of its members, disapprove the decision of the review board not later than 60 days after such notification. The Committee shall make such a disapproval if, based upon the review board's decision and the record of its determinations and on such other testimony or evidence as it may receive on the record, the Committee makes the determinations required to be made under subsection (d)(6) contrary to the determinations of the review board. Any determination of disapproval under this paragraph shall be final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(f) EXEMPTION ORDERS.—If a review board grants an exemption which is not disapproved under subsection (e), or if the Committee grants an exemption after disapproving a denial of an exemption by a review board, the review board or the Committee, as the case may be, shall issue an order granting the exemption and specifying the mitigation and enhancement measures established with respect to such exemption which shall be carried out and paid for by the Federal agency in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features

"(2) The Federal agency receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any Federal agency may request the Secretary to carry out such mitigation measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the agency receiving the exemption. No later than one year after the granting of an exemption, the agency to which the exemption was granted shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the agency preparing such reports.

Page 18, line 19, strike out "the Committee" and insert in lieu thereof "a review board".

Page 18, line 23, strike out "Committee" and insert in lieu thereof "review board".

Page 19, strike out line 5 and all that follows down through line 22 on page 20 and insert in lieu thereof the following:

"(h) JUDICIAL REVIEW.—Any real party in interest or the Federal agency involved may obtain review, under chapter 7 of title 5 of the U.S. Code, of—

"(1) any decision (including any decision with respect to mitigation and enhancement measures) made by a review board under subsection (d) which is not disapproved by the Endangered Species Committee under subsection (e), and

"(2) any decision by the Endangered Species Committee to disapprove a decision of a review board under subsection (e), in the United States court of appeals for any circuit wherein the agency action concerned will be, or is being, carried out, by filing a written petition for review in such court within 90 days after the last date on which the Committee may disapprove the review board's decision if it fails to disapprove such decision, or the date on which the Committee disapproves such decision, as the case may be. Attorneys designated by the review board or the Committee may appear for, and represent the board or Committee, respectively, in, any action for review under this paragraph.

Page 20, line 23, strike out "(j)" and insert in lieu thereof "(i)".

Page 21, line 2, strike out "(f)" and in lieu thereof "(d)(6)".

Page 21, line 11, insert "review boards and" and "section.".

Page 21 line 13, strike out "(k)" and insert in lieu thereof "(j)".

Page 21, line 14, insert "a review board or by" after "by".

Page 22, line 3, strike out "(l)" and insert in lieu thereof "(k)".

Page 22, beginning on line 5, strike out "subsections (d), (e), and (f) of".

—Page 22, line 16, strike out "not" and all that follows down through line 23 and insert in lieu thereof "and not to exceed $23,000,000 for the fiscal year ending September 30, 1979; and".

Page 23, line 1, strike out "not" and all that follows down through line 7 and insert in lieu thereof "and not to exceed $2,500,000 for the fiscal year ending September 30, 1979.".

—Page 31, line 20, strike out "subsection" and insert in lieu thereof "subsections".

Page 32, line 21, strike out the closing quotation marks and the final period.

Page 32, after line 21, insert the following:

"(i) MILITARY ACTIVITIES.—The provisions of this Act shall not apply to any action authorized, funded, or carried out by the Department of Defense, or by the Division of Naval Reactors and Military Application of the Department of Energy, as a part of their military functions. For purposes of this subsection, the term "military functions" means military functions directly related to military preparedness.".

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By Mr. VOLKMER:

—On page 41, strike line 10 and all that follows through line 23.

On page 42, strike line 12 and all that follows through line 21.

# SENATE—*Thursday, October 5, 1978*

*(Legislative day of Thursday, September 28, 1978)*

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by Hon. QUENTIN N. BURDICK, a Senator from North Dakota.

## PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

*My voice shalt Thou hear in the morning, O Lord; in the morning will I direct my prayer unto Thee, and will look up.*—Psalms 5:3.

We thank Thee, O Lord, for the strength and wisdom given in recent days to all who labor in this Chamber. Give us grace now to persevere until the work is done, and well done. Keep our vision high, our minds sharp, our speech instructive. May the refreshing winds of Thy Holy Spirit blow upon us to overcome weariness and to transcend fatigue. Keep us from giving up too easily or giving in too soon. Help us, Lord of all life, to do our duty for Thee and for our country and to rest the consequences with history.

Through Him who is King of Kings and Lord of Lords. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., October 5, 1978.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable QUENTIN N. BURDICK, a Senator from the State of North Dakota, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

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

## RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized for 5 minutes.

## THE JOURNAL

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

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

The minority leader is recognized.

Mr. BAKER. Mr. President, I have no requirement for my time, and yield it back.

Mr. ROBERT C. BYRD. Does the Senator from Colorado need additional time, over and beyond his order?

Mr. PROXMIRE. Mr. President, will the Senator yield me some of his time?

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. The order is 15 minutes?

Mr. ROBERT C. BYRD. Yes; does the Senator need additional time?

Mr. HART. I think not.

Mr. ROBERT C. BYRD. Very well. I yield whatever portion of my remaining time he may need to the Senator from Wisconsin (Mr. PROXMIRE).

Mr. PROXMIRE. I thank the Senator.

## GENOCIDE: A KAMPUCHEAN WAY OF LIFE

Mr. PROXMIRE. Mr. President, Democratic Kampuchea wallows in a bath of



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its own blood. Pol Pot's regime murders and abuses its citizens systematically and psychotically. Life is profane—expendable.

The Kampuchean abuse of human rights makes a textbook case of genocide as it is defined in the International Genocide Convention. The systematic murders violate article II, section (a) of the Genocide Convention.

Though the dictators who rule the country are Cambodians themselves, they have singled out specific sectors of the population to liquidate. From the throne of power, all their countrymen are mere commoners who can be snuffed out on a whim.

In 1975–76, according to Time magazine,

> The victims were intellectuals, officials of the previous regime, and members of the armed forces once commanded by Marshal Lon Nol.

The following year, Khmer Rouge commanders who had collaborated with the Vietnamese against the United States bit the dust.

Today a new 4-month-old purge initiated by Pol Pot seeks to "purify" the country of its professionals, minor officials, and anyone at all even suspected of disloyalty. Life is so cheap in Cambodia, reports Time, "they're getting down to killing cousins of cousins of Lon Nol's soldiers."

Another more insidious form of genocide—the forced migration and resultant intolerable conditions—violate sections (b) and (c) of article II. Though many Cambodians were accustomed to an urban way of life prior to the 1975 takeover, the Kampuchean controllers have driven them into the countryside. They have dispersed these city-dwellers across a land which is not only unfamiliar, but hostile.

In the country food is scarce. Whole expanses are stripped of anything edible. Even the leaves of the trees are torn away, eaten in desperation by starving refugees.

The denuded trunks and branches stand in stark testimony to the excesses of the Kampuchean regime. Starvation and disease have taken the lives of 2 million Cambodians in the past 2 years.

Even those who do find work under the brutal guidance of Kampuchean controllers are subject to an intolerable, mind-warping routine. Each day they are routed from bed at 4 a.m. After 12 hours of forced labor in the infertile fields, their reward is seven spoonfuls each of thin rice gruel.

Relief from this torture is escape into the shadowy realm of mental illness. Or suicide.

Mr. President, the disembowelment of Cambodia continues, but the United States has yet to ratify the International Genocide Convention. And 82 nations—many our closest allies—await only the vote of the U.S. Senate to make the United States the 83d nation to ratify a treaty which protects that most fundamental of all rights—the right to live.

We cannot stop genocide from occurring by ratifying this convention. But we will at least have a precedent, grounded in international law, for condemning such senseless slaughter as that perpetrated in Cambodia.

Mr. President, just as the nations of the world look at Cambodia and see useless, wanton violence, so do they look to the United States to gage its reaction to this gross violation of human rights.

Mr. President, we must return that gaze.

We must ratify the Genocide Convention.

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## THE VETO OF THE PUBLIC WORKS BILL

Mr. PROXMIRE. Mr. President, today it may be that the Senate will be called upon to act on the President's veto of the public works bill. I earnestly hope that when Senators consider their votes, they will consider the effect, not only on the country as a whole, which they certainly should as their principal concern, but also the effect on their States. If they do so, they will sustain the President's veto. The reasons are clear.

Thirty-one States will, in effect, be taxed more than they benefit from water projects. By that I mean that prorated cost of the water projects in this bill, if applied to the taxpayers in a State will result in 33 State's paying out more to support the water projects than they receive in projects. That includes all the States of New England, which, when they pay out tax money which ends up in another State, are losing resources. They are losing jobs. They are losing economic strength; and in some cases the amount they lose is not only 2 or 3 or 4 times as much, but in one New England State it is 27 times as much. Massachusetts for instance will pay out almost $1 billion in taxes over the full life of these projects and get back less than $40 million in projects.

In my own State of Wisconsin, we will lose hundreds of millions in taxes to pay for these projects and get back one-twentieth of that in projects.

I think some of these projects are excellent, and should be approved, and so does President Carter. As a matter of fact, he approves 95 percent of the public works bill. His veto extends only to a limited part. The total cost of these projects is about $35 billion, and his veto opposes only $1.8 billion, which, as I say, is 5 percent of the total. But if we stop that 5 percent, it would not only be to the advantage of those States which get very little in water projects, but it would be to the very great benefit of this country as a whole, including most of the States that benefit from public works.

I intend to discuss this at some length later on, in the event that the President's veto is overridden in the House of Representatives and we have a chance to discuss it in the Senate. But, Mr. President, I think all of us should be very sensitive to the fact that this is an inflationary year, and this is an enormously inflationary bill. Senators can go home and claim, "Look, I got a project in our State worth a million dollars," but take a look at what this program is costing the taxpayers of his State. In most cases it will be far more than they get.

As I say, in two-thirds of the States, for 66 of the Senators here in the Senate, they will find their States are short-changed in these water projects, and therefore they have every reason to be critical of them. Approve the good ones, even though it costs your State something, but be very critical of the ones that are not. And that means oppose the override and support the President's veto of the public works bill.

Mr. President, I ask unanimous consent that a table showing the list of 31 States that are losers on these water projects, be printed in the RECORD. The table shows how much each of these States get in projects and how much they pay in taxes.

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

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

Total shares of water project construction funds committed in fiscal year 1979 public works bill

(By State, nearest millions of dollars)

| State | What State gets | What State pays |
|---|---|---|
| Alabama | $447 | $628 |
| Alaska | 180 | 69 |
| Arizona | 1955 | 391 |
| Arkansas | 1560 | 365 |
| California | 3688 | 3726 |
| Colorado | 2029 | 446 |
| Connecticut | 63 | 529 |
| Delaware | 0 | 99 |
| District of Columbia | 15 | 117 |
| Florida | 957 | 1438 |
| Georgia | 286 | 859 |
| Hawaii | 65 | 152 |
| Illinois | 553 | 1913 |
| Idaho | 375 | 146 |
| Indiana | 284 | 907 |
| Iowa | 273 | 490 |
| Kansas | 241 | 396 |
| Kentucky | 680 | 588 |
| Louisiana | 5044 | 667 |
| Maine | 0 | 185 |
| Maryland | 98 | 704 |
| Massachusetts | 26 | 984 |
| Michigan | 70 | 1553 |
| Minnesota | 127 | 676 |
| Mississippi | 2487 | 407 |
| Missouri | 1646 | 817 |
| Montana | 773 | 130 |
| Nebraska | 391 | 266 |
| Nevada | 201 | 108 |
| New Hampshire | 0 | 115 |
| New Jersey | 55 | 1247 |
| New Mexico | 114 | 203 |
| New York | 77 | 3050 |
| North Carolina | 248 | 940 |
| North Dakota | 1034 | 111 |
| Ohio | 345 | 1821 |
| Oklahoma | 555 | 478 |
| Oregon | 492 | 404 |
| Pennsylvania | 425 | 2005 |
| Rhode Island | 0 | 159 |
| South Carolina | 219 | 489 |
| South Dakota | 4 | 117 |
| Tennessee | 1030 | 732 |
| Texas | 1454 | 2183 |
| Utah | 1019 | 216 |
| Vermont | 0 | 82 |
| Virginia | 134 | 874 |
| Washington | 4425 | 622 |
| West Virginia | 465 | 316 |
| Wisconsin | 4 | 791 |
| Wyoming | 51 | 69 |

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Colorado (Mr. HART) is recognized for not to exceed 15 minutes.

## EXPENDITURE RESTRAINT PERMITS TAX CUTS

Mr. HART. Mr. President, I am proposing today a comprehensive economic plan which is an alternative to those now before the Congress and the Nation. Unlike those plans which are based solely on massive tax cuts, this proposal would require that tax cuts depend on, and be precisely calculated in proportion to, restrained growth in Federal expenditures.

The heart of the matter is that unless tax cuts are strictly tied to restraint in Federal spending, we will only increase inflation. American taxpayers would be better off with no tax cuts at all than tax cuts which cause higher inflation.

I, therefore, propose that we consider a new, responsible remedy which has three key, interrelated basic elements:

First, strict controls on the growth of Federal spending; second, a reduction in personal and business taxes in precisely measured proportion to the reduced level of Federal spending; and third, indexing of personal income taxes.

Let me explain in more detail why I believe this approach is needed and why it will work.

During the past 7 years, many Americans have lost what was once an indomitable faith in the future of the U.S. economy and their own place in that future. Seven years ago, people assumed that if their income had doubled by today, they would be able to achieve most of their hopes and dreams with that increased spending power. The economy over the past 7 years has dealt a cruel blow to the hopes of most Americans.

### THE ECONOMIC PROBLEM

Although the average household income has almost doubled in 7 years, the sad truth is that actual purchasing power has not. In fact, it has barely increased at all. Three-fourths of the increase in average income has been swallowed by inflation. The remaining one-fourth has been wiped out by increased Federal, State, and local taxes.

Understandably, people are frustrated and are lashing out at most public and private institutions. They want an end to this seemingly endless cycle of inflation, high taxes, and diminishing purchasing power.

The current mix of high inflation and high taxes aggravates another problem in our economy—low productivity. Over the past decade, business investment in new plants and equipment has stagnated, holding back the high level of output which was the basis for this Nation's high standard of living. This loss in productivity has also fueled inflation and suppressed taxpayers' real incomes. So, this stagnation can and must be attacked by stimulating investment through tax reductions. Higher investment results in more production, which in turn generates more jobs and more income.

Solving this problem will be extremely difficult; because, at the same time that people desire Federal tax cuts and sharply reduced inflation, they also want the continued benefits of most Federal programs. Some elected officials are taking advantage of this apparent contradiction by saying that massive tax cuts are possible without exercising discipline on Federal spending. That is political demagoguery—and economic nonsense. Tax cuts which double the Federal deficit will not help the taxpayer. Doubling the deficit will stampede inflation to such a degree that inflation will cause more injury than the tax cuts can heal.

### SPENDING IS THE KEY

The alternative to this politically expedient, but economically destructive, approach is to control the growth of Federal spending at the same time that taxes are cut. This approach requires difficult decisions by Congress and the American people. Actually, to transfer purchasing power from the Federal Government to taxpaying households and business firms, the Government must control its own spending. To do otherwise is a logical and practical impossibility; for there is only so much output each year in the economy. If the private sector is to increase the share of the national output, the government sector simply must reduce the share of national output which it controls.

Those constituents who want lower taxes must be willing to help their elected officials pare Federal spending. Tougher priorities must be established to determine which Federal programs can be curtailed in order to construct a leaner budget. And even more importantly, we must find ways to keep the cost of existing high-priority programs from mushrooming beyond reasonable and responsible levels.

(Mr. PROXMIRE assumed the chair.)

Mr. HART. I am proposing an economic package designed to achieve these goals. It will not be as superficially appealing as a simple tax cut, but I believe it is the necessary remedy for our economy.

### HART THREE-PART ECONOMIC PACKAGE

This economic package consists of three main elements. One, the growth of Federal spending would be sharply restrained. Two, Federal taxes would be lowered significantly in proportion to lower Federal spending. And three, our tax system would be indexed to prevent inflation from exacting further penalties from taxpayers.

With these three elements taken together, the economy can function in a sound, responsible, and healthy manner—without added inflation. Both businesses and consumers can experience a growth in disposable income, providing more money for saving and investment.

### EXPENDITURE RESTRAINT

The first, and most important, part of this tax package is restraints on the growth of Federal spending.

Federal spending must be controlled if we are to cut taxes without increasing the Federal deficit to more inflationary levels. Currently, the Federal budget is projected to grow by about 8 percent per year into the mid 1980's. About 6 percent of this projected growth will be caused by inflation, which leaves 2 percent for expanding existing programs. We do not need to expand Federal purchases by 2 percent in the coming years.

Government spending can be divided into two categories: goods and services (for example, military hardware and troops, transportation, health research, education, Federal employees, et cetera) and transfer payments (direct payments to individuals or to third parties such as physicians and hospitals).

#### A. GOODS AND SERVICES

Federal purchases of goods and services actually declined in the last decade. Before adjustment for inflation, Federal spending on goods and services declined from $114 billion in 1968 to $90 billion in 1974. Thereafter, spending increased slowly to $102 billion in 1978. For the whole decade, Federal spending on goods and services declined by an average of 1 percent per year. After adjusting for inflation, this spending increased by 5 percent per year. Just this year, however, spending in reased sharply at an 8 percent rate.

The first element of this proposal to bring spending under control is to restrict the growth of purchases of goods and services to 4 percent per year during 1979, 1980, and 1981. Because inflation is expected to be 6 percent during these years (according to administration and CBO projections), however, we must actually reduce goods and services purchased by 2 percent per year. After 1981, I propose that the growth of goods and services should be limited to no more than the rate of inflation, so there will be no net change in the actual amount of goods pur·hased.

This level of spending restraint would require that Congress limit the growth of spending on goods and services by about $4 billion per year over the next 2 years, and about $7 billion in the early 1980's. Cumulatively, this provision will trim spending on goods and services by about $38 billion by 1983.

Contrary to much political rhetoric, Federal spending cannot be arbitrarily cut across the board. In fact, we must oppose such action. Arbitrary spending cuts are reckless, since they could require cuts in programs (such as research in preventative medicine, and development of new energy sources) where almost everyone would agree we need to spend more. Instead, we must establish clear priorities and weed out old programs which have outlived their usefulness. During the next several months, I intend to propose specific areas in which spending on goods and services can be cut. The passage of sunset legislation will also help to facilitate this process.

#### B. TRANSFER PAYMENTS

Less than half of the Federal budget goes to purchase goods and services for use by the Federal Government. Approximately half the Federal budget is money which is transferred directly to individuals to help pay for living expenses—payments such as medical care, housing, food stamps, retirement, and so forth. Those funds are called transfer payments. (However, medicare and medicaid funds are paid directly to physicians and hospitals, rather than to the individual receiving the service.)

Only 8 years ago, transfer payments were only half as large as Federal spending on goods and services. Since then, the transfer payments budget has grown twice as fast as goods and services. Now, transfer payments are 15 percent greater than purchases of goods and services.

Three transfer payment programs demonstrate this growth. In the last half

decade, spending on medicare increased by 37 percent annually, medicaid increased by 25 percent annually, and social security increased by 20 percent annually. These three programs together now cost over $100 billion per year.

Transfer payments have mushroomed for three reasons. First, the portion of the population which is retired, unemployed, or disabled has grown. Second, the amount and scope of public assistance programs has grown. And, third, inflation has greatly increased the cost of all necessities, especially medical services, much of which are now paid by medicare or medicaid.

Currently, Federal transfer payments are projected to grow by more than 9 percent a year, and they are expected to increase from 43 percent of the current total Federal budget to 47 percent by 1983. To avoid a large Federal deficit, this growth must be trimmed—but only without impairing the well-being of those people needing and deserving the assistance.

The challenge is how. As with the goods and services budget, this restraint cannot be imposed by arbitrary percentage cuts, which necessarily would create human suffering. Instead, those programs which do not target aid to those most in need and are inefficient can and must be made to work. The administration of public assistance programs can and must be reformed and restructured, so that the needy are helped and abuses are eliminated. We must deliver more aid and less bureaucracy for our public assistance dollars.

Total spending on transfer payments must be controlled to allow growth of 8 percent, not 9 percent, per year. Reducing expenditures by 1 percent per year is possible without reducing benefits to any needy persons. Achieving this goal will save $15 billion per year in 1983 alone.

Anyone who suggests that Federal spending be controlled has the responsibility to suggest categories where these controls will be most effective. I am preparing a preliminary list of areas where reform can reduce the cost of needed programs without harming those that deserve assistance.

Control of spending on transfer payments will require Congress to limit the growth of spending in this area by about $1.5 billion per year over the next 2 or 3 years over projected levels. By 1982, Congress must trim about $3 billion per year.

TAX CUTS

The second element of the package is reduction of both personal income taxes and corporate profits taxes.

During the past decade individual purchasing power has stagnated. While wages have doubled, inflation and increased taxes have taken virtually all of this increase away. Households have had to live with leaner budgets, but the Federal Government has not. Total Federal spending has been increasing at a faster rate than inflation—and the Government has increased its share of total output.

Also during the past decade, business investment has stagnated, so the growth of the economy has been below desired levels. The level of corporate taxes has contributed to reducing the funds which firms have remaining to invest. Also, the stagnating purchasing power of consumers has made prospective profits from new investments very uncertain. Thus, to expand economic output and to expand individual purchasing power, responsible tax cuts are needed.

The reduction in personal income tax rates would be phased in over 4 years under my plan. Compared to today's tax rates, personal taxes would be cut by 6 percent in 1979, an additional 6 percent in 1980, an additional 4 percent in 1981, and an additional 4 percent in 1982. While the average tax cut would be 20 percent over 4 years, tax rates would be cut by a higher percentage amount for lower income individuals.

For low-income taxpayers (up to $10,000), rates would be cut approximately 26 percent. For middle- and upper-middle income taxpayers ($15,000 to $100,000), rates would be cut approximately 20 percent. At the very high income range (over $100,000), rates would be cut approximately 16 percent.

Currently, middle-income taxpayers pay about 70 percent of all Federal income taxes. About 15 percent are paid by the high-income group, and 15 percent by the low-income group.

Corporate tax rates would be reduced 3 percentage points for firms of all sizes starting next year. The rate for small corporations with taxable income below $25,000 would be cut from 20 to 17 percent. This represents a 16-percent reduction in tax rates for small firms. Moderately sized firms, having taxable income between $25,000 and $100,000, would be reduced from the present rate of 22 to 19 percent. This represents a 14-percent cut for them. For large corporations, with taxable income exceeding $100,000 tax rates would be cut from 48 to 45 percent. This is a 6-percent cut.

INFLATION PROTECTION

Inherent in the present Tax Code is a hidden inflation tax, a perverse, automatic response to the rising cost of living. The income tax today does not distinguish between that part of a wage increase which is merely a cost-of-living adjustment and that part which goes beyond the cost of living and is a real increase. Any increase in wages is taxed at higher and higher rates, whether it represents an increase in real income or whether it is just a cost-of-living adjustment. The argument that this automatic response can always be offset by careful discretionary policy is, in light of recent experience, clearly unpersuasive. In short, while incomes rise to accommodate increased cost-of-living, tax brackets are static.

In every year that Congress does not legislate a tax reduction, inflation pushes people into higher tax brackets, even though they may have no increase in their real income. Their average tax rate rises—that is, their tax burden grows faster than the rate of inflation—and the result is that they have less to spend, and worse, less to save and invest. Indexing the Tax Code represents the most effective way to remedy this situation. Indexing automatically corrects the income tax system to prevent inflation from pushing taxpayers into higher and higher brackets. An inflation-indexed tax system would prevent inflation from producing a real increase in a taxpayer's tax bill, when the taxpayer has no increase in real income.

Congress must act to prevent inflation from increasing the average American's tax bill when there has been no real increase in his income. It is fundamentally wrong for Congress to be reaping a more stimulative Federal budget would be needed. Under such circumstances, a "windfall" in increased revenues each year, without ever having to enact a tax bill. The hidden tax increase that fills the coffers of the Nation's Treasury escapes unnoticed by the public and the press and is a dramatic example of taxation without legislation. The Federal Government will continue to take advantage of this destructive economic phenomenon unless Congress acts to correct it.

A number of legislators in both Houses of Congress have introduced legislation to provide for adjusting the tax code for inflation. When the Revenue Act of 1978 is taken up on the Senate floor, I shall offer an amendment together, with Senators GRIFFIN, DOLE, and BROOKE, to insulate taxpayers from the tax impact of inflation by automatically adjusting tax rates to reflect increases in the cost of living.

Without indexing, inflation would cause tax rates to increase by about 3 percent per year, or 10 percent by the early 1980's. Thus, tax indexing is roughly equivalent to an additional 10-percent cut in 1983 from tax rates under the present system.

The spending limits which are included in the legislation which I am introducing today will insure that there will be no revenue shortfalls as a result of indexing. In fact, Federal deficits can be systematically reduced to near zero in the mid-1980's.

LINKING TAX CUTS TO SPENDING CUTS

The above proposals for expenditure restraint and tax cuts must be tied together legislatively, because the issues are tied together economically. If tax cuts are not matched by spending controls, then they will be matched by rampant inflation. Tax cuts plus more inflation would be worse than no tax cuts at all.

The size of tax cuts in this proposal is measured precisely to complement the limits on Federal spending. If spending limits are not enforced, the tax cuts must be postponed. In fact, the legislation which I propose will contain a provision that allows the Secretary of the Treasury to implement the tax cuts only if Federal spending is held within the limits established for each calendar year. If spending limits are exceeded, the tax cut would be deferred to a time when the cut would not increase the Federal deficit above the levels projected in this legislation.

The projected budget deficits and eventual balancing of the budget envisaged by this legislation are based on continued economic growth of the economy. If unforeseen events, such as oil shortages or a poor agricultural harvest, tilt the economy into a recession, then

this legislation could be amended as part of the usual, annual congressional budgetary process.

IMPACT ON CURRENT BUDGETARY PROCESS

This legislation has no direct impact on the administration's or the Congress budgetary process. This legislation simply sets guideline limits for Federal spending. The administration and the Congress will carry out their usual budgetary procedures. They may result in spending levels which exceed the targets in the Hart plan. If, however, the Congress decides spending levels within the levels in the Hart plan, personal income tax cuts will automatically be triggered.

The tax cuts which would be triggered are carefully measured so that the Federal deficit will systematically decrease in the early 1980's.

SUPPLEMENTARY ECONOMIC ACTIONS

In the future, I intend to offer additional economic legislation as part of a comprehensive economic package. In the near term, I shall introduce legislation to provide economic incentives to firms and employees to control price and wage inflation. Also, I shall introduce legislation to target economic incentives for investment in new business ventures by new and existing companies.

Over the longer run I will introduce legislation to simplify the tax code—and to provide greater incentives for private saving and business investment. One such option I am considering would replace the present taxes on business profits and personal income with a progressive tax on consumption only.

In summary, I have offered a new proposal to further an old idea: You do not get something for nothing. You do not get tax cuts without inflation unless you are willing to control Federal spending. The American taxpayer wants frugal budgets effectively managed. The American taxpayer also wants lower taxes to reduce the burden of Government during this period of inflation-eroded purchasing power.

This plan results from careful economic study. The tax cuts are precisely measured to the levels of restraint in Federal spending, which Congress can achieve.

Because this plan will give business confidence that Federal budgets will not be inflationary, investment and economic growth should accelerate.

No single plan will solve all of our economic problems. But this proposal will directly address the most critical and complex economic difficulties.

Most of all, a plan of this type can go a long way toward reestablishing public confidence in an efficient Government.

Mr. President, I ask unanimous consent that a copy of my proposal be printed in the RECORD at this point.

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

HART PROPOSAL FOR TAX CUTS AND EXPENDITURE RESTRAINT—HART PROPOSAL COMPARED TO ADMINISTRATION/FINANCE COMMITTEE AND ROTH/KEMP PROPOSALS

| PROPOSAL | ADMINISTRATION PROPOSAL* | ROTH/KEMP PROPOSAL |
|---|---|---|
| Tax cuts: | | |
| Personal income tax rates will be reduced 20% over 4 years in the following manner: Phase in 6% reduction in 1979, 6% in 1980, 4% in 1981, and 4% in 1982. Such tax reduction will be progressive and triggered only when Federal spending is restrained to the extent described below. | Personal income tax rates will be reduced by approximately 6% in 1979. No further tax cuts are planned, although we assume tax cuts will be required in the future to counteract inflation. | Personal income tax rates will be reduced 30% over 3 years in the following manner: 10% in each year, cumulatively. |
| Corporate profits taxes reduced from 48% to 45% in 1979, permanently. | Corporate profits taxes reduced from 48% to 45% in 1979, permanently. | Corporate profits taxes reduced from 48% to 45%, permanently, but phased in over 3 years. |
| Personal income taxes indexed for inflation, so inflation will not erode the 20% tax cut. | No provision for indexing. | No provision for indexing. Inflation will erode the 30% tax cut to become the equivalent of a 20% tax cut in 1983. |
| Restraint on Federal spending: | | |
| Federal purchases of goods and services will be held to a growth rate of 4% (inflation rate *minus* 2% annually until 1981 and at the projected inflation rate (6%) thereafter. | No restraint on the growth rate of Federal purchases of goods and services. OMB and CBO now project growth of Federal spending on goods and services at 8%, annually. | No restraint on the growth rate of Federal purchases of goods and services. OMB and CBO now project growth of Federal spending on goods and services at 8%, annually. |
| Growth of spending on income security (transfer payments) will be held to 8%, annually. | No restraint on growth of spending on income security. OMB and CBO now project growth of spending on income security at 9%, annually. | No restraint on growth of spending on income security. OMB and CBO now project growth of spending on income security at 9%, annually. |
| Federal deficit: | | |
| Budget deficits will be equal to those under Administration plan in 1979–1980. Thereafter, budget deficits under Hart plan are below Adminstration levels. In 1983, Hart plan has deficit 25% below Administration plan. | Budget deficits currently are in the $40–$50 billion range, and deficits are predicted to decline to about $25 billion in 1983. | Budget deficits increase dramatically from current levels. Chase Econometrics projects a $70 billion deficit in 1981. Treasury and CRS estimate budget deficit exceeding $100 billion in that same year. |

* The Administration proposal is substantially similar to the proposal reported by the Senate Finance Committee, H.R. 13511.

## DEPARTMENT OF DEFENSE APPROPRIATIONS, 1979

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of H.R. 13635, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 13635) making appropriations for the Department of Defense for fiscal year ending September 30, 1979, and for other purposes.

Mr. STEVENS. 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. HELMS. 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. HELMS. Mr. President, I ask unanimous consent that John Carbaugh be granted the privilege of the floor during discussion of this measure and any votes thereon.

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

Mr. HELMS. 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business until 9 a.m.

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

## AIR BASES IN ISRAEL

Mr. ROBERT C. BYRD. Mr. President, following the announcement of the Camp David agreements on the Middle East last month, a question was raised in the Senate on September 19 by the Senator from Virginia (Mr. HARRY F. BYRD, JR.) about reports concerning an agreement to construct two new air bases in Israel

and the United States' role in constructing the bases.

At that time, I told the Senator from Virginia that I would obtain information on the subject and that I would make it available to the Senate.

Secretary of Defense Harold Brown has written to the Israeli Defense Minister, Mr. Ezer Weizman, concerning the bases. In his letter of September 28, Secretary Brown suggests that the two governments consult on the scope and costs of the two new air bases as well as on related forms of assistance which the United States might provide in carrying out the project on an urgent basis.

Secretary Brown's letter refers to the construction of two Israeli air bases in the Negev Desert area of Israel. These bases are considered by the Israelis as important to their security and would replace bases which Israel had constructed at Eitam and Etzion in the Sinai.

As Secretary Brown notes in his letter, congressional approval would be necessary for such assistance to be provided and, therefore, the President will be seeking such approval at some point in the future.

This is all I have been able to obtain in response to the distinguished Senator's question. I ask unanimous consent that the letter from the Secretary, Mr. Brown, to Defense Minister Weizman be printed in the RECORD.

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

WASHINGTON, D.C.,
*September 28, 1978.*

HON. EZER WEIZMAN,
*Minister of Defense,*
*Government of Israel.*

DEAR MR. MINISTER: The U.S. understands that, in connection with carrying out the agreements reached at Camp David, Israel intends to build two military airbases at appropriate sites in the Negev to replace the airbases at Eitam and Etzion which will be evacuated by Israel in accordance with the peace treaty to be concluded between Egypt and Israel. We also understand the special urgency and priority which Israel attaches to preparing the new bases in light of its conviction that it cannot safely leave the Sinai airbases until the new ones are operational.

I suggest that our two governments consult on the scope and costs of the two new airbases as well as on related forms of assistance which the United States might appropriately provide in light of the special problems which may be presented by carrying out such a project on an urgent basis. The President is prepared to seek the necessary Congressional approvals for such assistance as may be agreed upon by the U.S. side as a result of such consultations.

HAROLD BROWN.

## HOW ONE COMMUNITY BATTLES ARSON

Mr. PERCY. Mr. President, as hearings by the Permanent Subcommittee on Investigations recently emphasized, arson remains a serious and perhaps worsening problem, threatening many of our cities with financial and human disaster. Most alarming is arson-for-profit, the deliberate torching of properties, in order to obtain fraudulent insurance payoffs. The subcommittee's hearings indicated that arson-for-profit is a growth criminal enterprise, attracting the increasing attention of vicious quick-buck artists, unscrupulous landlords, and organized crime.

Local law enforcement, private industry, and the Federal Government all have crucial roles to play in a national campaign to stamp out arson. During the course of its hearings, the subcommittee received commitments from the FBI and from the Law Enforcement Assistance Administration to help mount more effective Federal and local law enforcement efforts against arson. But individual and community based citizens action is also warranted.

The Boston neighborhood group called STOP (Symphony Tenants Organizing Project) is an example of successful mobilization by a threatened community to analyze and alleviate its local arson problem. The October 1, 1978, edition of the Washington Post's Parade magazine contains an article, entitled "How One Neighborhood Foils Arsonists," describing how the STOP group attacked its problem and helped put a major arson ring out of business. The article, by Jack Canavan, describes the STOP approach to detecting arson-prone buildings and areas and lists tips for other community groups concerned about eliminating arson.

To more fully inform my distinguished colleagues about the experience of the STOP organization and the possibility for similar efforts elsewhere, I ask unanimous consent that the article be printed in the RECORD at this time.

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

HOW ONE NEIGHBORHOOD FOILS ARSONISTS

(By Jack Canavan)

The tenants were scared. One by one, the buildings in their neighborhood—Boston's Symphony Road area—were systematically being burned. An arsonist was on the loose, and nobody seemed to care.

Since 1973, a series of 30 suspicious fires had killed five persons and destroyed more than 30 buildings, leaving hundreds homeless and causing an estimated $6 million in property loss. As one tenant put it: "People were afraid to lie down and go to sleep."

In response to what they felt was an apathetic attitude by local authorities, a neighborhood group called STOP (Symphony Tenants Organizing Project) conducted their own investigation. What they found led to the discovery of what officials have called 'the largest arson ring ever uncovered in the United States."

On Oct. 17, 1977, in a series of predawn raids in the greater Boston area, Massachusetts State Police arrested 22 persons—including former high-ranking police and fire officials, lawyers, realtors and insurance brokers—in connection with the arson-for-profit ring. Later arrests brought the total to 33 persons who might have continued in their lucrative but deadly racket had it not been for the persistence of this small group of concerned neighbors.

STOP, which has about 30 members, was formed in Boston's Fenway area seven years ago, originally in response to substandard housing conditions. Its leaders, unlike the neighborhood's poverty-ridden residents, are mostly college-educated political activists with degrees in economics, biology and social work. For them, community work was more appealing than the routine 9-to-5 job.

The group's focus shifted to arson when a September 1976 fire in the neighborhood claimed the life of 4-year-old Jesse Oliver. Although not the first fire in the area, it was the catalyst for STOP's investigation.

Speculators would consider the Symphony Road area prime real estate. It lies in the shadow of the Prudential Center—Boston's convention showplace—and the new 60-story John Hancock tower. Also nearby are the beautiful Christian Science mall, Horticultural Hall, Symphony Hall, a university and a music conservatory.

Once a fashionable and stable neighborhood, the area has become in recent years a haven for transients, students, alcoholics and prostitutes. The sturdy brick town houses, subdivided to accommodate the populations, have deteriorated under absentee landlords. Many lie burned or abandoned, testimony to the onslaught of urban decay.

Prime real estate—yes. But also a prime target for arsonists.

Arson is the fastest growing, most expensive crime in America today. National Fire Protection Association figures show that in 1966, some 40,000 arson incidents were recorded. In 1975, the figure had leaped to an alarming 144,100 arson-related fires causing more than 633.9 million in property damage. In 1976, a recent New York Times study estimates, there were 150,000 arsons nationally, with losses of $2 billion, more than 1000 persons killed and 10,000 injured.

Of the four motives for arson—revenge, vandalism, mental disturbance and arson-for-profit—the last is by far the most common: Buildings are deliberately burned for insurance money or to make way for new construction.

A prime reason for the phenomenal rise of arson is the apparent belief by law-enforcement officials that arson is very difficult to prove. The arsonist must be caught in the act, so the theory goes, to obtain a conviction. As a result, arson has become profitable.

STOP's efforts have helped to dispel that theory and to focus national attention on the arson problem. Sens. Charles H. Percy (R., Ill.) and Sam Nunn (D., Ga.), members of the Senate permanent investigations subcommittee, asked the General Accounting Office to examine the country's lack of a suitable law-enforcement program to combat arson.

As a result, efforts are under way to coordinate the four agencies involved: the Federal Bureau of Investigation; the Alcohol, Tobacco, and Firearms Division of the Treasury Department (ATF); the Internal Revenue Service; and the Postal Service. ATF is setting up arson task forces in several cities, and the Postal Service will scrutinize suspected arson-related insurance fraud schemes involving the U.S. mails.

District Attorney William Delahunt of Norfolk County, Mass.—another area plagued by arson—described how increased government interest can produce dramatic results. With the aid of federal funds, a "white collar" crime unit was established in that county, and within a year, 20 persons were indicated for arson and arson-related crimes. "In the previous 10 years," Delahunt stated, "there was a total of 19 indictments, an average of under two a year."

Further aid for the Massachusetts war on arson came on March 31, when the Economic Development Administration and National Fire Prevention Control Administration announced a $200,000 grant for a special Massachusetts Task Force on Arson—the first of its kind in the nation.

David Scondras, key organizer of STOP, wrote his master's thesis in economics on the Symphony Road neighborhood, where he had lived for 10 years. When STOP began its arson probe, Scondras turned to data he had collected which showed that it was more profitable for landlords to burn their build-

ings than to rent or manage them. This, STOP found, was due chiefly to insurance settlements on property where the paper value had been artificially inflated.

Names of building owners were culled from housing court records generated during the group's original efforts to get repairs done.

Real estate transactions are a matter of public record, and through the local registry of deeds, STOP traced the history of a dozen buildings that had been hit by fire. The cycle started about 15 years ago, when the neighborhood began to lose its stability. Some of the buildings were sold to large-scale slumlords, who subdivided apartments and rented to students and poorer tenants. When the buildings began to deteriorate, they were bought by owners interested in them primarily as tax shelters and collateral for other investments—not as housing. Deterioration continued, and the buildings eventually lost all value—except to those who lived there.

STOP also discovered that tax-free insurance settlements can represent far more than the actual value of the burned property. By agreement, for example, a buyer and a seller could inflate the mortgage value every time a building changed hands. One building that had changed ownership twice—for one dollar in actual cash—had its book value, and potential insurance payoff, increased considerably. Records showed that the final owner paid $16,000 for a building worth $545,000 on paper.

Armed with their data, STOP began making demands for action. But their pleas fell on deaf ears.

One of their major obstacles turned out to be the chief investigator in the state fire marshall's office. Former state police detective-lieutenant James DeFuria was very convincing when he talked to reporters about the increase in arson. It was alarming, he agreed, offering arson figures of his own to boost his credibility and explanations based on arson-for-revenge and arson by vandals or drunks. Still no arrests were made, however, because DeFuria insisted that you had to catch the arsonist with the match in his hand.

DeFuria was arrested in the October raid and in April was convicted of bribery and seven arson-related charges. He is serving a 10-to-12-year prison term.

STOP's campaign, meanwhile, gathered momentum. When another fire on an adjacent street killed four people, STOP began a "media blitz." They appeared in the local press and on television and radio talk shows. Finally, they were allowed to bring their findings before the Massachusetts attorney general's office. In the words of Assistant Attorney General Stephen Delinsky, head of the state's new arson task force: "We were amazed by the tenants' work in establishing patterns of ownership. They organized and fought their way into recognition."

Private investigators hired by the victimized insurance companies adopted STOP's methods and conducted their own probe. The circumstantial evidence accumulated by these two groups—operating outside the attorney general's office—led to the October raid and the 33 indictments that would have a nationwide impact on the arson problem.

More important, by showing that arson-for-profit can be eliminated STOP has provided incentive for other communities to organize and fight this burning problem.

WAYS YOU CAN FIGHT BACK

Urban Educational Systems, Inc., is an outgrowth of STOP. A federal grant is helping the group develop its copyrighted Early Warning System (EWS), a computerized method for detecting arson-prone buildings.

Meanwhile, if arson, abandonment or deterioration is a problem in your community, STOP suggests:

1. Organize: Set up research teams to investigate history of the buildings; fire-watch teams (if fires are prevalent); relocation teams for victims of fires; information teams to recruit tenants, write and distribute pamphlets, conduct meetings.

2. Bring facts to authorities: Since most arson squads are understaffed, tenants can act as liaison to local arson investigators by supplying pertinent fire information. Also, information gathered from housing inspection records, building department violations and real estate transactions (taken from the local registry of deeds) should be presented to the proper authorities.

3. Media blitz: If no action is forthcoming, approach local newspapers, television and radio talk shows. Arouse public interest.

4. Get an office and a telephone: STOP was furnished an office and free rent by Northeastern University.

5. Share information: Contact other groups with similar problems.

6. Seek backing from authorities: Try to find cooperative local officials and work to get them on your side.

7. Get legal advice: With the help of a politician or lawyer, look at local arson laws, housing and building codes, real estate records.

8. Don't get complacent: The war on arson seems endless, but members of STOP say persistence pays off.

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## THE CONGRESS EXAMINES NATIONAL WATERWAYS POLICY: CHANGING TIMES AND CHANGING PERSPECTIVES

Mr. SPARKMAN. Mr. President, our distinguished colleague from Tennessee, Senator JAMES R. SASSER, has performed his duties and represented his constituents in a remarkable manner in the relatively short period of time he has served in this body. My colleagues will agree that he has an outstanding future ahead.

Therefore, I was particularly pleased when Senator SASSER visited my State of Alabama—his neighboring State—to give a talk on a subject of much interest to both States.

Senator SASSER's remarks to the September 22 closing luncheon of the 1978 annual meeting of the National Waterways Conference, Inc., reflect his keen insight into water transportation and water resources issues which are now before the Congress and are likely to be before this body in one form or another in the years ahead.

The distinguished Senator's remarks, titled "The Congress Examines Waterways Policy: Changing Times and Changing Perspectives," merit sharing with my colleagues, and I would urge each Senator to read them. If there is no objection, I ask unanimous consent for the text of Senator SASSER's address as delivered in Birmingham to be printed in the RECORD.

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

STATEMENT OF SENATOR SASSER

I'm delighted to be here today with this group of movers and shakers.

It's nice to be with people who get things done in this world.

Ralph Waldo Emerson once said that "ideas must work through the brains and arms of great and brave men, or they are no better than dreams."

Leaders like Glover Wilkins and other officers of the National Waterways Conference hang in there and do the work. They get the job done.

And I commend them and I commend all of you for your dedication to building America.

The voice of the turtle must be heard in the land—but we must also hear the sounds of progress.

We have to strike a logical medium between the need to preserve our environment and the necessity for providing essential services for 215 million Americans.

I know that you have had three days of panel discussions, breakfast meetings, and speeches, so I'm not sure I'll be able to add anything really substantive to what you've heard and discussed.

The theme of the National Waterways Conference is the importance of adapting to new realities.

We have seen many changes in the last year and a half. Many important issues relating to waterways, dams and other internal improvements have been debated. Many new proposals have been advanced. And the process of change continues. Final resolutions on some important issues have not yet been reached.

In the weeks and months to come, final decisions are expected on these issues.

Harry Truman once said, and I quote:

"Each period of history has had its special challenges. Those that confront us now are as momentous as any in the past."

That holds true today.

So in nineteen hundred and seventy eight, one of our challenges is to create a coherent policy for our Nation's waterways. Decisions affecting the use of our waterways are becoming increasingly important issues. The President, the Congress, and the States are paying more and more attention to these issues. I'm confident that we share the hope that these questions will be resolved in the best interests of the Nation.

We are no longer living in the days of the great depression. The growth versus no growth issue is the prime example of a changing era. In addition, our Nation is divided by regional conflicts: Such as Sunbelt vs. Snowbelt and East vs. West.

We have the constant struggle between those advocating development of natural resources and those advocating preservation of the environment.

These divisions and trends are reflected in positions and debates in Congress.

And these debates and these changes have a great impact on current water resource policy.

Let's turn, for just a moment, to the all-important issue of waterway user fees. As I'm sure all of you know, the President has proposed that substantial user fees be enacted to recover waterway operation costs and some of the costs of new construction on waterways.

In Congress, Senator DOMENICI introduced legislation to meet this goal. His initial proposal called for a fee to recover eventually 100 percent of all waterway operating costs and 50 percent of new construction costs. During Senate debate last May, Senator DECONCINI offered a compromise. The compromise proposed a phased-in fuel tax on barge traffic, to begin at four cents a gallon on October 1, 1979. By 1984, the tax would have increased to 12 cents per gallon. The compromise would have also implemented an interim user fee while the entire issue was subject to a Department of Transportation study.

I opposed the Domenici compromise. Although it was a weakened version of the initial proposal, I felt that the Department of Transportation study should be completed before such a significant change in policy is enacted into law. We must assess the full impact of the user fee proposal. One Memphis State University study indicates that the economy of my State would suffer under high user charges.

In my judgment, the legislation finally accepted by the Senate calls for a careful and thorough evaluation of this issue. Certainly, we are witnessing some changes in our waterways policy. The Senate bill calls for the Secretary of Transportation to report to Congress within three years on the impact and need for waterway user charges and fuel taxes. This study will give us the information we need to chart a proper course on this matter. This is just the beginning of the cost-sharing issue.

The Senate bill also omitted one major part of the Domenici proposal. Our bill does not impose a moratorium on construction until Congress acts on the final user charge study. The proposed moratorium would deauthorize existing projects and bring to an immediate halt development of our water transportation resources. Clearly, a complete halt in construction is not in our national interest.

Currently, differences remain between the Senate and House versions of this bill. Even if a bill passes Congress before the end of the session, there's a possibility that it will be vetoed.

We need some kind of bill signed into law because we need to demonstrate our continuing commitment to our nation's waterways. Traffic on our inland waterways is a vital part of our transportation system. We can ill-afford to turn our backs on this form of transportation.

People in all walks of life receive benefits from this inexpensive form of transportation. We must move ahead with necessary projects to meet the need. We must modernize existing projects to ensure that they also meet current requirements.

Our country is moving, to some extent, from the development era to what I would call an era of maintenance. The question is, are we willing to accept maintenance expenses as an unavoidable cost of keeping our transportation system intact?

One new project of particular importance to me is the Tennessee-Tombigbee waterway.

Last year there was outstanding progress on the Tennessee-Tombigbee. The employment level on the waterway construction project exceeded 2,000 workers. Records were set in almost all phases of construction.

Every effort was made during the contracts negotiation process to hold down costs. In fact, many of last year's contracts were awarded at levels below the government estimate. In this time of high inflation, the Tennessee-Tombigbee not only held the line on costs, but actually saw a $6 million reduction.

All of us in the five state area are optimistic about the benefits of the project. It will be a great economic shot in the arm. In my own state, the number of jobs along the Tennessee River is expected to increase from 43,000 to 87,000 just a few years after the waterway is completed. This means 44,000 new river-related jobs, over and above normal growth projections.

The Appalachian Regional Commission recently studied the impact of the waterway on workers' incomes in the east Tennessee area. The per capita income is projected to grow from $3,967 in 1973 to $8,180 by the year 2000. Similar increases are expected statewide, and in other affected states.

In April, I proposed that the Senate Appropriations Committee, on which I serve, provide adequate funding for the Tennessee-Tombigbee. The appropriations measure now includes $156 million for the project. This funding demonstrates congressional support for the waterway, and I'm hopeful that we can witness completion of this project by the mid 1980's.

Funds for the Tennessee-Tombigee are included in the all-important public works appropriations measure. As with the waterway user fee issue, there is apparent disagreement between Congress and the White House on various parts of the bill.

As a member of the Appropriations Committee, I've worked hard to guarantee that we proceed with development of our water resources.

Water is one of our Nation's most precious and valuable resources. Water is vital to our Nation's economy.

It helps our farmers grow their crops.

It offers a valuable energy source.

And it facilitates the growth of industry.

For most of us, water is available at the turn of the faucet. Recently, however, we've learned that we can't necessarily take our water for granted.

Many areas of the country are suffering from an extreme shortage of water. In some cases, massive crop damage has been the result. Water rationing has been put into effect in a few areas.

While many sections of the country are suffering from a severe shortage of water, others suffer from the other extreme—an excess of water. Many urban areas are still victimized by floods. Even today, precious topsoil in rural areas is carried away by uncontrolled water flow.

Throughout history, man has attempted to cope with the two excesses. The water resource system in the United States is the most impressive in the history of the world. Our system of dams, locks, harbors, canals, reservoirs, and irrigation systems is designed to serve the needs of the public.

The proposed public works appropriations measure takes these public needs into account.

The bill recognizes that our waterways are an essential part of our national transportation system. They provide clean, efficient, and economical transport of fuels for energy consumption, agricultural produce, and supplies for industry.

The bill also supports flood control projects to protect our Nation's communities and opens up vast areas for agricultural production.

General purpose projects included in the bill provide for hydroelectric power generation and downstream flood protection. They also offer great recreational opportunities as well as abundant and clean water supplies.

This bill is an "All American bill." It provides for a growing America.

Let's take just a minute to look at the estimated annual benefits of projects included in this bill:

Flood control, 2.9 billion dollars.

Power, 1.3 billion dollars.

Navigation, 1.3 billion dollars.

Irrigation, 750 million dollars.

Water supply, 313 million dollars.

Recreation, 292 million dollars.

The total estimate of annual benefits from this bill is more than 7 billion dollars. We are well aware of current benefits from existing projects. I, for one, am anxious to expand those benefits for even more Americans. This public works bill would do just that. We cannot stand still. This is a growing Nation, and we must grow to meet expanding needs. Just as private industry requires capital investment, our Nation requires capital investment.

Of course, we must carefully scrutinize each project to ensure wise use of taxpayers money. We must see that the cost-benefit ratio of each project is favorable. Congress has taken proper steps in this direction, and I hope that the President will see fit to sign this Public Works bill.

All of us involved in water resource development can testify that changes are taking place. Changes are in the making as a result of policy considerations. And changes are coming through healthy growth.

In the coming months we are likely to see some form of barge fuel tax. We shall experience further debate on the need for user fees.

The President has proposed changing funding formulas for public works projects to involve the States to a greater extent. To date, that concept has not received a great deal of congressional support. But we are certainly going to hear more about this administration proposal in the months to come.

This is, indeed, a time of change. Frankly, I feel it is also a time for excitement and guarded optimism. Our policy decisions will affect generations to come. We can make a great impact on the future growth potential of our country.

A noted historian once said, and I quote:

"The character of a civilization is determined by the challenges it faces and the response it makes to them. The greater the challenge the greater the chance to exhibit the qualities of greatness."

So I believe we should welcome this responsibility. We should be mindful of our past but keep our eye toward the future to secure expanded opportunities for our children and for their children.

We must continue to look ahead and move ahead.

Thank You.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

## DEPARTMENT OF DEFENSE APPROPRIATIONS, 1979

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, is the Senate back on the Defense appropriations bill?

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time not be charged against either side.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

### UP AMENDMENT NO. 1989

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

The PRESIDING OFFICER. There is an order pending before the Senate to proceed to an amendment by the Senator from South Carolina. It would take unanimous consent to have that set aside.

Mr. STEVENS. I ask unanimous consent that it be set aside temporarily. This is the amendment I have under the time agreement.

The PRESIDING OFFICER. That is correct. Under the unanimous-consent agreement, the amendment of the Senator from South Carolina will be set aside and the amendment of the Senator from Alaska will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment numbered 1989.

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

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

The amendment is as follows:

On page 2, line 11, delete the following, "$9,110,896,000." and insert in lieu thereof "$9,112,096,000.".

On page 2, line 20, delete the following, "$6,951,332,000." and insert in lieu thereof "$6,456,032,000.".

On page 3, line 12, delete the following, "$7,489,391,000." and insert in lieu thereof "$7,491,291,000.".

On page 6, line 13, delete the following, "$9,031,659,000," and insert in lieu thereof "$9,074,159,000,".

On page 6, line 24, delete the following, "$11,573,156,000," and insert in lieu thereof "$11,588,156,000,".

On page 7, line 15, delete the following, "$731,400,000," and insert in lieu thereof "$734,600,000,".

On page 8, line 1, delete the following, "$9,186,267,000," and insert in lieu thereof "$9,230,767,000,".

On page 38, line 17 through line 23, delete the following, "and in addition to the limitation contained above, for all other direct costs (excluding all transportation outside the United States): (a) in excess of 66⅔ per centum of such costs during fiscal year 1979, (b) in excess of 33⅓ per centum of such costs during fiscal year 1980, and (c) in any amount after September 30, 1980;"

Mr. STENNIS. Mr. President, may we have order? This is an important matter.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Alaska.

Mr. STEVENS. Mr. President, the amendment would restore funding for minimum staff for military commissaries. The Department of Defense appropriations bill, as reported, would begin a 3-year phaseout of Federal support of personnel costs in the commissaries. My amendment restores the $113 million deleted by the committee. This is a budgeted amount and we are well within the budget resolution for defense spending.

Mr. President, this is not a new issue. This is the 4th year in a row that proposals have been offered in the Senate to begin a phaseout of the funding for these operations. Last year my amendment to restore the funds was accepted by a wide margin—59 to 33—and I would hope that my colleagues will continue to support my position in this matter.

The Department of Defense has requested deletion of the committee provision beginning the phaseout. I ask unanimous consent that the Department's justification for continued support of the commissary system be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. STEVENS. The Defense Manpower Commission and the Quadrennial Review of Military Compensation have strongly recommended that commissaries be preserved as an institutional benefit to partially offset the unique conditions of military service—involuntary moves, family separation, no overtime pay, and combat duty. The President's Commission on Military Compensation supports the position that the commissary be preserved as to reorganize into central management modes an institutional benefit. It would be premature to reduce commissary support without considering its impact on the total compensation system. The recommendations of the Commission are scheduled to be forwarded to Congress early next year at which time we can act on the entire pay and benefit package.

Enactment of the Senate Appropriations Committee provision will serve to escalate the prices of food in commissaries at least 4 percent a year in addition to the usual inflation of food prices causing an undue hardship on those who can least absorb the increased costs: Junior enlisted families and military retirees.

In many instances, the families of military personnel are using food stamps at the present time. Yet, here we have a situation in which we are asked to further raise the costs of food to those in military service.

Throughout our Nation, the largest number of people using the commissaries are the poorest people in the military including: Married enlisted, the junior officers, and retired military members. According to the Department of Defense, the proposed 3-year phaseout of clerk-hire funds would have the most disastrous effect on the nearly 60,000 enlisted families that are eligible for food stamps. I have the feeling that this is only a portion of the amount of people eligible for food stamps, but pride prevents them from using this method. If this proposal is put into effect, more individuals will be forced to take advantage of this program thus escalating the cost of the food stamp program. Over $10 million in food stamps were redeemed in commissaries in fiscal year 1977. This itself is a deplorable situation in that some of our servicemen's and women's salaries cannot support their families above the poverty level.

The Reserve Officers Association of the United States cites a 1974 survey depicting the composite commissary picture; 43 percent retired personnel and 57 percent of active duty members. Of the active duty military using commissaries, 15 percent are officers and 42 percent are enlisted persons.

According to their statistics, 67 percent of today's active force is E-5 or below making between $5,300 and $9,600 a year in pay and allowances. The poverty level for a family of four in the United States is $6,200.

We, also, have a large number of retired personnel living on a fixed income. One of the things they rely on to maintain their standard of living is the commissary system. About 778,669 retirees retired prior to the enactment of Public Law 92-129 when active duty pay comparability was allegedly achieved; therefore, their retired pay is based on less than competitive levels. Average retired pay for a nondisability enlisted person is $5,748.

As my colleagues will recall, in 1976 in deferring the subsidy phaseout, we directed the Secretary of Defense to submit to Congress a report on commissary reorganization. According to a Department of Defense official:

The reorganization of the commissary store system is going well. When the instructions to reorganize into central management modes were disseminated to the Army and the Air Force, our goal was to reduce costs and increase our efficiency. In our view, that goal is well on track. Personnel savings and other management efficiencies have enabled us to affect reductions in appropriated fund costs. (Budgeted direct appropriated fund costs for FY 1978 are $309 million versus $313.5 million for FY 77). Increased efficiencies through centralized management have resulted in greater uniformity and control over commissary store operations, opening doors to other possible savings.

In the report submitted to the Senate and House Armed Services Committees, Assistant Secretary of Defense David Taylor stated management improvement would save almost $14 million in fiscal year 1977, $26 million in fiscal year 1978, and $36 million in fiscal year 1979. The savings are due to centralized management, consolidation management and administrative controls, greater use of part-time employees, closure of unnecessary annexes, testing of automated systems and vendors stocking shelves.

Mr. President, while problems still remain in reorganization, commissaries have made great strides toward their goal of "reducing costs and increasing efficiency." I ask unanimous consent that the attached article entitled, "Commissary Reorganization—Is It Working?" from the May-June 1977 Review magazine, be printed in its entirety in the RECORD following the conclusion of my remarks.

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

(See exhibit 2.)

Mr. STEVENS. In addition to this intraservice consolidation of commissary functions, the Department of Defense is evaluating the cost effectiveness of consolidating all four systems. The goals are to improve efficiency, reduce cost, and improve service.

In conjunction with this, the Air Force Association unanimously adopted at their national convention in Washington, D.C., last month, the following policy regarding commissaries:

We continue to urge improved management to reduce commissary subsidies, however, we oppose any action that would reduce commissary benefits. AFA would not oppose merger of the separate commissary systems as currently being studied but would not support any such merger that would lead to reduced service or benefits.

Pending the outcome of the current DOD study of commissary management, they feel that Senate action to delete funding for these facilities would likely "prove premature, ill advised, and in the end unduly costly in terms of retention of skilled military people." I ask unanimous consent that their communication to me on this matter be printed in the RECORD at the end of my remarks.

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

(See exhibit 3.)

Mr. STEVENS. The men and women in

our Armed Forces are the backbone of our strong Defense Establishment. It is essential to the survival of our defense system that our military people be compensated at a rate that is comparable to what they would receive if they were in similar civilian positions. An average Department of Defense civilian now earns 62 percent more than his military counterpart.

Historically, benefits such as the PX, commissary, and health care have offset the disparity in pay scales. One of the most important compensations in the form of benefits of our retired and active duty military members and their families is the commissary system providing them with savings on food products.

Over the past several years it has become quite popular to attack defense spending. Since 1973, there has been an erosion in military benefits in medical and CHAMPUS benefits, the regular reenlistment bonus; travel pay upon reenlistment; superior performance pay; terminal leave payments; sick pay exclusions; GI bill benefits; and the airman education and commissioning programs. Deletion of funds for commissaries will have a major impact on morale which is a key element in military preparedness. Action such as this can only be construed as a breach of faith to the people in our Armed Forces. We made a promise to these people when they entered the military that they would have commissary privileges as they were known at the time. The retired people relied upon that. By doing away with commissary privileges, that promise would be broken. It would be viewed as Government's failure to uphold its end of a contractual bargain.

I am particularly concerned about the promises made by our Government to the people who entered the service in World War II, for instance. Those people who stayed in and made the military a career, and who retired, did so on the belief that they would have the commissaries as one of the benefits after their retirement.

I urge my colleagues to reinstate funding for military commissaries so that the Department of Defense can continue to implement the programs of commissary reorganization that they have so successfully initiated.

We have come a long way in making the commissary system support itself—paying for new construction and utilities.

Mr. President, the following organizations have also sent communications in support of my amendment and I ask unanimous consent that they be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks: The Retired Officers Association, the AF Sergeants Association, the American Logistics Association, and the Veterans of Foreign Wars along with their resolution No. 619 entitled "Support Funding for Military Commissaries."

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

(See exhibit 4.)

EXHIBIT 1

DOD POSITION ON COMMISSARY STORES—PHASE OUT FEDERAL SUBSIDY: FY 1979 DEFENSE APPROPRIATIONS BILL

STATEMENT OF THE AMENDMENT

An amendment has been introduced to phase out over three years the direct appropriated fund support to commissary stores.

EFFECT OF THE AMENDMENT

Elimination of appropriated fund support would cause substantial increases in merchandise costs to service members in order to generate sufficient funds to pay employee salaries. This amendment, if approved by the Congress, will have an impact on the living costs of active and retired military personnel and their surviving spouses, 100% service-connected disabled veterans and their spouses, active duty and retired commissioned officers of the Public Health Service and others. As a result, savings to which patrons have become accustomed will be substantially reduced, if not altogether eliminated. Also, if the subsidy is reduced and store selling prices are increased to offset, the cost of living allowances in certain overseas areas will have to be increased to offset the impact of increased store prices. Thus, the reduction in store subsidy is not a net decrease in appropriations, but only a partial. Since the cost of food factor is the largest weighted factor in the cost of living allowance, the increase in the latter will be substantial.

DOD POSITION (AGAINST)

There is no doubt that the commissary stores have been considered over many years as one of the advantages of military service, and that military personnel have expected these stores and their concomitant savings to be available throughout their service and retirement. Retired personnel, particularly those who retired many years ago and who have not obtained supplemental employment, will be particularly affected by this proposal. While a specific savings level has never been guaranteed, commissary store patrons have come to expect rather substantial savings on their purchases. If the reduced savings available to commissary patrons have a marked effect upon sales volume, the commissary system could lose some of the advantages of large-scale operations. This could mean that the fixed costs of operation, spread over a smaller sales volume, could require additional price increases. At this point we cannot know the ultimate effect, since so many factors—in addition to price—combine to determine the degree to which commissaries are used. These factors include convenience of location, transportation costs for patrons, the quality of facilities and service, and competition from the private sector.

A loss of the commissary store savings will be viewed by service members as an erosion of their benefits, thereby contributing to a lowering of military morale. As such, it can only have detrimental effects on the recruiting and retention of military personnel. Previous well publicized similar proposals have contributed to talk of military unionization and a loss of confidence in the top leadership of the Department of Defense. Piecemeal reductions in military benefits should be avoided. The President appointed a "Blue Ribbon" Commission on Military Compensation to consider a reformed compensation system, including military benefits such as commissary stores. In the meantime, DoD is making every effort to reduce appropriated fund costs of commissary stores. In a further effort to increase efficiency and reduce costs in the commissaries, the Department is examining the feasibility of consolidating the commissary store systems under one organization. This examination is expected to be completed by the end of the year and we hope to reflect the change which would be recommended in the study in our budget for FY 1980.

Provided below is a summary by Service of the manpower, both military and civilian, and funds for support of the commissaries for fiscal years 1977, 1978 and 1979. Also included are the number of commissaries supported by Service.

PERSONNEL END STRENGTH

| | Fiscal year 1977 | | Fiscal year 1978 | | Fiscal year 1979 | |
|---|---|---|---|---|---|---|
| | Military | Civilian | Military | Civilian | Military | Civilian |
| Army | 226 | 9,207 | 220 | 10,005 | 220 | 10,505 |
| Navy | 1,222 | 3,449 | 1,288 | 3,539 | 1,298 | 3,577 |
| Marine Corps | 12 | 738 | 12 | 859 | 12 | 901 |
| Air Force | 492 | 8,559 | 441 | 9,443 | 391 | 9,428 |
| Total | 1,952 | 21,953 | 1,961 | [1] 23,846 | 1,921 | [1] 24,411 |

[1] Includes increase for conversion from full to part-time employees.

[In millions of dollars; [1] fiscal years]

| | 1977 | 1978 | 1979 |
|---|---|---|---|
| Military personnel funds: | | | |
| Army | 3.0 | 3.5 | 3.5 |
| Navy | 12.6 | 13.5 | 14.1 |
| Marine Corps | .1 | .2 | .2 |
| Air Force | 6.8 | 6.5 | 5.9 |
| Total | 22.5 | 23.7 | 23.7 |
| Operation and maintenance: [1] | | | |
| Army | 122.0 | 122.6 | 127.2 |
| Navy | 43.4 | 44.4 | 45.1 |
| Marine Corps | 9.8 | 10.2 | 9.6 |
| Air Force | 115.8 | 130.7 | 133.3 |
| Total | 291.0 | 307.9 | 315.2 |
| Total operations funds: | | | |
| Army | 125.0 | 126.1 | 130.7 |
| Navy | 56.0 | 57.9 | 59.2 |
| Marine Corps | 9.9 | 10.4 | 9.8 |
| Air Force | 122.6 | 137.2 | 139.2 |
| Total | 313.5 | 331.6 | 338.9 |
| Number of stores: | | | |
| Army | 140 | [2] 141 | 141 |
| Navy | 86 | [3] 84 | 84 |
| Marine Corps | 15 | 15 | 15 |
| Air Force | 163 | [4] 156 | 156 |
| Total | 404 | 396 | 396 |

[1] Excludes the cost of transporting commissary store goods to overseas stores.

[2] Army: Opening at Jidda, Saudi Arabia—support increased military strength.

[3] Navy: Closure at Sidi Yahia and Kenitra, Morocco—base closure.

[4] Air Force: Closure at: Webb AFB, Tex.—base closure. Craig AFB, Ala.—base closure. Richards Gebaur AFB, Md.—base closure. Kincheloe AFB, Mich.—base closure. Empire AFS, Mich.—reduced personnel, uneconomical operation. Kalispell AFS Mich.—reduced personnel, uneconomical operation. Landstuhl Germany—uneconomical operation.

EXHIBIT 2

COMMISSARY REORGANIZATION—IS IT WORKING

Is the reorganization of the commissary store systems working? A distinguished industry leader and longtime ALA supporter recently suggested that the question is redundant. "It must work," he commented, "since alternatives are no longer available."

The important question is whether the reorganization will increase efficiency and reduce the cost of commissary store operations enough to merit continued support from the Congress. The reprieve the Armed Services won in the hard-fought struggle to retain Federal funding didn't finally resolve the issue. Last year when Congress agreed to continue appropriated commissary funding, it told the military, in no uncertain terms, that the stores must be managed more efficiently. Military officials say this is being done.

The management improvements—some of the most important of which include greater

centralized management, increased use of automation, and other labor-saving measures—are producing positive results.

In a recent report to the Chairmen of both the Senate and House Armed Services Committees, Assistant Secretary of Defense David Taylor said management improvements already made will save almost $14 million in Fiscal Year 1977, $26 million in Fiscal Year 1978, and $36 million in Fiscal Year 1979.

The Department of Defense report to Congress said the savings came from:

Centralized Management. Both the Air Force and the Army went to centralized management of their stores last October. And this, the report said, allowed management functions to be consolidated and reduced the number of people required for administration.

Consolidation of Regions. The Navy commissary system, already centrally managed, consolidated two of its regions, which further reduced administrative costs.

More Use of Part-time Employees. By using part-time employees the stores save by not having to pay for the same amount of fringe benefits normally provided full-time employees. Also, part-time employees normally do not advance to higher paying grades.

Reducing Annex Stores. The Army, Air Force and Marine Corps have reduced the number of small annex stores and consolidated sales in the main stores.

The Air Force Commissary System is set to begin the second phase of its food store complexing operation. The move involves the administrative consolidation of two or more stores into a single operation.

SAVINGS REPORTED

AFCOMS officials recently reported that the complexing of 22 stores last year resulted in savings of $1.5 million and a reduction of 123 job slots. They expect "substantial savings" following the proposed consolidation of 58 additional stores. Customers will not be affected by the move. Local item selection boards will continue to meet and choose merchandise desired by a majority of local patrons.

In these and many other ways—even income from "cents-off" coupons, which commissaries had previously been turning over to the military exchanges for redemption—on balance, the comstores are making an all-out effort to improve management efficiency and operate more cost-effectively.

They are encountering a few problems here and there, but over all they're making progress. For example, Rear Adm. Edward M. Kocher, Commanding Officer, Navy Resale Systems Office, points out: "In the area of variable pricing NAVRESO still has a long way to go. It is a very sophisticated science and our Navy commissary stores just don't have the experience in this field that is available in the commercial sector. But, based on the limited testing that we have accomplished on variable pricing to date, we are encouraged by the potential."

Admiral Kocher explains that one of the larger commissary regions has been trying out slightly larger markups on certain commodity groups, such as spices, snack items, luncheon meats, cookies and crackers, and frozen foods. Health and beauty aid items also carry a slightly higher markup, except for certain dentifrices, which are given a lower than normal markup.

"Our approach to variable pricing," says the admiral, "is to try to more closely approximate the total savings to the commissary customer across all commodity groups rather than, if you will, having super-buys on a few items and lesser savings on the others. Variable pricing represents a major change in the way we do business."

He believes variable pricing, thoughtfully and skillfully applied, should give NAVRESO the tools it needs to adjust to the commercial competition to ensure that customers perceive the values they should in their commissary shopping privilege.

EFFORTS BEING MADE

Air Force, Army and Marine Corps comstores are also making a concerted effort to improve management and become as self-sustaining as possible through a variety of sound food marketing management techniques and efficient business practices—from centralized management to increased use of automation and labor-saving measures.

Maj. Gen. Daniel L. Burkett, AFCOMS Commander, is moving ahead with centrally directed management and administrative consolidation. He thinks variable pricing should apply basically to non-basic items: tobacco, soft drinks, candy, health and beauty aids, household items.

Army comstore's chief, Maj. Gen. Emmet W. Bowers, relies on a centrally directed worldwide commissary system to achieve more efficient operation, reduce personnel, lower direct and indirect operating costs, obtain better visibility and control of resources, resolve problems and put actual decision making at fewer supervisory levels. Suppliers and distributors are now able to do business at the region director's level. "By using source data automation to complete transactions more rapidly, payments are speeded up," General Bowers points out, "and increased efficiency reduces operating costs, and costs for the vendors doing business with us. This permits us to pass on the savings to our customers."

The effect at Marine Corps commissaries, says Brig. Gen. G. L. Bartlett, Director of the Corps' Facilities and Services Division, includes construction and renovation—replacing inadequate facilities with new buildings financed from surcharge revenues; upgrading equipment at stores not undergoing major modifications. The emphasis is on labor saving devices wherever possible and on improved convenience to the shopper.

WHAT'S IN THE FUTURE

Will these management improvement efforts be sufficient to convince Congress and the Carter administration they are "for real"? The comstore subsidy looks safe (for now anyway) but what about its future after the Ford budget runs out in 1979?

The Department of Defense budget request for Fiscal Year 1978 (which begins this coming Oct. 1, and runs through Sept. 30, 1978) contains the money necessary to provide full appropriated fund support for commissary stores through that date. That budget proposal ($123.1 billion worth) was forwarded to the Congress by the outgoing President last Jan. 17. Ford's original budget proposal contained a provision to begin phasing out Government funding for the military food stores over a three-year period. The first phase of that plan would have lopped some $90 million of commissary operating funds out of the FY 78 military budget. But, just before Christmas, outgoing Secretary of Defense Donald Rumsfeld successfully prevailed upon President Ford to change his mind and restore the deleted $90 million in commissary funds.

Substituted was a paragraph which read:

"We propose to continue the appropriated fund support to the commissary stores. Some cost reductions will be achieved as a result of certain management actions, e.g., centralizing the management of Army and Air Force commissary stores. In addition, we are examining the potential for achieving further reductions, such as the increased use of part-time and intermittent employees, and the combining of administrative functions for two or more stores in one geographic area. As a result of management improvements we expect to reduce the cost of this support while simultaneously maintaining a reasonable savings for commissary patrons."

Despite this action, however, the commissaries—over the long haul—still face an uncertain future. The proposal to eliminate the stores' salary subsidies has been rejected by Congress each of the past two years. However, it is entirely possible that the new Carter administration—or Congress itself—may revive the idea, and the new Congress, of course, is not bound by previous votes. So, for FY 1979 and beyond, it's anybody's guess what will happen in the area of appropriated fund support for commissaries.

Dr. Harold Brown, the new Secretary of Defense, has said he expects to reduce defense spending by $5 billion to $7 billion by 1979. Much of the savings could come in reduced personnel and support costs, he said. He also observed that in his view "military pay and benefits costs take up a disproportionately large share of the defense budget," and that they are "probably the first place we should look in any attempt to reduce the budget."

EFFECTIVE PROOF

The savings to date are proof reorganization is effective. A DOD official said recently that:

"The reorganization of the commissary store system is going well. When the instructions to reorganize into central management modes were disseminated to the Army and the Air Force, our goal was to reduce costs and increase our efficiency. In our view, that goal is well on track. Personnel savings and other management efficiencies have enabled us to affect reductions in appropriated fund costs. (Budgeted direct apropriated fund costs for FY 1978 are $309 million versus $313.5 million for FY77.) Increased efficiencies through centralized management have resulted in greater uniformity and control over commissary store operations, opening the door to other possible savings."

Corrections for drift, as the political winds change, have and are being made. But a careful review of the improvement effort over the past two years will convince even the most severe critic that—yes, the reorganization of the commissary system, with its goal of substantive increases in efficiencies, is working. And that industry, through ALA, is contributing substantially as an interested/involved/objective third party.

DON'T FORGET RECENT PAST

For those who attended the recent ALA Regional Seminars in San Diego and Norfolk the reasons why were fairly obvious: new and continuing dialogue, total participation by the respective services, etc.

But, for those who did not attend the seminars, may we remind Review readers that just two and one half years ago the Ford administration decided to support the OMB position to discontinue appropriated funds for the commissaries. Industry, along with many others, recognized that this action was unsound and unwise. The American Logistics Association, itself at the time just recently restructured and reorganized, quickly recognized and assumed its leadership role as an involved, concerned, interested and therefore objective third party.

An ALA Task Force was immediately put together. It met with responsible high-level people at DOD and offered its assistance and input. At the same time, a DOD Study Group, chaired by now Maj. Gen. Emmet W. Bowers, USA, and co-chaired by Capt. Robert Brewin, USN, was created.

The ALA Task Force met with this prestigious group on several occasions and presented a consensus of industry's suggestions and ideas. These meetings led to a survey of all ALA members, the results of which were developed into an "Industry Report" which the DOD Study Group accepted in its entirety and published verbatim in their final full report on the commissaries.

It is worth noting that the ALA Task Force showed foresight at the time in stating that after a blueprint for increased effi-

ciency is developed, the "real world" of transition will come into play. The Task Force underscored another important fact: that change is difficult under any circumstance, but under the glare of publicity, and the divergent views in the Congress and the administration, it would be doubly difficult and a real challenge.

SOME PROBLEM AREAS

It is interesting that today, in implementing the DOD Study Group's recommendations, all of the suggestions made by ALA's Task Force are either in effect, under consideration, or in the process of being adopted. Admittedly, there will be some hangups in implementing the reorganization. Among them, for example, are:

Shelf Stocking—The DOD view on shelf stocking is that it is strictly voluntary on the part of the supplier and is requested only on a limited number of line items.

Payment Problems—Payment problems are actually not a major problem system-wide, according to DOD. If bills are sent to the proper place, they are paid on time. As part of the management improvement effort all of the Services are making every effort to handle payments as expeditiously as possible.

But, even the longest journey begins with the first step forward. And even the severest critics of Federal funding for commissaries will admit a good beginning has been made. There will be further problems, of course. But ALA believes they will not be insurmountable, and, as part of a concerned mature industry, stands ready to continue to provide guidance and lend expertise in the food marketing area whenever requested to assist the Services in reaching their objectives.

EXHIBIT 3

WASHINGTON, D.C.,
*October 4, 1978.*

Sen. TED STEVENS,
*U.S. Senate,*
*Washington, D.C.*

We understand that the Senate and its forthcoming deliberations on the Defense Appropriations Act will be considering a provision that would eliminate military commissary subsidies and do away with government paid shipping of commissary goods overseas. The air force association opposes any such piece-meal approach to reducing military pay and benefits. The delegates to our national convention meeting in Washington, D.C. last month unanimously adopted the following policy concerning commissaries: "We continue to urge improved management to reduce commissary subsidies. However we oppose any action that would reduce commissary benefits. AFA would not oppose merger of the separate commissary systems as currently being studied but would not support any such merger that would lead to reduced service or benefits." In light of the currently on going study concerning commissary management, we urge the Senate not to take action which is likely to prove premature, ill-advised, and in the end unduly costly in terms of retention of skilled military people.

THE AIR FORCE ASSOCIATION.

EXHIBIT 4

FAIRFAX, VA.,
*October 4, 1978.*

Hon. TED STEVENS,
*Senate Building,*
*Washington, D.C.*

The Senate will soon be considering the defense appropriation bill, (H.R. 13635) with provisions that could have major negative impact on the active duty forces as well as on the retired military community.

One provision would phase out commissary subsidy over a three year period. Another would reduce the number of personnel assigned to the morale, welfare, and recreation activities.

Any reduction in commissary funding will necessitate a corresponding increase in the surcharge paid by the commissary patrons and will ultimately lead to closure of the commissary. The commissary have traditionally provided food products at reasonable rates to military families. Closure of these facilities will have the most drastic impact on the enlisted and junior officer segment who can least afford the added financial burden, many military retirees with reduced income have permanently settled near commissary facilities. To deprive them of this benefit now would constitute a breach of faith by their government.

Reducing the support personnel for morale, welfare, and recreation activities will result in many idle servicemen with insufficient activity to keep them occupied during their off duty hours. This will ultimately result in a general lowering of morale and increase absenteeism.

Senator Ted Stevens has indicated he will introduce an amendment to the defense appropriation bill to continue the support for the commissary. The Retired Officers Association and its more than a quarter million members strongly urge that you support the Stevens amendment.

Sincerely,

JOHN W. CARPENTER III,
*Lieutenant General ASAF. (Ret.)*

OCTOBER 4, 1978.

Hon. TED STEVENS,
*Senate Office Building,*
*Washington, D.C.*

On behalf of the 115,000 members of our association and their dependents, I would kindly request your support of Senator Stevens' amendment opposing Senator Eagleton's proposal to phase out the subsidy for the military commissary system over the next three years.

We are experiencing enough problems in obtaining, retaining, and sustaining the current enlisted components of our armed services, any further attack on benefits which will impose greater financial burden upon our enlisted members and their families will be extremely detrimental to the future composition and quality of our armed services.

DONALD L. HARLOW,
*CMSAF Retired.*

FALLS CHURCH, VA.,
*October 4, 1978.*

Hon. TED STEVENS,
*Washington, D.C.*

Your continued leadership needed now to protect vital military commissaries. Senate Appropriations Committee has again this year approved amendment to H.R. 13635, the defense appropriations bill, to: (1) phase out commissary subsidies within 3 years; (2) reduce military personnel in non-appropriated fund activities; and (3) eliminate transportation costs for exchange goods overseas. Bill likely will go to Senate as early as Thursday October 5, urge you join with Senator Stevens Alaska in effort to restore full funding for commissaries and oppose other harmful amendment provisions outline above. Military personnel and families deserve protection and continuation of promised benefits. Similar amendment was overwhelmingly defeated last year and will be defeated again with your outstanding assistance and leadership.

William Lazarus, executive vice president, American Logistics Association, 5205 Leesburg Pike, Suite 1213, Falls Church, Va. 22041.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
*October 4, 1978.*

To All Members, The United States Senate.
From Eric G. Sandstrom, National Commander-in-Chief, Veterans of Foreign Wars of the United States.
Subject Military Commissaries.

It was with extreme disappointment I learned the Committee on Appropriations ordered favorably reported H.R. 13635, making appropriations for Fiscal Year 1979 for the Defense establishment, which included an amendment to reduce the $339 million annual subsidy for military commissaries by $113 million in each Fiscal Year, 1979 through 1981, inclusive.

The 16,000 voting delegates to our last National Convention, representing the 1.85 million men and women of the Veterans of Foreign Wars of the United States, passed Resolution No. 619, entitled, "Support Funding for Military Commissaries", a copy of which is enclosed.

In view of the foregoing, I solicit the support of each of you in voting for the amendment to be introduced by Senator Ted Stevens, to restore full funding for military commissaries.

With best wishes and kind regards, I am

Sincerely,

ERIC G. SANDSTROM,
*National Commander-in-Chief.*

Enclosure.

[Resolution No. 619]

SUPPORT FUNDING FOR MILITARY COMMISSARIES

Whereas, commissaries and exchanges have been long-standing compensatory entitlements to service life, and, as such, have been a part of the total compensation package and a part of the military community, and now their possible loss threatens the cohesiveness of the military community; and

Whereas, the military commissary store is a very important benefit to both active duty military and retired service personnel and their dependents, particularly in higher cost-of-living areas and overseas deployments; and

Whereas, commissaries save the patron about 20 percent of the total grocery bill for those items purchased there and, losing this saving would equal a hidden pay cut for the military; and

Whereas, chipping away at military entitlements, which compensate for the unique tribulations of service life will prove a false economy; and

Whereas, a two-percent increase is already law and this will increase to a total surcharge, or shelf mark-up of 16–20 percent; and

Whereas, driving commissary prices sharply upward, witness the minimum wage now required for "baggers," will drastically reduce—or eliminate—any savings active and retired service personnel presently enjoy; and

Whereas, commissary patronage would drop as military customers couldn't pay the high prices, and consequently, the commissaries would have to close their doors because Congress has mandated that commissaries must produce savings or close; and

Whereas, this is but one more attack on those who can least afford to shop in commercial establishments and will mean money out of the pockets of every active and retired serviceman—unless we can continue to prevail upon Congress to continue funding military commissaries; and

Whereas, more is at stake here than mere dollars and cents in that the competitive pay situation between military and civilians does not pay for or adequately recompense the military man and his family for life that imposes severe demands and hardships on the family structure; now, therefore

Be it resolved, by the 79th National Convention of the Veterans of Foreign Wars of the United States, that we oppose precipitate action from any quarter which would reduce critically-needed military commissary privileges and services.

Mr. STEVENS. I would say to my good friend, the manager of the bill, we have an extraordinary situation in that the Senator from Missouri, who has been so persistent in pressing this matter, has

been called to Rome to represent our Government at the funeral of Pope John Paul. I feel that under the circumstances it would be unfair to proceed without his vigorous support for his own amendment. I have no doubt that the Senate would once again vote to support the position we have taken 4 years in a row. We have not lost on this matter as far as the Senate or the conference is concerned.

I have discussed this with the Senator from Mississippi and know his feelings on the matter as far as the fairness is concerned. It would be my intent, after he has the time which he is entitled to under my amendment, to state the committee's position, Mr. President, to ask to withdraw the amendment. I yield to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. I thank the Senator for yielding, and I thank him for his attitude, too, as a very effective and vigorous member of the group which represents his viewpoint. I appreciate his rising to the occasion here, with senatorial courtesy on the merits of the matter being preserved. The Senator from Alaska is a valuable member of this conference.

The Senator from Missouri, who is very concerned, will also be a conferee. If the amendment is withdrawn now, the whole matter will be in conference.

I support the position of the Senator from Missouri. To save time, we can see that the whole subject matter will receive the fullest kind of consideration. The House position, of course, will be vigorously held.

I would expect this whole matter to be thrashed out in conference the best we can. I will ask the Senator from Alaska and the Senator from Missouri to take a strong role in the conference. I very much appreciate his attitude of cooperation. I do not think he has yielded anything here.

Mr. STEVENS. I thank the Senator. I am sure he understands that neither the Senator from Missouri nor this Senator yields very much. We are going to have a battle in conference, I know. But we had it there 2 years ago and we will have it again. It is a situation we did not anticipate when I originally got the time agreement for this amendment.

Mr. President, I believe the best thing to do is withdraw it.

The PRESIDING OFFICER. Since there was a unanimous-consent agreement on the amendment, it would take unanimous consent to withdraw the amendment.

Mr. STEVENS. Mr. President, I ask unanimous consent to withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

The question now recurs on the amendment of the Senator from South Carolina, on which there is 2 hours to be equally divided and controlled by the Senator from South Carolina and the Senator from Mississippi.

Mr. HOLLINGS. Mr. President, we are momentarily retyping the amendment. What is proposed now by the Senator from South Carolina and the Senator from Mississippi is that we will make better time when we have the prepared amendment typed. We will request that the yeas and nays be set aside and then allow me to amend my amendment.

We want to make two points on junior enlisted travel in the amount of $85 million to provide for those who are already in an overseas station.

For example, in Europe alone, where there is no provision in the appropriation bill for E–4's under 2 years of service, E–3's, E–2's, and 1's, the junior enlisted grades; the fact of the matter is that of the 24,000 eligible, 20,000 of them are there—and we rechecked those figures this morning. What we are saying here is that we want to take care of those. The way we worded it is, not provide for any future junior enlisted travel after November 1, 1978. Let us assume we are in the first, almost second week of October. By the time the bill gets through Congress and the conference and the report is signed by the President, it will be the last part of October. So we are trying, on the Senate side, to put that issue in conference.

I am trying, as the Senator from Mississippi is, to make adjustments, as we always do in the legislative field. A man convinced against his will is of the same opinion still. I think we ought to take care of the 4,000. That will continue to be my position. This is what we have done now in order to move along on this particular score.

In a general sense, I feel that those who have been on the other side and myself have a similar feeling; namely, that we need a uniform balanced policy, an equitable policy with respect to travel and allowances in support of our overseas soldiers, sailors, and airmen.

There is another provision there, too, and I think that was made clear. I read last evening the exact language provided me by the Pentagon, that the adoption, let us say, of my amendment presently at the desk, enacted by the House, $95 million on junior enlisted travel, would in no way obligate the Government for additional housing construction. We do provide for the cost-of-living allowance. We do provide for the housing allowance in the community on a space available basis.

Let me emphasize a particular matter while we are awaiting the final draft of this amendment. Talking to our military friends late last evening, one of the outstanding officers was pointing this out:

> If we could only get the authority for an assignment, a duty, and a responsibility, in the sense that we already have—namely, a congressional truce on this particular score, we could do a job.

Specificially, those would have just come in, those who have served a year, a year and a half, those who are young, have just been married, whose wives are expecting, or those with little children who have just come into a strange area and are struggling financially will be forced to accept any kind of living conditions. He said:

> In many instances, we see cases where they are already renting a $1,000 a month apartment.

Absolutely ridiculous. But he says they are held up in this regard because they do not have counseling and they do not have the Army in between them and the landlords or the local community.

He said:

> If this is approved by Congress, then we, as officers, looking after our men, will be able to step in, correlate the availability of housing space for the junior enlisted grade, correlate what is a fair and equitable rental, correlate, if you please, the proper facilities.

Namely, we were pointing out that in many instances, they do not have stoves, washing machines, closets, electrical fixtures or anything else in some of these places. So that can be graded up and down and more or less apply to a newly landed troop in Europe who has an obligation and is immediately trying to do his job in that assignment and also take care of his family. He will pick up anything he possibly can at a particular time and sign a rental contract.

Then, of course, I asked this officer, "How many more officers, how many more counselors, how much more bureaucracy or superstructure is this going to be?" He said none whatever. Officers are assigned right now, in the company grades and otherwise, in the capacity of looking out for their men. They do this kind of thing.

As I was pointing out yesterday, in the Army, the first thing an officer wants to do for his company is make sure a man's housing, his food, his personal needs and everything else, are good and that the men are taken care of. They are trying to do it now but they just do not have the authority under the present policy. They are allowing them to come but not providing for them financially. I think this would clarify that.

Incidentally, Mr. President, I have at this point, so I can yield to my senior colleague, the chairman of our subcommittee, a letter from the Secretary of the Army. I ask unanimous consent that it be printed in its entirety in the RECORD.

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

SECRETARY OF THE ARMY,
*Washington, D.C., October 5, 1978.*

Hon. ERNEST F. HOLLINGS,
*U.S. Senate,*
*Washington, D.C.*

DEAR FRITZ: The most important single item that can be undertaken to assist our enlisted personnel assigned overseas is the extension of travel and transportation entitlements to our junior enlisted personnel. The benefits of the Junior Enlisted Travel Program (JET) far outweigh any problems which may occur.

This program is needed to help our young married soldiers assigned overseas. It will help by transporting their automobiles, personal effects and their dependents. In the absence of these travel entitlements, many young married soldiers finance the move of their dependents by obtaining a loan or advance pay. They then start their overseas tour in debt and during the repayment period, have insufficient funds to provide for their day to day living expenses.

Twenty four thousand dependents of junior enlisted members are already overseas in a non-command sponsored status. The majority (17,000) are in Europe. If these entitlements are extended, an estimated 5,000 addi-

tional dependents would be going to Europe. This represents an increase of only 3 percent in the total number of dependents there. I expect no problem in providing services such as commissary and medical and further most of the children of our junior enlisted personnel will be too young for school.

The direct out of pocket savings to each junior enlisted member will be $600 to $1,000. In addition, we will ship his household goods so he can maintain an acceptable living standard. We will also ship his automobile which will relieve the junior members of a large cash expenditure since many junior enlisted use expensive local transportation or purchase an automobile.

Our soldiers despite financial difficulties are unwilling to endure family separations and for this reason they will continue to take their dependents with them. The extension of JET will allow these members to start debt free and maintain their families at a minimum but acceptable standard of living. My deep concern for the well being of our soldiers and their families overseas prompts me to place JET at the head of the personnel programs within the Army today.

Sincerely,

CLIFFORD L. ALEXANDER, JR.

Mr. HOLLINGS. I shall read the first sentence:

The most important single item that can be undertaken to assist our enlisted personnel assigned overseas is the extension of travel and transportation entitlements to our junior enlisted personnel.

The letter substantiates the various points and facts I made last evening.

Concluding then, with respect to the housing, there will be no new construction. On the contrary, this will only give the cost of living and the housing allowance to those already over there. The amount is a rough computation at this time, and we both trust the staff—and they are experts. We trust them on this score for the recomputation of the figures, to bring it down, as these amendments are now drafted, from approximately $95 million to an approximately $85 million figure to then carry this out, not just for those in Europe but those generally in overseas assignments.

I think these general provisions are added in the amendment:

On page 60, after line 15, insert the following:

Sec. 860. (a) None of the funds appropriated by this Act shall be used to pay junior enlisted dependent travel entitlements to overseas areas after November 1, 1978.

That. Mr. President, will simply allow us to be in conference with the House.

(b) None of the funds for overseas housing allowances in this Act shall be used for the construction of new government housing overseas.

I think we will be on lockstep with the House and the Pentagon on this last proviso, because we are not obligating, and I am sure the House is not, and the Pentagon affirms just that, that it does not call now, in supporting financially travel in the junior enlisted grades, for any kind of obligation to start coming up to Congress and ask for additional government housing in Europe, Japan, or anywhere else. I think we are clear on the last score.

We shall go to conference and see if we cannot work that out. I do not want to mislead. The Senator from South Carolina still believes that in order to be in equity, uniform, balanced, and across the board, we ought to take care of that grade whether they arrive before November 1 or after November 1, whether they are there now and entitled or later.

We can look at the entitlement and I can understand the chairman's point with respect to conference. So we are yielding on that momentarily in this amendment.

I yield now to the chairman.

Mr. STENNIS. I thank the Senator. If there is going to be any question of time, this time will be choice to me.

First, I thank the Senator from South Carolina for his very fine work on this problem, which is a problem to the services and to all of us. I thank the Senator from North Dakota (Mr. YOUNG) for his interest in it and his work on it. I think he and I see this thing very largely the same.

Mr. President, these items are not within the express province of the authorization processes of the Senate Committee on Armed Services. These are funds that are generally appropriated directly without express authorization. Our Committee on Armed Services did not go into this item this year for those reasons.

Coming over to appropriations, where this responsibility lies, for several years, if I may go back just a little, I have looked upon this as a mounting problem, a military problem and NATO problem and geopolitical, if I may use that term, problem, particularly in Western Europe.

I think, without a doubt, the growing numbers of these dependents over there in Western Europe becomes a holdback or a roadblock to our own forces and, to a degree, of the allied forces.

Frankly, with so many of them there, I think it is an encouragement to the Soviets, to our adversaries, to the possible aggressor, to see that we have this physical problem, taking care under short notice of over 330,000 dependents.

I think that Congress should intervene in this matter and set some kind of a ceiling, if no more.

I think we should go further and set a definite policy. I do not think the military services are going to do that. For one reason, it is tied up so closely in their problem of recruiting.

But making allowances for that, this other problem is so serious that my idea was to bring it up on the money issue, because we do not get results in a lot of cases until we talk about the money.

The situation, as I explained it yesterday, is that the House has the funds in their bill and our committee took it out. That would leave it in issue in conference.

But I think the proposal here that the Senator from South Carolina has helped work out is better still for the problem. It goes to the problem of these dependents being taken care of, as well as the overall policy of, how far are we going to let this go, how high are we going to let this mountain grow, this mounting problem of dependents?

It recognizes the housing matter, too, now expressly written in here. The Senator from Alaska is interested in that, too.

Mr. President, as an illustration that something must be done when we talk here on the Senate floor about housing costing the American taxpayer $1,000 a month, housing for one infantry recruit that has only been in the Army, say, 13 weeks, and they are eligible to go there when they merely finish their 13 weeks of basic training.

However valuable they may be, and they all have some value, that is an awfully big sum to pay out, $1,000 a month—I hope it does not average that—for a man that is no more mature as a soldier than 13 weeks of training would make him.

I think that is a warning sign to us and spells out the problem and says to the Congress that we must heed this matter.

We have all agreed, those of us who worked on it, the Senator from North Dakota can speak for himself, of course, and also the Senator from Alaska. The Senator from South Carolina has already spoken. We have agreed here to work on this matter the very best we can, on this amendment if it is adopted, in conference, and try to get a balanced settlement of this matter.

One thing we stand for is that there is not going to be any dependents added over there with this money. That is one point I think is fundamental. During that 12 months, something along this line should be evolved into a hard policy, and our first advisers on that will be the military, and, particularly, those charged with the responsibility.

But I will insist, in my small part, on realism and, as I said, a stop to building up the number of dependents over there, as high as the sky, that is bound to be a hazard to themselves and to military operations should trouble come.

Who is going to get to use the highways? That is one thing. Everybody who lives over there will be wanting to move, too.

We do not have the cargo to bring those people out quickly. Are we going to provide that for that money? What are we going to do about housing? Are we going to build it?

Those are matters that can be decided and must be decided.

So that completes my position on this matter, Madam President. We will do the best we can in conference with this amendment. I certainly expect us to get something out of it.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. HUMPHREY). The Senator from North Dakota.

Mr. YOUNG. Madam President, I am very pleased with the compromise worked out with the distinguished Senator from South Carolina (Mr. HOLLINGS) and the distinguished chairman of the committee (Mr. STENNIS). I am hopeful the compromise now will accomplish all that the Senator from South Carolina attempted to accomplish. He brought to the Senate and explained very well the very difficult situation with respect to junior enlisted conditions in Europe. I think now that the Pentagon will understand better what the Senator from South Carolina is concerned about, what the Senate wants to do, and hopefully what the Congress wants to do.

I commend him for working out that very good solution to a different problem.

Mr. STENNIS. Madam President, I certainly thank the Senator for his position and for his remarks.

Again, I join with him in what he said about the Senator from South Carolina.

Mr. HOLLINGS. Madam President, I thank the distinguished Senator from North Dakota.

Way back, when I first came to the Senate, I had been elected 1 day and on advice of counsel and the help of good friends, the second day, way back in November 1966, I was on the front porch of Senator Dick Russell's home in Georgia and he told me about the Senator from North Dakota.

Of course, he always knew he had his sidekick and, really, the distinguished chairman, the Senator from Mississippi (Mr. STENNIS) had been doing the work and veritably ran the committee the last few years due to the emphysema and illness that Mr. Dick suffered, but he talked about the Senator from North Dakota with tremendous affection, and he talked about the Senator from Mississippi (Mr. STENNIS) with tremendous affection, and admiration, also.

So I really appreciate the chance to work this out with Senators I have the greatest respect for.

I think, as the Senator from North Dakota just said, we all have the same intent.

The Senator from Mississippi wants to make sure we can put some kind of cutoff. The Senator from South Carolina's intent is clear, so there is no misunderstanding, that the problem and the policy be evenhanded. And that, of course, would entail, providing not just for those there, but for those eligibile in a particular grade. There is not a race to see who can get to Europe first with his dependents. On the contrary, we are trying to promote a Pentagon and a congressional policy with respect to dependents.

I talked to another Senator late last evening. He does not believe in any dependents. I confronted him with that. I had the similar kind of feeling. If we could have that Army that I grew up in there is an old saying, "If the Army wanted the soldier to have a wife, it would issue him one."

That is the crowd that we were growing up with at that time. They did not believe in a soldier having a wife. They did not believe in soldiers having dependents. They were in the way. We were there to fight. But that is not true for the Volunteer Army.

The thing has materially changed, and we have to be realistic, and we have to keep up our readiness and keep up the morale.

In a letter here this morning, for example, from the Secretary of Defense, in strongly supporting such an extension he says and I quote from his letter:

> The need grows more intense each month and the maintenance of a maximum readiness posture abroad dictates that we look to the well-being of these young men and women.

So, there is a changed policy from the Secretary of Defense, the President, the Commander in Chief, all the way down. I am going to ask unanimous consent that Secretary Brown's letter and the letter of the Acting Secretary of the Air Force, Hans Mark of the Air Force, be printed in their entirety in the RECORD at this particular point. I ask unanimous consent for the printing of these letters.

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

WASHINGTON, D.C.,
*October 5, 1978.*

Senator ERNEST F. HOLLINGS,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR HOLLINGS: As you have requested, I am providing a restatement of the position of the Department of Defense on the extension of permanent change of station travel entitlements to our junior enlisted military personnel assigned overseas. We strongly support such an extension. The need grows more intense each month and the maintenance of a maximum readiness posture abroad dictates that we look to the well-being of these young men and women.

Basically Junior Enlisted Travel Entitlements (JET) is a matter of equity. Currently it is very difficult to explain to a young soldier why the Government will not pay to transport his spouse, household goods, and car to Europe when those entitlements are justifiably provided to his only slightly more senior comrades-in-arms. The hardship of severe financial strain or enforced family separation erodes seriously the effectiveness of these people and leads to problems of morale and discipline. The price we are paying in dissatisfied personnel in terms of performance, reenlistment, and image requires that we take action as soon as possible.

West European prosperity (particularly in West Germany) and a rapidly declining exchange rate make our young service members' lives increasingly difficult, particularly those who are married. Naturally service members want to have their families with them. Many do, even in the absence of JET, at considerable expense out of their own pockets. It is extremely difficult for these soldiers to recover from debts incurred during the movement of their families to Europe.

JET will provide our people with the resources to move their families and household goods overseas and subsequently, to live in decent housing. In addition, because the entitlement is controlled by the Commander it give the DoD the ability to manage the process. In summary, this is a vital issue for the well-being of our young service members and I urge every possible action to approve the funding for the extension of these entitlements.

Sincerely,

HAROLD BROWN.

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WASHINGTON, D.C.,
*October 5, 1978.*

HON. JOHN C. STENNIS,
*Chairman, Subcommittee on Defense, Committee on Appropriations, U.S. Senate.*

DEAR MR. CHAIRMAN: This is in reference to the recent action of the Defense Subcommittee in eliminating the funds requested in the Fiscal Year 1979 Department of Defense (DOD) Appropriations Bill for travel entitlements of junior enlisted personnel serving overseas.

The Air Force considers the current lack of entitlements for these young families to be our most serious personnel inequity. We believe it is unconscionable that junior enlisted members being reassigned overseas are faced with two highly undesirable alternatives: a two-year family separation (which Air Force surveys have repeatedly shown to be the number one career disincentive for enlisted members), or assumption of the severe economic burden of relocating their households overseas at personal expense. Understandably, the large majority—over 80% of the total DOD junior enlisted population in the European theater—elect the latter course of action, often incurring overwhelming debts, rather than risk the potential marital trauma entailed in protracted separation.

Everywhere that Air Force leaders have traveled, they have been confronted by junior and senior service members alike and asked repeatedly why our leadership cannot rectify this gross injustice. Their deep concern is not surprising since the files of the Air Force Aid Society are replete with examples of the economic sacrifices and deprivation endured by these young families in order to stay together. Extensive hearings by the House Armed Services Committee (Subcommittee on Military Compensation) earlier this year confirmed the primacy and urgency of the need to provide travel and transportation entitlements in order to alleviate the financial hardships being experienced by junior enlisted families overseas.

It is evident to us that if we are to maintain credibility among our service members and continue to attract and retain the number of quality volunteers we need to provide an effective defense force, the government must lift this financial burden from the shoulders of our youngest members and assume its rightful obligation to fund this cost of doing business. It is for these reasons that the President has personally endorsed this essential program in his FY 79 budget.

The Air Force has no higher priority in the personnel area than extending travel and transportation entitlements to our junior enlisted members. We have prepared the attached fact sheet to put the major issues in the proper perspective and you may find it helpful. Your support of this effort is deeply appreciated.

Because of the importance we attach to this matter, I am sending copies of this letter to the other members of your Committee for their information.

HANS MARK,
*Acting Secretary of the Air Force.*

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FACT SHEET: JUNIOR ENLISTED TRAVEL AND TRANSPORTATION ENTITLEMENTS

BACKGROUND

By law, all military members are entitled to the same basic travel and transportation allowances for dependent travel, transportation of household goods, and certain other privileges. However, funding constraints have necessitated restriction of these entitlements to members in grade E-4 (with more than two years service) and higher grades. The last change in the area of junior enlisted travel entitlements was in FY 74, when the longevity eligibility point for E-4s was lowered from four years to two years.

ISSUES

1. Equity. Although the majority of private US firms reimburse employees for the cost of moving their families and household goods when such moves are directed by the firms to meet company needs, junior enlisted personnel being reassigned overseas are faced with two inequitable alternatives—family separation for a period of two years or more, or acceptance of the severe financial burden of relocating their households overseas at personal expense. Since most young marriages could not survive a two-year separation, a significant majority of junior enlisted members choose the latter course of action, often incurring substantial indebtedness from which they are unable to recover during their tour of overseas duty. Their financial worries are exacerbated by the realization that they must also personally finance a return move to the US in two years. So serious have their difficulties become that the West German media have published several stories

in recent months indicating that these young people have come to be looked upon as charity cases by much of the German populace—a highly embarrassing situation for both junior enlisted personnel and the government.

2. Overseas dependent population. Some concern has been voiced that approving junior enlisted travel entitlements would lead to a significant increase in oversea military dependent population. This is not the case. DOD analysis indicates that, regardless of their entitlement status, most junior enlisted members will relocate their dependents overseas at personal expense rather than endure protracted family separation. Of a potential junior enlisted dependent population of 24,000 in Europe, 20,000 are already there in a non-sponsored status; in other oversea areas, nearly two-thirds are already in place. With this in mind, DOD estimates that providing these entitlements would yield a relatively insignificant increase of only 2.5 percent in the total dependent population already overseas. The State Department has agreed that this small increase would have no effect on dependent evacuation requirements. Conversely, authorizing these entitlements would make junior enlisted dependents subject to normal command sponsorship controls (that can, for example, temporarily delay funded travel until acceptable housing is obtained), and would permit normal pre-planning and scheduling of dependent travel and completion of necessary pre-move counseling.

3. Cost. Although the $95M cost of this proposal is not unsubstantial, there are certain offsetting savings and benefits. For example, the Air Force has already taken steps to increase its average time between permanent change of station moves, at a savings of $27M, to help offset the cost of junior enlisted entitlements. These funds have already been deleted from the Air Force's FY 79 budget. Improved reenlistment rates could also be expected due to first-term enlisted members' more favorable service experiences. In this regard, this proposal would significantly reduce the prospect of family separation—which has long been the single most frequently mentioned career disincentive for enlisted personnel. Finally, easing the financial and emotional strains on these young people would have a significant positive effect on morale that would certainly enhance force readiness.

CONCLUSION

The financial hardships being encountered by junior enlisted families serving overseas are real and inescapable. Further, it is apparent that these families will continue to assume the severe economic burden of financing their own oversea relocations until such time as the government assumes this human responsibility.

Extensive hearings conducted by the House Armed Services Committee (Subcommittee on Military Compensation) clearly indicate that funding of travel and transportation entitlements for these young people would be the single most important step the Congress could take to alleviate their present difficulties. This measure would permit them to begin their oversea tours of duty without the burden of substantial debt payments that necessitate reduced living standards, and it would relieve their worries concerning their return moves.

In view of these pressing human considerations, as well as the substantial cost offsets and morale and readiness benefits associated with this proposal, funding of junior enlisted travel entitlements represents a sound personnel investment that will significantly enhance the effectiveness of the nation's oversea defense forces.

Mr. HOLLINGS. Madam President, I am reading now from the Air Force letter:

The Air Force has no higher priority in the personnel area than extending travel and transportation entitlements to our junior enlisted members.

We get that kind of statement from civilian heads as well as the generals and everyone else. This is something that we cannot turn our back on. We are going to have to provide for them.

Incidentally, I wish to add one thing. We do not get an opportunity to remark on some of the misgivings with respect to the dependents in the Army itself. We are going to have to get into that Volunteer Army. The readiness is not going to be totally satisfied by any manner or means in this amendment. The readiness goes right to those who are coming in, their reasons for enlistment, and whether or not they have the proper attitude which I do not think we can ever supplant and change. I readily go along with change. But for those who are coming in, there are those who are coming into our Volunteer Army who look upon service as a labor contract, and they make their agreement:

You hire me and I accept your employ. But when I want to quit, I quit. I just walk away.

That is desertion, AWOL, and otherwise. That is not the fundamental loyalty and the fundamental obligation that is envisioned in our military, and I do not think we can countenance that kind of attitude that is growing with some who are coming along.

And in many instances, we have a situation with dependents where there is a soldier, namely, the individual male soldier, who is separated or has lost his wife and has a little 2-year-old and a 7-year-old in the home, and it is not just who is going to go forward and fight and let the wife stay back and look after the children, but it is who is going to look after those children should an emergency occur. So the Senator from Mississippi has a real concern, and I am concerned with this. Or, on the contrary, we have female officers and soldiers and noncoms, and I am thinking of one particular case, where, of course, there is no husband and just the children at home, and if the call comes to go forward, who is going to take care of the little children?

Just the other day we know from staff visitation there, we had very serious human problems of a lady sergeant, who just had an illegitimate child, a 2-month-old baby. She was killed in an automobile accident. The U.S. Army owns—I hate to use that crass language—owns a 2-month-old child.

This is the kind of life we are in. We are not back in that Army that I grew up in and served in. These are new kinds of problems and we will never get a field manual on this subject, hopefully. And we are going to have to be realistic and start as a Congress in the hard work of administering and running the Government and running the military to face up to these problems. And the quid pro quo for success of any policy that we adopt or enunciate is that it be equitable, that it be fair.

I saw that attitude change in the sixties, and I look at my friend, the Senator from Colorado, who led that change of mind in the sixties. When the young students in the Vietnam war hit us here in the National Capital, we changed to the fairness doctrine. Is the draft law fair? That is how we got the Volunteer Army.

Is the tax law fair? That is why we are going to get tax reform here tomorrow or later this week.

Are all these policies coming out of Congress fair? And they can see through them quicker than you and I. If they are not fair, if they are not equitable, they are not going to carry the public's confidence necessary to have a volunteer tax program in this country. If they are not fair and not equitable, they are not going to have the public confidence and support for a Volunteer Army to be successful.

So in that particular score, Madam President, I am glad to list these measures here and reconcile at least for the purpose of the conference these differences so we can take this amount to conference. If the chairman permits me, then, I shall ask unanimous consent that the call for the rollcall vote that was ordered for 11 o'clock be set aside, and I have checked this with the majority leader and also the minority on the other side. So I ask unanimous consent.

The PRESIDING OFFICER. Without objection, the yeas and nays on the amendment are vitiated.

Mr. HOLLINGS. I thank the distinguished Presiding Officer.

Then having set aside the yeas and nays, I ask unanimous consent to set aside the present amendment and substitute thereof my amendment that I will send to the desk.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

UP AMENDMENT NO. 1990

(Purpose: Fund Junior Enlisted Travel Benefits)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes unprinted amendment numbered 1990.

Mr. HOLLINGS. 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:

On page 2, line 11, strike out "$9,110,-896,000" and insert in lieu thereof "$9,154,-325,000"

On page 2, line 20, strike out "$6,951,-332,000" and insert in lieu thereof "$6,455,-500,000"

On page 3, line 3, strike out "$2,000,-375,000" and insert in lieu thereof "$2,004,-275,000"

On page 3, line 12, strike out "$7,489,-391,000" and insert of lieu thereof "$7,521,-081,000"

On page 60, after line 15, insert the following: Sec. 860. (a) None of the funds appropriated by this Act shall be used to pay junior enlisted dependent travel entitlements to overseas areas after November 1, 1978. (b) None of the funds for overseas housing allowances in this Act shall be used for the construction of new government housing overseas.

Mr. HOLLINGS. I yield to our distinguished chairman.

Mr. STENNIS. Madam President, I appreciate very much all the Senator's remarks, and I feel certain that good will come from the debate and from the passage of this amendment. I do not know what can be done about it in conference, but we will certainly do the best we can anyway. The issue has been clearly raised, and a step has been taken by the Senate. A forward step has been taken toward the possible partial solution anyway of this problem.

Just one word here about the new dependents who might be in Europe. That date was moved forward to November 1 to take care of any situation whereby someone was already in transit. As I understand that without a doubt they could be taken care of and this money spent on them. But between the time the President might sign the bill and it become law, during those unknown numbers of days, just what dates they are, certainly it would be understood that the services would not be trying to put in a large number or any number of new dependents who are not already selected before this matter is adjusted. So I think that this will work out.

Just for clarity and emphasis, also, I restate this problem as I see it is to get a ceiling put on the number of dependents whom we will have in this area of the world. I mean they are there, because of the military. I think it ought to be gradually reduced.

There will be a strong argument against that, I am sure, but I believe as we get more and more familiar with this situation, the stronger that position will become.

This matter of recruiting for the services, all of the services, is a continuing problem. I have supported the recruitment. I do not want any inferences to arise that I have not, because the facts are that I have, and I will continue to support it generally.

But whenever they get into a practice that I think is working to the benefit of our adversaries, I certainly am not going to support that.

I know there is much money in this whole bill for recruitment, the actual cost of recruiting, the bonuses to be paid, the effort to recruit enough of our reserves, the regular reserve that I call it, and then the National Guard, a very valuable element of it; it is harder and harder, it seems, to recruit for some of those units. But, at the same time, some of those units are getting better and better. We now have reserve component units that outscore the regulars. That is no reflection on the regulars. It is just a compliment to the reserves.

I think some of the very best investment we have its in these Reserve units. We have some new planes in this bill that go directly to the Reserves. They do not have to ask the Air Force for them. They go directly to them. My vote on it was partly as a reward for their very fine service, conscientious service, that those men perform.

So far as I know, Mr. President, that concludes our situation. We will do the best we can in conference.

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

Mr. STENNIS. I am glad to yield.

Mr. YOUNG. I just want to thank my good friend from South Carolina (Mr. HOLLINGS) for the kind references he made to the late Senator Russell and myself. We were very close. I think he was the most intelligent man I ever knew, and I think he will go down in history as one of the all-time great Senators.

Mr. HOLLINGS. I believe it, Senator, I really do. I am glad to hear you say that. That is why I was on his front porch the next day. I watched him over the years, and we have the same affection and respect for him as the Senator has.

Mr. STENNIS. Madam President, just one sentence here. I cannot let the name of the late Senator, a dear friend, Senator Richard Russell, pass without saying that he was the No. 1 of the number ones. The great fortune I had when I came here was to fall in contact with him. As an American, I thank God for his contribution, his life, and his life of public service.

Along with that, I had the good fortunate of falling in with the Senator from North Dakota (Mr. YOUNG), too.

Mr. YOUNG. I thank the Senator.

Mr. STENNIS. I have a growing indebtedness to him, and I appreciate him very much.

● Mr. GOLDWATER. Mr. President, I rise in support of the amendment by the junior Senator from South Carolina to add $85 million to the bill for junior enlisted travel entitlements. The DOD request was for $103 million and the House bill reduced that to $95 million and that would leave a small amount to resolve in conference.

The issue of junior enlisted travel is something the Congress has been remiss in supporting for a number of years. It is time for the Congress to recognize that the All-Volunteer Force requires a different type of support than did the force recruited under the draft system. We are now asking young men and women to join a large organization and become part of that organization for what we hope will be a 20- or 30-year career. No one is forcing them to join, the pressure of the draft no longer exists, so consequently inducements must be more attractive. If we expect these young men and women to join this defense organization and be asked to serve overseas, why should they do so when they see they will not be allowed to take their dependents with them? I ask my colleagues if it is standard practice for large corporations who recruit young men and women into their organization to ask those new people to serve in remote areas without their families. To the contrary, I believe you will find it is standard practice of the large corporations to recognize the stability derived from keeping a family together.

There are other advantages of funding junior enlisted travel. As things stand now, a young soldier stationed overseas may bring his family to his overseas station at his own expense.

When he does this, since his dependents are not DOD-sponsored, they are not authorized automatically the right to use the post exchange, the commissary, medical facilities, or dependent schools. Special exceptions must be made and these "unauthorized" dependents are treated as second-class citizens. Consequently, the families that can least afford not to be supported by the Department of Defense are, in fact, the ones that do not receive support, because they are not "command sponsored."

As a result, our lowest paid servicemen are put under the biggest financial strain, and I suspect this could well cause them to turn to other means to make ends meet. I have no evidence to support this, but I would think a young man desperate for money, concerned about the welfare of his family, might be pressured into illegal activities to make up his financial deficit. The point is, it is not in the long term economically beneficial to deny these young people the right to have their families with them wherever they go. If we want to try to keep this All-Volunteer Force together and to make it work, then we need to eliminate this discriminatory policy against junior enlisted personnel as soon as possible.

There is another advantage to authorizing junior enlisted travel. When that occurs, before the serviceman can bring his family overseas, it must be authorized by his command and he must show the command that he has found adequate quarters on the local economy, if he is not authorized quarters on the military installation. This gives the command some control over where this young man and his family will reside. It will preclude, in many cases, our young people from residing in totally inadequate and unhealthy housing, because if the quarters selected do not meet command standards, the command does not have to authorize the overseas travel for the dependents. The important thing is the services gain additional control over the flow of dependents and they have an impact on the morale and welfare of those dependents once they arrive in the theater.

Mr. President, I do not buy the argument that this would increase the number of dependents in the NATO theater to the point of overloading present evacuation plans. I suspect that the addition of the relatively few dependents that would be involved would have no significant impact on present evacuation plans. It is my observation that any evacuation of dependents, especially if the decision to evacuate was delayed, would be almost impractical if not impossible. We may as well accept the thesis that in Europe our military dependents will very likely be subject to the same dangers as any European citizen in the event of a NATO war. So, let us not cloud the issue with this argument.

Mr. President, I commend Senator HOLLINGS for his amendment and I urge its acceptance by the Senate.●

Mr. HOLLINGS. Madam President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Carolina.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota (Mr. McGOVERN) is recognized to call up an amendment on which there will be 10 minutes' debate to be equally divided and controlled.

Mr. STENNIS. Madam President, if the Senator will yield to me for just a parliamentary inquiry, the way the Senator from Mississippi understands it, this clears the docket, so to speak, of the amendment that the Senator from South Carolina has, and adopts the substitute. I wish we could have copies of that substitute made for the information of the Senate.

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 3813

(Purpose: To reduce total appropriations by 1 percent)

Mr. McGOVERN. Madam President, I have an amendment at the desk and I ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. McGOVERN) proposes an amendment numbered 3813:

At the end of this Act, add a new section as follows:

Notwithstanding any other provision of this Act, the total amounts appropriated herein shall be reduced by 1 percent.

Mr. McGOVERN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McGOVERN. Madam President, this is a simple amendment. It does not require any elaborate discussion. Those Senators who think the proposed military budget of $116 billion is exactly right should obviously vote "no" on this amendment. Those who believe that by careful management the Defense Department might be able to run its operations adequately on 1 percent less funding should vote "yes."

The Senate bill was thoughtfully constructed by Senator STENNIS and other members of the Appropriations Committee whom I greatly admire. I congratulate them on the general character of this pending act and for their conscientious work. All of us admire Senator STENNIS, the distinguished chairman of this committee, not only as a Senator, but because of the kind of man he is.

But I am concerned about the growing dangers of inflation, of budget deficits, and Federal waste, as all of us are in this body.

The bill before us calls for the expenditure of $116 billion, roughly. This amendment would save in excess of $1 billion of that amount. That would be a modest challenge, some would even say symbolic, to the Defense Department to reduce a little of the fat and work a little harder, while keeping an eye on the Russians and the Chinese, and to also keep an eye on the American taxpayer.

As a former pilot in World War II, I realize we have to have a defense force that is second to none. That really is not the issue here. We have that now, with enough of a cushion to justify, in my opinion, a 1-percent saving.

The great danger to the Nation today is not so much that we are being outdone militarily as it is that we have piled up huge inflationary war debts and war deficits.

As we all know, today's inflation began with the war in Southeast Asia. But instead of reducing military spending at the end of that war, as we had always done throughout our 200-year history after every previous war, we sharply increased military spending at the close of that conflict.

We used to talk about the cost of the New Deal. How many of us are aware that the cost of the entire New Deal, I mean the total cost of running the U.S. Government for 7 years from 1933 until 1940, was only $50 billion, about $7 billion a year for the entire Federal budget.

The budget now before us for the Defense Department for 1 year is $116 billion. That is more than double the cost of running the entire U.S. Government for the 7-year period of Franklin Roosevelt's New Deal.

Two years ago, when he was running against Gerald Ford, Jimmy Carter pledged to cut military spending $5 to $7 billion. Instead, he has sent us military budgets that are roughly $10 billion a year higher. Senator STENNIS and his committee have trimmed off some of this fat, for which I am grateful. I am offering a chance to trim off a little more. This may be symbolic, but what is wrong with a modest symbol for economy in our military operations?

We have been criticized for a new Senate office building that will serve the American people for a century or more. I am offering you a 1-percent cut in military outlays that—in 1 year—provides a saving of over $1 billion—10 times the cost of this new Senate building; plus enough additional saving to cover the cost of those water development projects that are apparently causing the President to veto the public works bill.

I want the United States to be as strong militarily as the Russians and Chinese. But I would also like to see the American dollar become as strong as the German mark and the Japanese yen.

This little amendment will give us a chance to save the dollar from the Germans and the Japanese—and we will count on Senator STENNIS' remaining $115 billion to save us from the Russians and the Chinese.

Madam President, I reserve the remainder of my time.

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

Mr. STENNIS. Madam President, I am going to save some time now. Call me at the end of 4 minutes, if you will.

The Senator from North Dakota and I, with proper modesty, I hope, are going to express our position here on this matter.

We have been into every cranny of this bill—over 3,300 actual line items, ladies and gentlemen, in this appropriation bill. We have been grinding on it with preparatory work we did last fall, and then started again in January, and we had all the benefit of what was done in the Senate Armed Services Committee, with their extensive hearings in the past; and these figures have been through, much of it, a high percentage have been through the Armed Services Committee twice, because the military procurement appropriations bill was vetoed—and, by the way, the House passed that bill yesterday, a slight variation from the Senate bill.

The Appropriations Committee has been through this entire matter, this bill being from that committee. Literally hundreds of pages of testimony have been taken on many of the major items of this bill, pro and con, in these committees and these subcommittees, and following days and days and many nights of hearings, these figures are what we have come out with.

I do not say they are all correct. But I do say they are about as near correct as human effort can make them, and I say respectfully they are more correct than a guess would be; and that is what this 1 percent is—just a guess, at best. Just across the board, 1 percent goes out.

We are already $2.9 billion, or 3 percent, under the budget. A billion dollars of that, in round numbers, is due to the Trident that was deferred. But in this case, as in cases heretofore, when the bill has been 4 percent, 7 percent, 5 percent, 6 percent, 8 percent, 3 percent, 4 percent—those are other years I am talking about—under the budget, so we are almost as much under the budget as in years past, in spite of this inflation.

I repeat, in spite of the inflation; and who knows how much to allow here for inflation? They asked for $1.5 billion for inflation alone, and we have in here around, I believe now it is close to $900 million; $900 million for inflation.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi has used 4 minutes of his time. The Senator from North Dakota.

Mr. YOUNG. Mr. President, I strongly oppose this proposed 1 percent cut. One percent does not sound like much, but there are many items, like contract items, where you cannot make cuts at all; so even a 1 percent cut would result in a 10 percent or more cut on many items.

Senator STENNIS and I met with the House leadership and with Secretary Brown just before the markup. In fact, he pleaded with us to increase certain items. His total list was about $2 billion. On one item alone, he requested an increase for inflation, which was originally estimated at about $1.5 billion. But the House reduced it to $1.2 billion, and now it is down to $878 million. This is only about half of what was requested.

The whole budget was handled that way. It is a very austere budget. I do not know of a time when a percentage cut would have done more damage to the Defense Department than now.

Mr. STENNIS. Madam President, how much time remains?

The PRESIDING OFFICER. The time of the Senator from Mississippi has expired. The Senator from South Dakota has 1 minute.

Mr. McGOVERN. Madam President, I have nothing to add. I yield back that 1 minute.

Mr. STENNIS. Madam President, may I observe we are running far ahead of schedule here? For the notice to get out among the Membership, maybe we could take a quorum call here for a few minutes.

Therefore, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

The question is on agreeing to the amendment.

Mr. STENNIS. And the yeas and nays have been ordered?

The PRESIDING OFFICER. The Sentor is correct.

Mr. HART. Will the distinguished floor leader yield me 2 minutes on this amendment?

The PRESIDING OFFICER. All time has expired.

Mr. HART. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Sentor from South Dakota. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Louisiana Mr. JOHNSTON), the Senator from Washington (Mr. MAGNUSON), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from West Virginia (Mr. RANDOLPH) are necessarily absent.

I further announce that the Senator from Missouri (Mr. EAGLETON) is absent on official business.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay."

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Maryland (Mr. MATHIAS), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The PRESIDING OFFICER. The Senate will please be in order.

Have all Senators presently in the Chamber voted?

The result was announced—yeas 11, nays 74, as follows:

[Rollcall Vote No. 444 Leg.]

YEAS—11

| | | |
|---|---|---|
| Church | McGovern | Riegle |
| Cranston | Metzenbaum | Stevenson |
| Griffin | Nelson | |
| Hatfield, Mark O. | Pell | |
| | Proxmire | |

NAYS—74

| | | |
|---|---|---|
| Anderson | Glenn | Morgan |
| Baker | Goldwater | Moynihan |
| Bartlett | Gravel | Muskie |
| Bayh | Hansen | Nunn |
| Bellmon | Hart | Packwood |
| Bentsen | Hatch | Percy |
| Biden | Hatfield, Paul G. | Ribicoff |
| Bumpers | Hayakawa | Roth |
| Burdick | Heinz | Sarbanes |
| Byrd, Harry F., Jr. | Helms | Sasser |
| Byrd, Robert C. | Hodges | Schmitt |
| Cannon | Hollings | Schweiker |
| Case | Huddleston | Sparkman |
| Chafee | Humphrey | Stafford |
| Chiles | Inouye | Stennis |
| Clark | Jackson | Stevens |
| Culver | Javits | Stone |
| Curtis | Kennedy | Talmadge |
| Danforth | Laxalt | Thurmond |
| DeConcini | Leahy | Wallop |
| Dole | Long | Weicker |
| Durkin | Lugar | Williams |
| Eastland | McClure | Young |
| Ford | McIntyre | Zorinsky |
| Garn | Melcher | |

NOT VOTING—15

| | | |
|---|---|---|
| Abourezk | Haskell | Matsunaga |
| Allen | Hathaway | Pearson |
| Brooke | Johnston | Randolph |
| Domenici | Magnuson | Scott |
| Eagleton | Mathias | Tower |

So the amendment (No. 3813) was rejected.

Mr. STENNIS. Madam President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

● Mr. ROTH. Mr. President, before the President vetoed the Defense Appropriations Authorization Act which authorized funding for the proposed nuclear-powered carrier, it had been my intention to offer an amendment deleting appropriations for the carrier.

It is my strong belief that the carrier represented an excessively large and expensive ship which would have starved scare defense resources needed for other defense and naval requirements.

Because the carrier has been deleted and because the Defense Appropriations Subcommittee made significant cost-savings reductions in the budget request, I will not offer an amendment to reduce appropriations in this bill.

I believe the defense budget, like other areas of the Federal budget, should be subjected to close scrutiny to eliminate waste, duplication, or mismanagement. At the same time, I support the commitments made by the President and other NATO leaders for a 3-percent real growth in defense spending. This growth is is needed to maintain the strength of our deterrent and security in the face of a continuing Soviet buildup of both strategic and conventional forces.

The appropriations in this bill are $2.7 billion below that of the House bill, $3 billion below the budget request, and represent less than a 4-percent increase over last year's appropriations level.●

● Mr. MUSKIE. Mr. President, I support the defense appropriation bill for fiscal year 1979. In terms of my responsibility as chairman of the Budget Committee, I want to express my views regarding the bill and how it relates to the national defense functional ceiling set by Congress in the second budget resolution for fiscal year 1979.

First, I extend my congratulations to the distinguished Senator from Mississippi, Mr. STENNIS, and the other very able members of the Defense Subcommittee for the work they have done and the time that they have devoted to this crucial piece of legislation. They have worked extremely hard to bring before the Senate a defense spending measure that is within the budget ceilings Congress mandated for national defense and provides for continuation of our Armed Forces modernization and readiness.

The bill before us appropriates funds totaling $116.4 billion in budget authority. Outlays associated with the bill are $105 billion, which includes outlays of $27.5 billion from prior year budget authority.

Mr. President, this bill is well below the budget authority levels of the budget request and the House-passed bill—$2.9 billion and $2.7 billion respectively. Outlays are below the budget request and the House bill by $0.7 billion and $0.4 billion respectively.

Taking into account all other actions to date and anticipated in the National Defense function, the bill is consistent with the assumptions for defense spending as contained in the second budget resolution for fiscal year 1979.

Because the nuclear carrier has been deleted from the bill, the amount of budget authority available in the function for possible later requirements, such as the spring 1979 pay supplemental and a weapons supplemental, should be adequate to allow the Defense Subcommittee to stay within its allocation under section 302(b) of the budget act.

The pressure on the outlay ceiling, however, is much greater. Due to the slow spending rate associated with the Navy's shipbuilding program, the removal of the nuclear carrier from this bill did not ease the pressure on keeping defense outlays within the second budget resolution. Possible later requirements for the pay supplemental and other defense contingencies will exert a great deal of pressure on the very tight ceiling for outlays. This aspect of a future supplemental will be carefully watched.

Mr. President, in concluding my remarks, I want to state my appreciation to the distinguished chairman of the Appropriations Committee, Mr. MAGNUSON, and to the distinguished chairman of the Defense Subcommittee, Mr. STENNIS, for their efforts in producing a bill within the congressional budget ceilings for Defense.

I support this Defense appropriation bill, reserving the right to support or oppose floor amendments. I congratulate the committee for its efforts to date and encourage the committee to continue its efforts to restrain spending in the subsequent conference with the House.●

SUPPORT FOR THE CIVILIAN TECHNICIAN PROGRAM

● Mr. ROTH. Mr. President, the House Appropriations Committee has recommended a "test program" calling for the eventual replacement of full-time Reserve and Guard civilian technicians with active military personnel.

As a strong supporter of the civilian technician program, I was very pleased

that the Senate Appropriations Committee eliminated this test program in the Senate version of the Defense appropriations bill. I urge the Senate conferees to remain firm in this position.

As the House report itself points out, recent Defense Department reports show that there is no cost savings by converting to full-time military personnel.

What is clear is that the steps proposed by the House committee would waste the thousands of taxpayer dollars spent over the years in developing and training a highly qualified and dedicated civilian technician force. Active duty military pay and benefits far exceed those of the civilian technician.

The Senate Appropriations Committee report rightly points out that Reserve components are now overburdened with other tests.

The "test" proposed by the House committee would create new uncertainty, hurting the morale and readiness of Reserve and Guard components.

The loyalty, dedication, and skill of our civilian technician force has been amply demonstrated. The Senate should stand firmly behind the civilian technicians.●

● Mr. METZENBAUM. Mr. President, last year, Senators MOYNIHAN, HEINZ, HATHAWAY, CHAFEE, HUMPHREY, LUGAR, BROOKE, and CASE joined me in offering an amendment to the defense appropriations bill to require the Department of Defense to resume the practice, discontined in 1973, of tracking the distribution of subcontracts awarded by the Department's prime contractors. Our reason for offering that amendment was to provide the Congress with some specific answers to the many questions that have been raised about the economic impact of defense spending on the various regions of the country.

Until our amendment was passed, the DOD could account only for funds awarded to prime contractors. Under that system, the entire amount of a major contract was reported as flowing to the State in which the prime contractor had its corporate headquarters. The secondary distribution of these funds via subcontracts was not taken into consideration.

The result of this faulty system, Mr. President, was to seriously distort the information available to Congress and the public on where our defense dollars are actually spent. According to DOD experts, the Department had no way to track up to 50 percent of its procurement dollars.

I believe that we need precise information in this controversial area and so I am pleased that the Committee on Appropriations has incorporated the tracking requirement in this year's defense appropriations bill. Collection and dissemination of this data should be an ongoing responsibility of the Department of Defense. It is not a project that should be terminated, as the DOD has requested, at the end of a single year.

Mr. President, I commend the committee for including a provision in the bill that will give us the information we need to make informed judgments on a complex and potentially divisive issue. I am confident that the Senate conferees will, as they did last year, do everything they can to insure that this important provision is included in the final legislation that goes to the President.●

NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE

Mr. KENNEDY. Mr. President, today the Members of this body will vote on the 1979 appropriations for the Department of Defense, H.R. 13635. I am taking this opportunity to express my vehement opposition to the underwriting of a program that is unquestionably established to benefit a minority of this nation's population who belong to the National Rifle Association.

I have stood before this body in the past and debated the validity of American tax dollars being expended to support the National Board for the Promotion of Rifle Practice. The amount of $694,000 can be viewed as a mere pittance when enveloped in a multibillion dollar appropriations measure.

However, I believe it is a disgrace that at a time when the Congress has said to thousands of this Nation's homebound elderly that the Federal Government can not provide daily hot meals to all those in need—that this same Congress stands ready to insure that the NRA will be able to hold their annual target shooting matches.

I find it a disgrace that at a time when we are saying to economically and educationally disadvantaged school children that the Federal budget is limited and some of them will have to do without needed instruction and support services—that this Congress stands ready to continue to support a program the validity of which has been repudiated by a congressionally authorized study conducted by the Arthur D. Little Co. and issued in January of 1966. The study issued a 57-page report which provides some valuable insights into why this program should be abolished.

The most significant conclusion in the report appears on page 14 and again on page 57, and deals with training soldiers to meet marksmanship proficiency. The report states:

> A fundamental question in determining how much to spend on training is what degree of proficiency is desirable or even "good enough"?
>
> We were surprised to find that no desired objectives or even minimum standards of rifle marksmanship proficiency have seen set for either units or individuals going into combat. Therefore, as far as we could tell, no one has yet been able to "price out" the value of achieving a given level of marksmanship proficiency in a rifle company, platoon, squad, or perhaps even more difficult, in an individual rifleman. Thus, it is difficult to justify on a cost/benefit basis, the investments made in teaching riflemen how to shoot.

Further from page 24 of the report, I read:

> Until more direct study and research is applied to the question of how incremental degrees of rifle marksmanship proficiency relate to a unit's combat effectiveness, and also to the question of "how much it's worth" for a unit to attain higher levels of combat effectiveness, we believe it will be extremely difficult to "price out" the value of the DCM program in terms of a quantitatively expressed cost/benefit relationship.

My colleagues should also be interested that the Little study discovered the remarkable fact that only 3 percent of the personnel who enter Army basic training have ever been members of civilian marksmanship gun clubs.

Federal support of civilian rifle practice is an obsolete anachronism that cannot be justified in our modern society.

The Congress enacted the National Board for the Promotion of Rifle Practice in 1903 to carry out four missions:

First. To promote practice in the use of military type individual small arms among civilians;

Second. To promote small arms matches and competitions;

Third. To issue arms, ammunition, targets and other supplies to competitors participating in these activities; and

Fourth. To procure and award to winning competitors, trophies, medals, badges, and other insignia.

According to legislation creating the board, the basic purpose of these activities is to encourage and support small arms target practice, so that in time of war the Nation would have a trained corps of riflemen and rifle instructors.

In 1903, that was a worthwhile purpose. At the turn of this century, the need for a prepared civilian force of riflemen may have been important. But if there is any one thing that our enormous military training system has mastered—it has mastered the technique of training new recruits how to shoot.

Last year a Washington Post editorial on the national board questioned the wisdom of this appropriation.

Mr. President, I ask that the editorial from the Post be included at this point in my statement.

[From the Washington Post, Sept. 13, 1978]

FEDERAL AID FOR RIFLE PRACTICE

When Congress is chewing over a $109-billion Defense Department budget, few are likely to pay great attention to a $694,000 item—especially if it's an item Congress has faithfully approved every year for the last 75 years. The item is a bureaucratic anachronism known as the National Board for the Promotion of Rifle Practice. The official reason for this U.S. Army-affiliated board, created in 1903 after a vigorous campaign by then-Secretary of War Elihu Root and the National Rifle Association, is to train the citizenry in the use of small military arms. It does this by promoting matches and competitions and by supplying rifles, ammunition, targets and trophies. This familiarity, so the official Defense Department position goes, will enable those citizens to take up active duty and immediately and effectively defend the country in the event of an attack by, say, Mexican ground forces. The Army would be well advised, by this line of logic, to resume riding lessons against the day when we may wish to revive the cavalry.

The more likely explanation for continued congressional support for the rifle board lies in the dubious alliance between the board and that stalwart protector of the right to bear arms, the good old NRA. For example, federal law authorizes the rifle board to sell—at cost, not market value—U.S. Army rifles to those who meet certain qualifications. One of the qualifications for purchasing the guns is membership in the NRA. Many of the gun clubs that benefit from the rifle board's largess are closely connected to the NRA. And U.S. Navy Vice Adm. Lloyd Mustin (Ret.), a member of the rifle board's civilian/military oversight committee, happens to be NRA president this year.

Sen. Edward M. Kennedy (D.-Mass.) and Rep. Abner J. Mikva (D.-Ill.) have led the opposition to the continued existence of this board for the past decade. It's too bad they

can't drag more of their colleagues into the last quarter of the 20th century and into a realization that the federal government has no business subsidizing either the well-heeled NRA or those people who shoot guns for sport.

Mr. President, I believe we have, as a Nation, more important priorities pressing us 75 years later than subsidizing both the NRA and private gun clubs for the sport of shooting.

I know of no other appropriation that provides any degree of support for any other sport, or any other competition. Moreover, this $694,000 appropriation includes $55,000 for the lease of Camp Perry in Ohio. Interestingly, the NRA for 9 years, until 1978, had borne this expense in order that their annual shooting matches could be held. I am certain if we were to ask taxpayers in America—how they would like to see the $694,000 of their tax money expended it would not be on trophies, ammunition, or the leasing of Camp Perry.

Mr. President, I offered an amendment last year which would have prohibited funds appropriated to the Department of Defense to be used in connection with any civilian rifle practice program, including the issuance of military rifles or ammunition.

The National Rifle Association is a powerful, well financed organization. Their influence with the Congress is well documented. This program is a sacred cow which the NRA will muster all the troops to protect. But, there are other Americans who will read the Arthur D. Little study and disagree with the wisdom of Congress continuing the funding to a program that has little if any benefit to our national defense.

Finally, Mr. President, this provision also permits the sale of surplus weapons to NRA gun clubs and their members. Why the Federal Government ought to be in the retail gun business escapes me. Do we sell discount baseballs for our little leaguers, discount footballs to "Pop Warner" participants or discount basketballs to athletic clubs in the neighborhood leagues around the country? No, we do not.

The $694,000 is not a great sum, but I for one clearly find no justification for the Department to continue this activity.

Mr. STENNIS. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STENNIS. Madam President, as I understand the situation now, we are at the place regarding the unanimous consent for third reading.

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. Third reading of the bill, and have the yeas and nays yet been ordered?

The PRESIDING OFFICER. They have been ordered.

Mr. STENNIS. They have been ordered.

I thank the Chair.

Mr. GRIFFIN. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GRIFFIN. I do not have an amendment to offer, but after third reading, will there be an opportunity to have a colloquy with the chairman?

The PRESIDING OFFICER. It would take unanimous consent.

Mr. GRIFFIN. Then I ask unanimous consent for 3 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Add 1 minute to that, Madam President, I ask unanimous consent for a minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. STENNIS. Madam President, will the Chair insist on order to the extent we can at least hear?

The PRESIDING OFFICER. The Senate will be in order so that the clerk can be heard for third reading.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The Senator from Michigan has 3 minutes.

Mr. GRIFFIN. Madam President, I would like to raise with the distinguished Chairman the issue of ELF, the extremely low frequency communication system.

I see that this bill contains an appropriation of $20 million for the ELF communication system.

However, I am pleased to see that the Appropriations Committee concurs in the judgment that use of these funds should be restricted.

In its report, the committee has indicated its agreement with a restriction that was contained in the Defense authorization bill.

That restriction is as follows:

EXTREMELY LOW FREQUENCY (ELF) COMMUNICATION SYSTEM

SEC. 202. None of the funds authorized to be appropriated by this Act for the development of the Extremely Low Frequency (ELF) communication system may be obligated or expended for the development of such system unless the President certifies to the Congress in writing that the use of funds for such purpose is in the national interest, that a site has been selected for the deployment of such system, and that the President has approved such site for the deployment of such system, and in no event may any of the funds authorized to be appropriated by this Act be used for full scale development or construction of another test-bed facility for an Extremely Low Frequency (ELF) communication system.

Let me empasize that last phrase:

In no event may any of the funds authorized to be appropriated by this Act be used for full scale development or construction.

I welcome this judgment by the committee, which will become the mandate of the Senate when this bill becomes law.

Needless to say, the Navy's plans for a submarine communication system have been the subject of a great deal of controversy.

The Navy's plans have changed frequently and there seems to be no real consensus as to how or where this system should be deployed.

There is no consensus even on what the system should be.

Under the restriction provided in the authorization bill and concurred in by the Appropriations Committee in its report on this bill, as I understand it, none of the funds can be expended until and unless the President certifies in writing that:

First. Spending the funds is in the national interest;

Second. That a site has been selected for deployment;

Third. That the President has approved such site.

Mr. STENNIS. Yes, the Senator is correct. This money that is in the bill, $20 million, is to be used only under those conditions set forth in the authorization bill.

The Senator from Mississippi knows that the President of the United States fully understands those paragraphs and has said that he would spend this money for R. & D. within this language.

Mr. GRIFFIN. I thank the chairman for that assurance.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

The Senator from Alaska is recognized for 1 minute.

Mr. STEVENS. Mr. President, The National Board for the Promotion of Rifle Practice was created in 1903 at the request of the National Guard and other military officers and has been in continuous existence since that time. Congress felt that citizens entering military service were inadequately trained in the use of a rifle and the creation of the NBPRP was an effort to provide a citizen army in the event of a national emergency.

The NBPRP consists of not less than 21 nor more than 25 members appointed by the Secretary of the Army from the Army, Navy, Coast Guard, Air Force, Marine Corps, the Army Reserve, the National Guard Bureau, Treasury Department, Interior Department and the country-at-large. Members serve without compensation other than reimbursement for necessary authorized expenses and are appointed for a term of 3 years.

The Office of Director of Civilian Marksmanship (DCM) is the implementing agency for the Secretary of the Army responsible for carrying out the policies and programs recommended by the Board.

The DCM program provides a valuable service to America, not only in developing skills for potential military use but, also includes instruction in safety and proper use of firearms. Currently there are 2,000 civilian rifle clubs and over 130,000 members enrolled in the DCM program. I would like to list for my col-

leagues the number of DCM-sponsored clubs and their membership in each State:

| State | Clubs | Members |
|---|---|---|
| Alabama | 0 | 466 |
| Alaska | 17 | 813 |
| Arizona | 21 | 1,958 |
| Arkansas | 10 | 413 |
| California | 136 | 11,028 |
| Colorado | 23 | 1,474 |
| Connecticut | 55 | 3,763 |
| Delaware | 7 | 1,444 |
| District of Columbia | 5 | 271 |
| Florida | 22 | 1,530 |
| Georgia | 14 | 409 |
| Hawaii | 2 | 90 |
| Idaho | 20 | 1,459 |
| Illinois | 63 | 3,030 |
| Indiana | 31 | 1,683 |
| Iowa | 28 | 1,640 |
| Kansas | 20 | 749 |
| Kentucky | 13 | 641 |
| Louisiana | 13 | 1,571 |
| Maine | 19 | 1,001 |
| Maryland | 63 | 3,742 |
| Massachusetts | 72 | 5,388 |
| Michigan | 81 | 4,840 |
| Mississippi | 1 | 20 |
| Missouri | 49 | 2,080 |
| Montana | 33 | 1,431 |
| Nebraska | 37 | 1,354 |
| Nevada | 2 | 69 |
| New Hampshire | 18 | 1,022 |
| New Jersey | 27 | 4,646 |
| New Mexico | 8 | 925 |
| New York | 254 | 16,136 |
| North Carolina | 9 | 336 |
| North Dakota | 24 | 1,659 |
| Ohio | 102 | 7,573 |
| Oklahoma | 17 | 1,492 |
| Oregon | 28 | 1,852 |
| Pennsylvania | 196 | 15,888 |
| Rhode Island | 17 | 1,620 |
| South Carolina | 10 | 252 |
| South Dakota | 13 | 659 |
| Tennessee | 12 | 517 |
| Texas | 80 | 4,345 |
| Utah | 19 | 1,420 |
| Vermont | 10 | 946 |
| Virginia | 30 | 1,319 |
| Washington | 57 | 2,953 |
| West Virginia | 15 | 890 |
| Wisconsin | 85 | 5,374 |
| Wyoming | 22 | 1,272 |

The DCM program has proved very worthwhile to the military in the past and will continue to serve an important purpose. History shows that during World War II, more than 1,700.000 Americans entering military service had received prior marksmanship training through NBPRP-sponsored programs.

Today, a sizable number of the participants in DCM programs go into the military. In 1976, 1,095 participants joined the military and in 1977, 1,888 persons joined.

Mr. President, because of the dramatic change in the lifestyle of Americans, the average citizen today is simply not trained in the use of firearms. During the Vietnam conflict, Army divisions found it necessary to establish marksmanship training programs in the combat zone. The small amount of money requested in the budget and approved by the House and Senate Appropriations Committee provides a great service to many individuals and to the United States. It is used to train Americans in the proper use of firearms, to prepare them for a national emergency and to provide the Army with a forum from which to recruit well-qualified men and women for our all-Volunteer force. It does a great deal to strengthen the ties between the Armed Forces and the general population.

I am pleased that the Senate accepted the committee position and retained funding for the National Board for the Promotion of Rifle Practice.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, we have had third reading and, so far as time is concerned, if others who have time are willing to yield the time back, I will yield back our time, Mr. President, on condition——

The PRESIDING OFFICER. There is no time.

Mr. STENNIS. All right, time is not available.

I just say this, I understand this is the largest appropriations bill that the Senate ever passed on. I believe it is one of the best.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mr. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Louisiana (Mr. JOHNSTON) and the Senator from West Virginia (Mr. RANDOLPH) are necessarily absent.

I further announce that the Senator from Missouri (Mr. EAGLETON) is absent on official business.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Colorado (Mr. HASKELL) would vote "yea."

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Kansas (Mr. PEARSON), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The PRESIDING OFFICER. Have all Senators voted?

The result was announced—yeas 86, nays 3, as follows:

[Rollcall Vote No. 445 Leg.]

YEAS—86

| | | |
|---|---|---|
| Anderson | Case | Ford |
| Baker | Chafee | Garn |
| Bartlett | Chiles | Glenn |
| Bayh | Church | Goldwater |
| Belmon | Clark | Gravel |
| Bentsen | Cranston | Griffin |
| Biden | Culver | Hansen |
| Bumpers | Curtis | Hart |
| Burdick | Danforth | Hatch |
| Byrd, Harry F., Jr. | DeConcini | Hatfield, Paul G. |
| Byrd, Robert C. | Dole | Hayakawa |
| Cannon | Durkin | Heinz |
| | Eastland | |
| Helms | McIntyre | Schweiker |
| Hodges | Melcher | Scott |
| Hollings | Metzenbaum | Sparkman |
| Huddleston | Morgan | Stafford |
| Humphrey | Moynihan | Stennis |
| Inouye | Muskie | Stevens |
| Jackson | Nelson | Stevenson |
| Javits | Nunn | Stone |
| Kennedy | Packwood | Talmadge |
| Laxalt | Pell | Thurmond |
| Leahy | Percy | Wallop |
| Long | Ribicoff | Weicker |
| Lugar | Riegle | Williams |
| Magnuson | Roth | Young |
| Mathias | Sarbanes | Zorinsky |
| Matsunaga | Sasser | |
| McClure | Schmitt | |

NAYS—3

| | | |
|---|---|---|
| Hatfield, Mark O. | McGovern | Proxmire |

NOT VOTING—11

| | | |
|---|---|---|
| Abourezk | Eagleton | Pearson |
| Allen | Haskell | Randolph |
| Brooke | Hathaway | Tower |
| Domenici | Johnston | |

So the bill (H.R. 13635) was passed.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. STENNIS. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. DECONCINI) appointed Mr. STENNIS, Mr. MAGNUSON, Mr. PROXMIRE, Mr. INOUYE, Mr. HOLLINGS, Mr. EAGLETON, Mr. CHILES, Mr. BUMPERS, Mr. YOUNG, Mr. CASE, Mr. STEVENS, Mr. SCHWEIKER, and Mr. BROOKE conferees on the part of the Senate.

Mr. STENNIS. Mr. President, I announce a meeting of those conferees in room H-405 this afternoon at 2:30 p.m.

Mr. President, I believe that completes the disposition of these matters, and I thank the Chair.

## TIME-LIMITATION AGREEMENT—H.R. 8200

Mr. ROBERT C. BYRD. Mr. President, with the approval of Mr. DECONCINI and Mr. THURMOND, the manager and comanager of the bankruptcy bill, I ask unanimous consent that at such time as the House message on H.R. 8200 is called up and made the pending question, there be a 20-minute time limitation thereon, to be equally divided between Mr. THURMOND and Mr. DECONCINI.

The PRESIDING OFFICER. Without objection, it is ordered.

## PRIVILEGE OF THE FLOOR

Mr. McCLURE. Mr. President, I ask unanimous consent that the following staff members of the Senate Budget Committee have the privilege of the floor: Charles M. Quillen, Bill Stringer, Bob Boyd, Gail Schelp, Carol Cox, and Bob Fulton.

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

Mr. NELSON. Mr. President, I ask

unanimous consent that Mr. Philip Ufholz, of my staff, and Mr. Denis Zegar, of the Small Business Committee staff, be accorded the privilege of the floor during the course of the consideration and votes on the pending legislation.

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

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REVENUE ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate proceed to the consideration of the tax bill, H.R. 13511, Calendar No. 1187.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

Calendar 1187, H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Finance with an amendment in the nature of a substitute.

Mr. ROBERT C. BYRD. Mr. President, may I have the attention of Senators?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats or retire from the Chamber if they wish to continue any conversations.

Mr. ROBERT C. BYRD. Mr. President, the Senate is now on the tax bill. The Senate will be in on Saturday, and there will be rollcall votes on Saturday. My attendance sheet shows that we have a quorum on our side of the aisle Saturday, so Senators are preparing to stay.

We had a better attendance last Saturday than the previous Saturday. The reason we are staying is we are still on the track hoping to achieve the October 14 sine die adjournment. I keep hearing rumors around to the effect that I have said that that is not achievable. When I see that that date is no longer achievable I will stand right here on this floor and state it for everyone to hear. I think it is achievable. I think the Senate is progressing expeditiously and deliberately.

We have made more progress up to this moment than I had anticipated for the week. So, Mr. President, I hope Senators will consider giving time agreements on the amendments to the tax bill. I hope they will consider entering into arrangements which will provide for the sequence in which amendments are called up, and I hope all Senators who have amendments will work with the joint leadership and the chairman and ranking minority manager of the bill in an effort to expedite in a reasonable way the tax bill.

So it will be up today; it will be up Saturday if we have not completed it. If we have not completed it Saturday, it will be up Monday. If it is not completed Monday, it will be up Tuesday. But I think if Senators will restrain their desire to call up too many amendments, especially nongermane amendments, that the Senate can complete its work on this bill, it can go to conference, and we can achieve our hoped-for adjournment goal.

TIME-LIMITATION AGREEMENT—H.R. 11003

Mr. President, I ask unanimous consent that at such time as Mr. STEVENS and Mr. SASSER call up their conference report on the White House personnel employment bill, H.R. 11003, that there be a 10-minute time limitation thereon, to which both of those Senators have agreed, and which would be equally divided between the two Senators.

Mr. BUMPERS. Mr. Leader, reserving the right to object, and I am not going to object, I just want to make this observation: Last Saturday we had a good attendance, as the leader has pointed out, and I heard quite a bit of grumbling that we had only three rollcall votes and were actually out of here by 12 noon.

I feel about Saturday sessions as I do about evening sessions. If we are going to be kept here until 8 o'clock I would just as soon stay until midnight, because my evening is shot, and I have very little time to do some work before going to bed.

I think it would help this Saturday if the leader would let everybody know that this is an important bill, and there are a lot of amendments; and that, if we choose, we can spend all day Saturday here and get a tremendous amount of work done, with a lot of rollcalls, and perhaps even complete the bill.

If Senators are on notice that that will be the case, we will get a lot of work done. As I say, we will get a good attendance and get a lot of work done, because nobody wants to come on down here on Saturday if we are actually going to be through by 10 a.m. and not transact a lot of business. So if the leader will make that clear to all Senators, it will be helpful.

Mr. ROBERT C. BYRD. I am glad the distinguished Senator has made the suggestion. I have seen the time when the Senate actually transacted more business on Saturday—once this year we had a Saturday session and we had 10 rollcall votes and transacted a great deal of business. The Saturday before last we passed two important bills, two conference reports, and this past Saturday I do not recall what was up before the Senate but we did make progress, and it helped to put us where we are today.

I agree with the distinguished Senator from Arkansas in indicating that there is a need for Senators to be on hand. The manager of the bill, Mr. LONG, will be here and at his post of duty, and the ranking manager will be here also, and it is possible we could complete action on this bill on Saturday.

Everybody knows what happens when the tax bill comes up. There are amendments and there are votes, and Senators are notified that we expect plenty of votes on Saturday.

Mr. BAKER. Mr. President, will the Senator yield to me for just a moment?

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. BAKER. Mr. President, reserving just for a moment, if the majority leader will yield to me, I am fascinated by the colloquy between the distinguished Senator from Arkansas and the distinguished Senator from West Virginia. But the ultimate fascination, it appears to me, looks as if we are going to have a busy day on Saturday. Is that a fair interpretation of what the majority leader said?

Mr. ROBERT C. BYRD. I think there is every prospect of that.

Mr. BAKER. Seriously, we have, as the majority leader has, a number of Senators who simply have to be out of town for at least part of Saturday, and a number of Senators are inquiring of me whether they ought to make arrangements to come back in contemplation of a late session on Saturday. I wonder if the majority leader can give us any statement of his intention with respect to the time he intends to conclude on Saturday.

Mr. ROBERT C. BYRD. I am glad the distinguished minority leader asked me this question. I cannot answer this question. I can only say that if we really mean that we are going to try to get out Saturday a week—and I really mean it, I am for it, have been for it, and I want to see us get out of here, and we can complete our work—but if we do we are going to have to be in this Saturday, and we are going to have to be in until a reasonably late hour which, I should think, may I say to the distinguished minority leader, would be 7 or 8 o'clock.

I cannot control the manager and ranking manager. They are the men who have to stand here day after day, go without lunch, go early and go late, and talk to the amendments. If they at 5 o'clock on Saturday feel they do not want to go any further I cannot force them to. I would not want to if I could. But it may be we would have something else we could take up.

I think we have to be in until 7 o'clock, I say to the minority leader, if we really mean it when we say we are going to try to make it next Saturday, and that is achievable. But we cannot come in on Saturday and go out at 11 or 12 or 1 o'clock and hope to finish our work by next Saturday, and it is just 50-50 whether we can do that next Saturday.

Knowing what I know about what remains to be done, I will state that it hinges right here on this bill and on the energy conference reports, and that is the answer as to whether or not we get out next Saturday. We have to get this bill passed after a reasonable period of time.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. May I say to the distinguished Senator that it would be irresponsible of Congress to adjourn sine die without passing this bill.

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. Because when we passed the 1977 social security amendments we made a commitment—at least many of us did, and I think it was implicit in the vote of most of us—that we were going to give the taxpayers of this country an income tax cut that would relieve them of the burden of the social security tax increase that was being passed on to them.

This bill fulfills that commitment. It further extends the 1975 income tax cuts

that otherwise will expire at the end of this year.

If this Congress should adjourn having failed to pass the tax cut to adjust for social security and, in fact, having failed even to continue the existing income tax cut from 1975, the taxpayer will receive a tax increase rather than a tax cut come next January, and there will be a lot of criticism of this Congress for a very good reason. I do not think anybody here really wants the Senate to be subjected to that kind of criticism.

So I think the Senator is entirely correct. This is a matter that must be acted on by this Congress.

Mr. ROBERT C. BYRD. Absolutely. Mr. President, if this bill is not acted on and the conference reports are not adopted by the close of business next Saturday, we will be in until we get it done. If it means coming back after the election, we will do it.

This is it: The tax bill. I am just pleading for the cooperation and understanding of all Senators, and hope they will work with the manager, the ranking minority member, and the joint leadership in expediting action on this bill, but in a way that will allow due consideration.

Mr. President, could we have the question put by the Chair on the 10-minute limitation?

Mr. KENNEDY. Mr. President, could I direct a question——

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

Mr. KENNEDY. It is really a question directed toward the managers of the bill, as to whether they have any recommendation to those of us who would like to offer amendments as to the way that we are going to proceed.

In the 1976 legislation we went section by section, and concluded on that, and then there were certain elements, as a point of accommodation to particular Members, that were bypassed, and at least there was an order and a degree of predictability so that those who were interested in various features could prepare and be able to be on the floor and follow the debate.

I know it is early at this time, but I do not know what the disposition of the managers of the bill would be, whether they will have any recommendations so that we can proceed in an orderly fashion, in a way which would be consistent with the majority leader's request.

Mr. LONG. Mr. President, my impression would be that we would obtain unanimous consent and agreement among Senators so that every Senator's amendment could be considered, especially every amendment that is a tax amendment could be considered, and that we could proceed and accommodate one another.

I would hope we would try to do it in a sequential fashion so that we could all know in advance the order in which amendments were going to be called up, and that we could then proceed step by step to consider these issues, in a way that everyone could prepare himself for and have whatever help he needed and whatever information he needed as each amendment comes up.

As the Senator well knows, that unanimous consent is something that has to be the product of 100 Senators. I would propose simply to lay the bill down——

Mr. KENNEDY. Fine.

Mr. LONG. And the committee amendment is in the nature of a substitute, and with the bill before the Senate, as the debate goes along, I would hope to obtain unanimous consent that we proceed in the kind of fashion the Senator has suggested.

It is all right with me to do it however the Senate wants to do business, but I would hope very much that we can obtain agreements.

I know the Senator has several significant amendments at the desk. If he would be willing to go over his amendments and decide which ones he would like to call up, and at what times, I would like to accommodate him as well as others.

Mr. KENNEDY. All right.

Mr. LONG. As the Senator knows, we have some very significant differences even within the Finance Committee itself. We have very strong support for some provisions that the committee did not agree to. So we would hope that we can obtain agreements as we go along.

Mr. KENNEDY. I thank the Senator for his response. I think he has always obviously attempted to insure the protection of all the Members of the Senate. It seems to me the way we proceeded in the 1976 debate, where various sections were considered, provided the kind of opportunity for the Senate to be on notice in timely fashion for consideration. I am obviously agreeable to following whatever procedure is set out or established by the managers of the bill and by the Senate. I hope that perhaps when the manager of the bill is going to formulate some way and means to proceed, he will have the Senator from Massachusetts notified, so that I would have the opportunity to join with other Senators in discussing them.

Mr. LONG. I thank the distinguished Senator. I can only say that at this particular point I am not asking for any agreements from anyone, but just to lay the bill before the Senate, and as we go along I would seek to obtain agreements from the Senators, and hope we would be able to agree and have unanimous consent that after a certain amendment is agreed to, we would go to another one But I am not going to ask for it at this point, until the matter is before the Senate.

Mr. President, few Americans are satisfied with the performance of the American economy in the 1970's. Economic growth has been very sluggish; the growth of workers' productivity has slowed alarmingly; the rate of inflation is unacceptably high; and, despite almost 4 years of economic recovery, the unemployment rate is still near 6 percent.

The Revenue Act of 1978 is a response to these serious economic problems. It attempts to turn the economy around, just like the Kennedy-Johnson tax cuts of 1964. The Finance Committee's version of the bill, while it will not solve all the Nation's economic problems, represents a major step in putting us back on the path to stable, noninflationary economic growth—an economy where there will be a decent job for all Americans who are willing to work.

The bill provides a balanced package of tax cuts for individuals and businesses. It also provides a significant cut in capital gains tax rates, but I view this as something that will lead to a revenue gain, not a loss.

The new tax cuts in the bill total $23 billion for 1979, compared to $16 billion in the House bill. Of the $23 billion, $16 billion—about 70 percent of the total—consists of an individual income tax reduction. About $4 billion—18 percent of the total—is a reduction in business income taxes, which is intended to encourage businesses to increase their investment in plant and equipment and to hire workers who have often difficulty finding jobs even in a prosperous economy. The rest of the tax reduction is a capital gains tax and a restructuring of the minimum tax. Furthermore, the bill makes permanent $16 billion of temporary tax reductions which are scheduled to expire at the end of this year.

The bill also contains fiscal relief for State and local welfare costs and additional social services funding.

As reported by the Finance Committee, the bill is consistent with the fiscal year 1979 budget resolution. Together, the new tax cuts and the extensions of temporary tax cuts will reduce budget receipts for fiscal year 1979 by $20.5 billion, which can be accommodated under the overall budget ceiling for tax cuts of $21.9 billion. The outlays authorized by the bill are consistent with the outlay ceilings in the second budget resolution. This is a fiscally responsible bill and is consistent with the policy of bringing the Federal budget into balance by the early 1980's.

Let me review the major provisions of the bill.

INDIVIDUAL INCOME TAXES

The individual income tax cuts in the bill were designed with two goals in mind: First to provide tax relief to people who needed it the most and, second, to compensate for the tax increases expected next year as a result of the social security bill enacted in 1977 and as a result of inflation pushing people into higher tax brackets.

When the Senate enacted the social security bill, I made a commitment that income tax cuts would compensate for the social security tax increases. While there is no specific commitment on the inflation tax increase, most members of the committee also wanted a tax cut large enough to cover inflation as well. This bill achieves these goals. Each income class receives a tax cut that is at least as large as the 1979 social security and inflation tax increases for that class.

The House bill has been criticized for not providing enough tax relief to lower and middle income families. The committee has responded to this criticism

by providing a substantial tax cut to the working poor through a $1.7 billion expansion and a simplification of the earned income tax credit. In addition, it has increased the House middle-income rate reductions by $2 billion, which was needed to make sure that every income class is fully compensated for the inflation and social security tax increases.

The bill increases the personal exemption from $750 to $1,000. This increase in the exemption will compensate for the expiration of the general tax credit.

The zero bracket amount—which replaced the old standard deduction in the 1977 tax reduction bill—is increased by $100 for single persons, $200 for married couples and $800 for single heads of households. Because the zero bracket amount is now a flat dollar amount, inflation tends to reduce its real value and convert more and more people to itemizing their deductions. This increase in the zero bracket amount will partially offset inflation. Furthermore, the increase in the zero bracket amount for single heads of households is a recognition of the onerous family responsibilities which these people often face.

The major tax cut for individuals is a tax rate reduction. The bill greatly simplifies the existing tax brackets and reduces the number of tax brackets from 25 to 15. This rate cut and bracket widening provides across-the-board tax relief.

The earned income tax credit was enacted in 1975 as a means of providing an incentive for people to work rather than be on welfare, and as a way of compensating low-income people for their social security taxes. Since 1975, the credit has proved its worth. The bill, therefore, makes the credit permanent, increases the amount of the credit, simplifies it, and provides that the credit be reflected in an employee's paycheck rather than paid out after the end of the year.

The maximum earned income credit is increased from $400 to $600, and the income range over which the credit phases out is increased from the range $4,000 to $8,000 to the range $6,000 to $11,000. This $1.7 billion tax cut is the major tool by which the bill compensates low-income persons for the inflation and social security tax increases. These people have been particularly affected by recent economic trends, because they use a larger proportion of their income for food, energy, and housing, whose prices have increased very rapidly.

Other significant tax reductions for individuals include an additional personal exemption for handicapped people, an increase in the tax credit for the elderly, and a liberalization of the pension provisions for people who are not adequately covered under the present system.

Another goal of the bill is tax simplification. Taxpayers are increasingly concerned about the complexity of the income tax. They find it demoralizing not to be able to understand the tax system and to have to go to tax return preparers for help.

Several of the changes in the bill will simplify the income tax. The deduction for State and local gasoline taxes is repealed. The earned income credit is considerably simplified, and additional simplification will result from replacing the general tax credit with a larger personal exemption.

BUSINESS TAX CUTS

A major cause of our economic problems is inadequate business investment. More investment in plant and equipment will raise workers productivity and lead to higher wages. In addition, expanding capacity will contribute to reducing the rate of inflation and to improving our balance of trade. Thus, the business tax cuts in the bill should not be viewed merely as benefits for corporate shareholders, but more importantly as effective ways to provide better jobs for workers and lower prices to consumers. A balanced tax reduction package must contain not only individual tax cuts to stimulate consumer spending but also business tax cuts to stimulate the investment which is needed to produce the goods consumers want to buy.

As evidence of the need for more investment, let me note that, while personal consumption is now 15 percent above its 1973 prerecession peak, business investment is only 7 percent above its previous peak. This imbalance must be ended.

The major business tax cut in the bill is a reduction in the corporate income tax rate from 48 percent to 46 percent. In addition, the corporate rate structure is shifted to provide greater incentives for small business. Currently the rate on the first $25,000 of corporate income is 20 percent, and there is a 22-percent rate on the next $25,000 of corporate income, with the 48-percent top rate applying thereafter. The new corporate rate schedule will have five brackets, instead of three, and will have rates between 17 percent and 40 percent on the first $100,000 of income, with the top rate of 46 percent applying to income over $100,000. This corporate rate cut amounts to $5 billion, $1 billion of which will be received by corporations with incomes below $100,000.

These corporate rate changes were in the House bill. The committee believed, however, that these alone were not a sufficient stimulus to business investment. Chairman Miller of the Federal Reserve Board testified that the best way, in his judgment, to encourage investment in equipment would be to provide greater accelerated depreciation, and the committee was very impressed by his argument. To implement this policy, the bill contains a major liberalization of the asset depreciation range—or ADR—system. It increases from 20 percent to 30 percent the amount by which businesses can shorten the lives of equipment for tax purposes and simplifies the ADR system so that small businesses will find it easier to use.

As a further investment stimulus, the bill makes permanent the existing 10-percent investment tax credit. This includes the provisions for additional investment credits for employers who make matching contributions to employee stock ownership plans (TRASOP's). In the 3 years during which the TRASOP provisions have been in the law, many businesses have set up employee stock ownership plans, and these plans are a very useful way of creating a more equal distribution of wealth and increasing the productivity of workers. By making these provisions permanent and making some technical revisions to them, the bill will provide for the further spread of employee stock ownership. In the long run, this could be the single most important result of the tax bills we have enacted in the past several years.

The other major business tax reduction is a significant expansion of the existing WIN and welfare tax credits and a new targeted jobs tax credit. These will replace the general jobs tax credit which was enacted last year and is scheduled to expire at the end of 1978.

Since the enactment of the jobs credit, unemployment has fallen from above 7 percent to below 6 percent, and the problem now is not so much general unemployment as it is structural unemployment among certain groups of people who have a lot of difficulty finding jobs, even when the economy is prosperous. For this reason, the committee decided to let the general jobs credit expire and replace it with a program of targeted credits.

Together with the work incentive from the expanded earned income credit, the expanded WIN and welfare credit should lead to a significant reduction in the number of employable people who are on welfare. In addition, the targeted jobs credit should lead to a significant reduction in the high unemployment rates of needy youths, needy Vietnam veterans, and other groups with chronically high unemployment rates.

(Mr. ZORINSKY assumed the chair.)

Mr. LONG. Mr. President, these business tax cuts should go a long way toward raising our low rate of investment and reducing our high rate of unemployment. To the extent these goals are achieved, all Americans will benefit from them.

Other business tax provisions include several of the administration's recommendations for tax reform. These include a tax credit designed to encourage more investors to purchase tax-exempt State and local government bonds and also a denial of business deductions for yachts, country clubs, hunting lodges, and other entertainment facilities.

CAPITAL GAINS

The current capital gains tax is counterproductive. Because it is entirely within a taxpayer's discretion whether or not to sell an appreciated asset, high capital gains taxes have the perverse effect of lowering revenues by discouraging transactions. Furthermore, the high tax burden on investment and the reduction in capital mobility resulting from high capital gains taxes reduce investment in the economy, particularly risky investments in new businesses—the future Xeroxes and IBM's which are so essential to a dynamic economy.

The existing capital gains tax is also unnecessarily complex and confusing to taxpayers. An investor needs a law degree just to determine the capital gains tax from a particular transaction, because of the interaction of the regular

tax, the minimum tax, the maximum tax on earned income and the alternative tax. In certain cases, the combined effect of these provisions can be a capital gains tax as high as 49⅛ percent. If more than half of the gain results from inflation, then in real terms, the tax can easily exceed 100 percent of the gain.

A moderate reduction in capital gains taxes, such as in the committee's bill, will raise revenues, not lower them, because it will induce additional transactions and lead to much more investment. The committee report includes only a very conservative estimate of these feedback revenue effects and assumes that they will only equal one-third of the initial tax cut. I believe that the feedback effect will be much higher than this and that the capital gains tax cut in the bill could actually increase tax revenues.

To get a wider set of opinions on this subject, I wrote to several dozen former Government officials and eminent economists asking them their views on the revenue effects of the capital gains tax cut. These responses have been published and sent to every Senator, and I hope Senators will read them carefully. The vast majority of the responses predicted that capital gains tax cuts that we have recommended in the committee bill will raise, not reduce, revenues. This view was supported by no fewer than six of seven former Secretaries of the Treasury. Even many of those people who thought that a capital gains tax cut would lose revenue thought it would still be a good idea because of its beneficial economic effect.

Specifically, the bill increases the percentage of long-term capital gains excluded from taxable income from 50 percent to 70 percent and reduces the corporate capital gains tax rate from 30 percent to 28 percent.

Even though capital gains tax cuts are helpful to the economy, a high-income person should not be able to escape paying at least some moderate rate of income tax through the use of tax preferences like capital gains. The existing minimum tax, which is added on to the regular income tax, is not an adequate response to the problem of tax avoidance by high-income persons. Because it is an add-on tax, it imposes too high a tax rate on people who are already paying substantial regular taxes. For the people who are paying hardly any regular tax or none at all, however, the 15-percent rate on the current minimum tax is far too low.

For these reasons, the committee decided to scrap the existing minimum tax for individuals entirely and to replace it with a true alternative minimum tax. This alternative minimum tax will raise as much money as does the existing minimum tax, and it will raise all of it from people who are paying little or no regular income tax.

The alternative minimum tax will be based on the sum of taxable income plus tax preferences, minus a $20,000 exemption, and will have rates ranging up to 25 percent. It will insure that high-income people pay at least a moderate amount of income tax and will not have the devastating economic effects of the existing minimum tax.

The House bill contained a once-in-a-lifetime exclusion for up to $100,000 of the gain on a principal residence. This is a very popular provision, but the committee nevertheless decided that it should be scaled down to only a partial exclusion. A complete exclusion would make it possible for a high-income person to escape tax entirely on the gain from the sale of a residence, and the committee felt that at least some tax ought to be imposed on gains from expensive homes. Furthermore, the exclusion in the House bill would be unfair to people who keep their wealth in something other than an expensive residence, like a farm or small business. And it would also have the bad economic effect of encouraging people to put their money in their home rather than in the stock market or other investments which will lead to greater productivity in the economy. Thus, the committee decided to delete the House provision and replace it with a complete exclusion only for homes whose selling price is less than $50,000 and a partial exclusion for more expensive homes.

The other capital gains tax change in the bill is a deferral until the end of 1979 of the provision for carryover of basis at death. This deferral will give Congress time to study this extremely complicated issue.

FISCAL RELIEF FOR STATE AND LOCAL WELFARE COSTS

For several years now, States and localities have looked forward to congressional action restructuring the welfare program with a view toward lessening some of the burden which is placed upon them by the existing system. Unfortunately, most of the attention during this Congress was focused on the proposal put forward by the administration and variants of it, and these proposals simply did not command the support of the Congress. In this bill, however, the Finance Committee felt it was appropriate to provide State and local governments some measure of fiscal relief from those heavy welfare costs they now experience. At the same time, the committee believed that the relief should be coupled with a strong incentive to improve the operation of the welfare programs in those States which are not now doing the best possible job.

To meet this dual objective of fiscal relief and incentives for better program administration, the committee bill would make available a one-time fiscal relief allocation to be paid during the latter part of fiscal year 1979. The allocation will be based on State welfare costs and on the general revenue sharing formula. To get its full allocation of fiscal relief, each State will have to have achieved a payment error rate of 4 percent or less. States with higher payment error rates will receive partial payments depending on the extent to which they have shown progress in reducing their AFDC error rates. Payments will first be used to relieve up to 90 percent of the local cost of welfare and the remainder to provide relief for State welfare costs. The committee estimates that the amounts paid out next year will total $400 million.

SOCIAL SERVICES FUNDING

The committee bill also includes an increase in the ceiling on Federal funding of the social services program under title XX of the Social Security Act. This program underwrites child care and other social services for people of low and moderate incomes with a view toward helping them to become independent of welfare or to maintain their capacity for independence and self-support.

The committee bill would continue for an additional year the special $200 million increase in this program for child care and would also provide a further $200 million increase. This will result in an overall ceiling for the program in fiscal year 1979 of $2.9 billion as compared with the permanent ceiling of $2.5 billion. The $2.9 billion funding level for fiscal year 1979 has already been approved by the House of Representatives in separate legislation. The committee felt that this increase was appropriate, since most States have now reached their ceilings under the permanent limitation.

OTHER PROVISIONS RELATED TO WELFARE

The committee has also included in the bill several other provisions related to federally funded welfare programs. In general, these provisions should make it possible to increase the effectiveness of the administration of the aid to families with dependent children (AFDC) program and the related child support enforcement program and work incentive program.

I hope the Senate will enact this bill as soon as possible. It is now late in the session and a tax cut should be enacted before adjournment. I would have liked the Senate to have more time to deliberate about the bill; however, the House version of the bill was only sent over to us late this summer. If no legislation is enacted, $16 billion of temporary tax cuts will expire on January 1, and there will be no new tax cuts to offset the social security tax increase of more than $3 billion and the inflation tax increase of more than $9 billion. The effects of these combined tax increases—both economic and political—would be disastrous. Let us proceed, then, to pass this bill and give the American people the tax cuts they need.

Mr. PACKWOOD and Mr. CURTIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon sought recognition first.

Mr. CURTIS. I wonder if the Senator from Oregon will yield for just a brief opening statement by me.

Mr. PACKWOOD. Without losing my right to the floor, I yield, yes.

Mr. CURTIS. I thank my colleague. While my remarks are brief, I think to have them follow the chairman's statement will be helpful.

I commend the chairman on his excellent statement describing this bill.

Mr. President, H.R. 13511, as reported by the Committee on Finance, represents a significant step toward true tax reform.

The Finance Committee, in addition to

providing individual tax reductions, has reduced the corporate tax rate, with special consideration for small corporations. It provides an increased depreciation deduction, but, most importantly, this bill substantially reduces the tax on capital gains.

For many years, the policy of this Government has been to gradually increase the rate of tax on capital. As the tax on capital has increased, the American economy has turned in a dismal record.

Gains in worker productivity have been badly lagging, inflation has remained high despite a recession, and the unemployment rate is beyond an acceptable level.

The substantial performance of productivity largely reflects a slowdown in the growth of business investment in plant and equipment. Productivity improvement and economic growth have been linked to the addition of new and better physical facilities. But the impact of inflation on capital goods costs, real corporate profits and investment values, as well as the depressed equity market, have weakened the incentive for risk investment.

Mr. President, the need for reform in the taxation of capital gains is obvious. The committee has faced the problem and designed a bill under the able guidance and leadership of Chairman LONG, which eases the punitively high burden on long-term capital gains.

Mr. President, I would also like to pay special tribute to my colleague, Senator HANSEN, who has taken the lead on the issue of capital gains and without whose dedication, the reductions in capital gains taxes would not be possible.

Mr. President, there are many others that deserve attention, also.

Again, I thank the distinguished Senator from Oregon for permitting me to proceed.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, before starting my comments, let me commend the Senator from Nebraska for the extraordinary service he has given, not just to the Finance Committee, but the Senate, the House of Representatives, in a career that spans almost 40 years of uninterrupted service as a Member of the Congress.

He has been our ranking member on the Finance Committee for the last 4 years and has done an exemplary job in leading all of us, as we start what I assume will be his last major tax bill of his career.

I know that when the Finance Committee starts in again next year, we will miss his leadership, his talent. I, for one, wish to express the appreciation of all of us, both Republican and Democrat, for what he has done.

Mr. CURTIS. Will the Senator yield?

Mr. PACKWOOD. Yes.

Mr. CURTIS. I want to thank the Senator for his very gracious remarks.

Mr. PACKWOOD. They are well deserved for leadership long given.

Mr. President, this bill makes the first start, the first start in the 10 years I have been in the Senate, toward attempting to redress the problem we have had on capital formation.

Year after year, from the tax reform bill of 1969 onward, we have whittled away, whittled away, and whittled away at incentives to invest.

We have given an investment tax credit here and there, and we made some special provisions for certain types of industries. But, by and large, in the area of capital gains, in the area of the minimum tax, in the area of the corporation tax, we have made it more and more difficult for businesses to flourish and to amass capital.

So, what has happened. Today, of the seven major industrialized countries in the world, we find the United States seventh in terms of capital reinvestment, seventh in terms of increase in productivity, seventh in terms of exports as a percentage of gross national product.

For years, we lived off the capital investment of World War II, and after World War II we were the preeminent, paramount industrial nation of this world, the Germanys, the Japans, the Frances, the Englands, the Italys, found their factories in ruins and we gave or granted or loaned those countries the capital to rebuild their industries. In the meantime, we did little or nothing for our industries.

Finally, in the 1960's, we discovered that we were being overtaken in technology, overtaken in increases in productivity, overtaken in exports, by the principal other industrial nations of this world. We were overtaken, until today we have a balance of payments so staggering that it is causing the dollar to drift downward perpetually, and it is not just a problem of energy, bad as that is, difficult as the problem is for oil.

We now discover we will have a deficit balance of payments in manufactured goods, a deficit balance of payments in almost every facet of trade except for agriculture.

The one thing we have discovered is that while the Germans can compete with us in cars, and the Japanese can compete with us in cameras, they cannot compete with us in agriculture.

I hazard to think what our balance of payments would be, I hazard to think what the value of the dollar would be today, were it not for feed grains and other agricultural products that we have exported en masse to the world.

Mr. President, fortunately, this bill does nothing to harm agriculture. But, for the first time in 10 years, it does something to try to help the situation of capital formation.

When we compare 1969 to 1977, when we look at how many new issues of stock have been floated for new companies, not new capital for the General Motors and the Ford Motors of this world, but capital for new, young, venture companies, it has almost dried up, dried up because there are only two incentives for anyone to invest in a capitalist economy. One is dividends, and the other is capital growth of the value of the stock.

Profits of corporations have been so consistently low for so many years, and they are even overinflated when we look at inflation, so low that the incentive to invest in a new company in the hope of profits and dividends is nil.

But it used to be that at least we could find somebody who might be willing to risk $50,000, $100,000, $150,000, realizing they might full well lose it, but risk it in the hope that if they invested in a company working to make a profit, the stock would go up.

That was well and good until we put in such a punitive capital gains tax that no one had any interest any longer in taking a flyer on a company which, if it succeeded, they were almost taxed out of all their gains, and, if they lost, they had almost nothing they could write the loss off against, because we narrowly prescribed that.

Mr. PERCY. Will the Senator yield?

Mr. PACKWOOD. I am happy to yield.

Mr. PERCY. Mr. President, I should like to commend my distinguished colleague on the perceptive analysis being offered now on one of the greatest problems that this economy has in its attempt to get some movement behind it to create private sector jobs, rather than public sector jobs, and to see we have a level of economic activity that will be adequate in providing the revenue this Government needs from taxation, but do so in such a way it is not punitive to the future growth potentials of American business.

I cannot but think as I listen to my distinguished friend from Oregon, of my own business experience, certainly, in the years I had it, a major American company, when our employment grew from about 1,300 to better than 10,000 over a period of 17 years, that growth in American employment could never have been possible if capital had not been available to invest behind those businesses.

In fact, every single year, the total amount of capital necessary to back up an American worker is greater, the average in some industries being $40,000 per worker.

Now, how can we create jobs, how can we talk about a Humphrey-Hawkins bill without basically going back to fundamentals, providing to industry incentive capital?

Mr. PACKWOOD. I might add that at the time the distinguished Senator from Illinois was the president of Bell and Howell, that company was not required—I am not complaining about the requirements—to worry about the cost of pollution devices, to worry about the cost of present safety standards now imposed on business, all of which take capital, which produces new jobs. There is only so much capital pie in this country. For every dollar that you put into one thing, that is a dollar that you cannot put into another.

When we ask industry to pick up the tab for environmental protection and safety, and at the same time deny them any return or significant chance to realize a return on the capital, is it any wonder that we fall behind other countries which understand that capital means jobs?

Mr. PERCY. As a member of the steel caucus of the U.S. Senate, the Senator from Illinois visited nine steel mills in the State of Illinois. From what I could determine in talking to the management,

almost a third of all their capital investments were nonproductive, did not add one iota to reducing production costs or improving manufacturing processes. They were used to meet environmental standards.

Most of us backed those standards. We want clean air. We want clean water. We want production to be consistent with the heritage we have and must preserve. But we have to recognize that these nonproductive investments are not being made by competitive companies in Japan, Germany, Sweden, and so forth. Yet, we are saddled with that high extra cost. This is why we are losing markets abroad and losing markets here at home. We have to recognize that in our tax policy.

Mr. PACKWOOD. In addition to the facts stated by the Senator from Illinois, we used to pride ourselves on a 3 to 3.5 percent increase every year in productivity, and we knew that we could have wage increases and a rising standard of living, and we could pay for that out of productivity. This year, for the first time in the history of this country, the increase in productivity is going to be zero; yet, there has been a 6 to 7 percent increase—or an 8 to 10 percent increase—in wages, without productivity to pay for it.

What has to be the natural effect? Inflation.

Then we are further priced out of the markets in Brazil, in trying to compete with Toyota, or in Singapore, in trying to compete with Volkswagen. Our productivity goes down and down.

Mr. PERCY. I point out a fact that the Senator from Oregon well knows: In 1969, when the capital gains tax maximum was 25 percent, there were 31 million stockholders in America. Today, with the effective tax rate top level at 49.1 percent, the revenue to the Federal Government is less than it was when it was 25 percent, and the number of stockholders has decreased from 31 to 25 million.

In the same period of time, where did people put money? About a billion dollars used to be invested in public lotteries. Today, this year, the investment in public lotteries will be $17 billion. People have the money to invest and to spend, but they are not going to put it into the equity market. They are not going to put it behind corporations that will create jobs if the return is almost confiscatory in the appreciation they have in those assets. So I think the policy has been proved self-defeating.

The distinguished manager of this bill, Senator LONG, and Senator CURTIS, the ranking minority member, are to be commended, together with the distinguished Senator from Oregon, the distinguished Senator from Delaware, and the distinguished Senator from New York, in connection with our belief that the greatest way to get this economy moving again, the best way to fight inflation, bringing down the unit costs of production with respect to capital investment, enabling us to absorb increasing wage increases, is by increasing productivity, thereby holding down unit costs or bringing them down. This prevents price inflation, which is the heart of our whole problem. That can be done through a sensible, sound tax policy that must be adopted on the floor of the Senate.

This is why I agree completely with the distinguished Senator from Louisiana (Mr. LONG), who has authored many important parts of this bill, in feeling that capital formation is the only way to fight inflation and the best way to increase, not decrease, Government revenue.

That is why, after President Carter said that a capital gains tax would benefit only millionaires, the Senator from Illinois wrote a 4½-page letter—I wrote it myself; I did not have time to write a shorter letter—pointing out the facts in this matter.

I ask unanimous consent that the letter I wrote to President Carter following his statement be printed in the RECORD.

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

U.S. SENATE,
*Washington, D.C., June 30, 1978.*

THE PRESIDENT,
*The White House,*
*Washington, D.C.*

DEAR MR. PRESIDENT: I want to share my thoughts with you about the vital domestic issues of inflation, taxation and legislation to stimulate investment through lowering the taxation of capital gains and other measures. The proposals, introduced by Rep. William Steiger in the House and Senator Clifford Hansen in the Senate, would set the taxation of capital gains at the same level as in 1969.

I strongly support passage of this measure and urge you to reconsider your position and lend your offices to help move the bill through Congress.

I think that as former businessmen, we both appreciate the importance of capital formation in starting new companies and in employing workers in the private sector. When I joined Bell & Howell in 1938, it was a small company of less than a thousand workers and it would probably still be one today if we had not had access to venture capital markets. There was always a great deal of competition for that capital, but there was a plentiful supply of it then. Before I left the company, our U.S. employment increased to more than 10,000. Now, there is a serious scarcity of the type of money that helped us get off the ground.

Perhaps it would be helpful if I used just one specific case. A company in Chicago has encountered a great deal of trouble in raising capital for new firms. Heizer Corp, is a business development company that helps get new businesses on their feet and then stays with them until they are stable. They have found that the 1969 tax change has virtually dried up investor interest in financing new companies. A small computer firm which they were helping actually had to go to Japanese and West German investors recently because no American investors would participate. The new firm, an IBM competitor, has highly capable executives but investors preferred other approaches to heavily-taxed capital investment.

This case does not appear to be unique. The Securities Industry Association certifies that in 1969, companies with net worth under $5 million made 548 stock offerings totaling $1.5 billion. Six years later, though, only four such offerings were made and they raised a total of only $16 million. Clearly something is seriously wrong.

The Small Business Administration is alarmed about this and, in a January, 1977 report, expressed that concern:

"In the face of clearly emerging needs and the documented benefits to the United States economy, a set of impediments have developed that are preventing smaller businesses from attracting the capital without which they cannot perform their traditional function of infusing innovation and new competition into the economy . . . A public policy that discourages the public from investing $1 billion a year of its savings in economic innovation, growth and the creation of jobs while it encourages the public to risk $17 billion a year in Government-sponsored lotteries, requires close and serious reexamination."

Larger businesses have also felt this capital pinch and many—especially those with low profits to earnings ratios—have been forced to go into debt to finance their own expansions. The consequence has been additional pressure on interest rates, bidding them up out of the reach of some small businesses and making government financing far more expensive than ever before.

Most of our major trading partners—and especially our two greatest competitors, Germany and Japan—do not even tax capital gains on portfolio investment. The individual savings rate is also higher in these two countries. Japanese save at triple the rate of Americans and the West Germans save at more than twice our pace. Of all the major industrial countries, the U.S. put the smallest percentage of GNP back into manufacturing capacity between 1965 and 1976. The country next in line was England, hardly a model for investment strategy.

During the time that our venture and investment capital has been drying up, the Federal Government entered into a new phase of regulation of the economy. These effects have been most evident in the environmental and safety areas and, according to the Council on Environmental Quality, private capital outlays for pollution abatement were $3.8 billion higher in 1975 than they would have been in the absence of the Federal requirements. Similar estimates of annual costs to business have been made for safety and health regulations, non-productive capital investment requirements exceeding 28 percent in many industries.

Many of these regulations protect and safeguard the consumer and worker and I have supported these when they were before Congress. The Federal Government must recognize the economic costs of these vast investments, however, and act to make sure that we do not lose our ability to generate a growing economy.

The effect of a capital shortage is also seen in our productivity rate, which, according to your 1978 Economic Report, has dropped from annual increases of about 2½ percent between 1950–1968 to about 1½ percent over the past decade. As you know so well, productivity and investment are closely related and when our productivity begins to sag, inflationary pressures are increased.

Government estimates of the costs of the Steiger-Hansen proposal have failed to take into account the economic changes that would spin off from the tax change. A model prepared by Data Resources, Inc. and based on the passage of the proposal, forecasts a startling increase of $100 billion in GNP between 1979 and 1983 (The firm's predictions show increases over the Treasury's own estimates). Investment itself would of course rise—by an estimated $46 billion—because the proposal encourages the realization of capital gains. The subsequent rise in the stock market will lower the cost of obtaining funds through equity financing, thus leaving more for actual investment.

DRI found the employment effects of this invigorated economic activity to be particularly encouraging: in 1982, 520,000 new jobs would be created over what the Treasury predicts for that year. Finally, and from our standpoint an important consideration, Federal revenues would actually increase. By

1983, revenues would have jumped by $12.3 billion.

This would undoubtedly be made up in part by increased revenues from the capital gains tax. As you know, these revenues fell precipitously in 1970, after the present tax was enacted, and have only just recovered their 1969 level, albeit in inflated dollars.

The experience of the company previously mentioned proves that this model is on the right track. Since 1969, they have helped 24 companies get started, with an initial investment of $80 million. The results of this investment are truly impressive. The 1978 sales of these 24 firms exceed $1 billion and their pre-tax profits stand at $152 million. These businesses contribute annually $75 million in taxes to the Federal Government alone. As of March, they employed 20,000 workers. All of this has been costly, however, as the investment required to create a new, permanent job is over $13,000. It was fortunate that Heizer obtained its initial capital prior to 1969. It would be virtually impossible to accumulate that type of investment capital today, due in large part to the confiscatory nature of our tax laws.

Those tax laws have turned many Americans away from investing and have penalized middle income families who sell their homes. According to the Treasury Department, the two largest items accounting for capital gains are stocks and bonds and the sale of residences. What is more, in 1976, 62 percent of total net capital gains were realized by taxpayers with less than $50,000 income. A revitalization of the stock market will benefit all investors, regardless of income.

Since the 1969 change in the treatment of capital gains, the number of stockholders has dropped steadily so that today many Americans do not hold the types of investments that will ultimately yield capital gains. In fact, the number of stockholders has dropped from 31 million in 1969 to 25 million today. Despite this decline, the overwhelming majority of stockholders are not what we would ordinarily consider wealthy. In 1975, nearly three-quarters of individual stockholders earned less than $25,000 a year. In the past decade, the number of institutional investors has increased dramatically to the point that they now account for over one-third of all stock investors. Although these are big investors, they often represent moderate income Americans in the form of pension and profit-sharing plans and stock option programs. These are the people who ultimately benefit from increased investments and we should be aware that Federal tax policy discriminates against them in the long-run.

The Council on Wage and Price Stability reported this spring that "inflation in the housing sector has been a persistent problem over the past few years and is unlikely to dissipate wholly in the near future." Rising housing prices and interest rates have put a strain on would-be homebuyers, but the present capital gains tax has put the bite on existing homeowners who may want to sell their home and move into a smaller house or apartment. The average price of an existing home has skyrocketed from just over $22,000 in 1968 to nearly $54,000 today. A family that bought ten years ago and sells their home today could realize tens of thousands in one-time capital gains, even if they were low or middle income. A simple change in tax policy will help these homeowners immensely.

You have properly focused the nation's attention in recent months on the problems of inflation. I support your efforts in this direction but feel that one of the strongest weapons we have against spiraling wages and prices is investment which leads to increases in our productivity. It lies at the heart of solving inflation and I feel the passage of this provision, together with other investment tax incentives like a reduction in the maximum corporate tax rate, a permanent investment tax credit, a full investment credit for pollution control facilities and a tax reduction for middle income taxpayers, is essential to the nation's economic health.

I would like to urge you again to give full consideration to supporting these important economic steps toward a sound economy. I look forward to working with you and your economic advisors in this program that can improve the economic well-being of every American in a relatively short time.

Sincerely,

CHARLES H. PERCY,
*U.S. Senator.*

Mr. PERCY. Mr. President, I respectfully disagree with the statements made by the President at that time. The Senator from Illinois is delighted that the President has moderated those statements. The Senator from Illinois has been assured by no less a person than Bob Strauss that a reasonable capital gains reduction will be accepted by this administration in a bill signed by the President. That leaves open what is reasonable, but I say it is reasonable for us to go back to a proven case and at least reduce it to 25 percent, when the revenue to the Federal Government was higher than it is today, at 49.1 percent. This is a self-defeating type of thing, because capital and investment will gravitate away.

Mr. President, I thank the Senator from Oregon for yielding to the Senator from Illinois. I again commend him on the perception of his comments and the critical analysis he has made, which have helped clarify this matter greatly.

Mr. PACKWOOD. I thank my distinguished colleague. I look forward to his help and voice as we debate some of these provisions.

Mr. President, it is my intention, in a few moments, to offer an amendment to this bill. The amendment will relate to tuition tax credits for college attendance. I emphasize "college." While my preference would have been to include primary and secondary schools, we have had that battle in the Senate, and we have had that battle in the conference committee with the House on the issue, and those of us who wanted primary and secondary credits have lost for this session.

However, I will be offering the college credits as they were adopted by the conference committee of the House and the Senate on this subject. I will offer them to this bill for this reason: The President has indicated that he may veto the college tax credit bill that now has been agreed upon by the House and the Senate. I do not know whether there are the votes to override the President's veto on that bill.

Therefore, to protect ourselves, for those of us who support college tax credits, I want to add it to this tax bill, fully realizing that if the other bill is vetoed and the veto is sustained, these provisions will not be operative in this bill. But if by chance the other bill is vetoed and that veto is sustained, then the college tax credits, which Congress agreed to, will be in this tax bill and again will be presented to the President in a bill which I hope he will sign; and if he vetoes that bill, I hope we will override the veto.

Mr. President, there are few things more difficult today for the middle-income taxpayer than to try to send a child to college.

Some of us can remember when college tuition at a public university was free or $30 or $60 or $90 a term and living costs were no more than $1,200 to $1,500 a year. With luck, and working during the summer and perhaps working 15 hours a week during school, and with some help from our parents, we could get ourselves through college. That was at a public university. It was a bit more difficult at a private university.

Today, however, with college costs at the prestige private universities approaching $10,000 a year for room and board and tuition and incidentals, and even at public universities approaching $4,500 to $5,500 to $6,000, by the time you count all costs, it is almost impossible for a family to be able to put one child, let alone two or three children, through college, even with the help of basic educational opportunity grants and other forms of Federal aid, even with the student working 30 or 40 hours a week in summers.

The amendment that I will offer is a modest amendment. The conferees felt that with the budget restraints we are faced with we could not in good conscience give to the middle-income taxpayers of this country as large a tax credit as we would like. What the tax credit provides as agreed by the House and Senate conferees is a 35-percent tax credit for tuition paid up to $100 this year, $150 in 1980, and $250 in 1981. It will apply to full-time students until 1980 and then full-time and part-time students after 1980. It is a very simple amendment. It is very uncomplicated. You pay some tuition for yourself or for your children; you take 35 percent of that tuition up to the maximum allowable and simply take it off your income tax.

If you are entitled to take a $250 credit and you owe $1,000 tax, you pay $750. It adds one line to the tax, and all anyone has to do is to be able to subtract and divide to get the credit.

I realize that the administration is opposed to this. They prefer their grant program. Their grant program comes with a 12-page instructional booklet that for all I can tell very clearly resembles the income tax forms that we have to fill out. I defy anyone in this Chamber, anyone who is reading this RECORD to accurately fill out that form the first time. I do not care if you are a certified public accountant, a lawyer, or a Ph. D. in mathematics. That form cannot be comprehended by a person of rational intelligence upon first reading.

I assume that that form is not unique to the Federal Government. That form even goes to the extent of explaining what a spouse is in terms of who provides your support and what a parent is and concludes by saying in no event can your spouse be regarded as your parent.

Now most of us would intelligently

maybe come to that conclusion, but it takes at least three to four column inches of that form to explain them. If you are a student using that form you have to know what your parents net worth is, what the value of their house is, what their assets are, what they paid for the house, how much they owe on it, and what other income they have.

It is a very snoopy form. It has other complicated questions. And then in its charitable way when you get down to the end of it there is a box that says if by chance you made a mistake on this form, deliberately lied, you are subject to a $10,000 fine or a year in jail, or both.

That is the Department of Health, Education, and Welfare's idea of simplicity.

Their real argument, Mr. President, is not simplicity. The Department of Health, Education, and Welfare does not like the tuition tax credit approach where individual taxpayers simply decide where they want to go to college or send their child to college and take part of the cost off the income tax. They do not like that system because they do not have control of it.

The nice thing about a Federal grant is first, as far as HEW is concerned, we can tax the money out of the taxpayers, bring it to Washington, D.C., transfer it from the Internal Revenue Service to the Treasury Department, run it through the congressional appropriations process, give it to the Department of Health, Education, and Welfare, and they will give it back to the student if you fill out the form properly and filling out the form properly means filling it out and meeting all of the standards, regulations, and guidelines of the Department of Health, Education, and Welfare; and via that method, that is the way we can control educational policy in this country.

What happens if we start down the road of tuition tax credits instead of the appropriations process? What happens is decisions are made in Poughkeepsie, Peoria, and Portland. The money never comes to Washington, D.C. Money goes from you to the college and you take part of it off your income tax.

That might have the result in a diminution of employment in the Department of Health, Education, and Welfare which, of course, we all understand would be a disaster for this country. It might result in the inability of the Department of Health, Education, and Welfare to determine the kinds of grants and the income levels of the students that will receive this.

Mr. President, as I say, this amendment is simple. I have simply adopted exactly the wording of the conference report, appended it to the amendment that I will hand in, and ask that it be added to this bill.

There is room for it in the budget. The Senator from Delaware has fought and fought and fought and fought for this subject. He was the first person to offer this amendment years ago. He has made sure that there is room in this budget this year for this amendment.

So, let us not hear any argument about budget-busting. It has been provided for.

The cost is relatively slight and the benefits for the middle-income taxpayer are very great.

Mr. President, I commend once more the Senator from Delaware for the leadership he has taken in this matter. I remember when he first offered this amendment. I see the Senator in the Chamber.

How many years ago was it that he offered this amendment?

Mr. ROTH. I can tell the distinguished Senator from Oregon, that is so long ago that I am not sure what the year was, but it was around 1972 or 1973.

Mr. PACKWOOD. I remember when he offered it, a number of people scoffed at it and said it would never pass. It finally passed the Senate and the House of Representatives turned it down, and subsequently it passed the Senate in another year and the House of Representatives turned it down, and it passed another year and the House of Representatives turned it down.

Last year the Senator from Delaware almost got this amendment appended to the social security bill, and finally the House of Representatives was no longer able to say that this year we will not consider it because each year as the Senator from Delaware would offer his amendment, the House of Representatives would say, "We have not had a chance to consider it," or "We have not had time to look at it." That excuse is gone.

Now we are ready to offer it.

I will yield for a moment to the Senator from Louisiana if the Senator has a unanimous-consent request.

Mr. LONG. Mr. President, I ask unanimous consent that Mr. John Steen and Miss Karen Stall be accorded the privilege of the floor during consideration of this measure.

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

Mr. LONG. Mr. President, I wanted to make a procedural request but at the moment it has not been cleared with the Senator from Massachusetts so I will withhold it at this point.

Mr. PACKWOOD. In that case, Mr. President, I shall offer my amendment.

UP AMENDMENT NO. 1991

(Purpose: To add college tuition tax credits to H.R. 13511)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon (Mr. PACKWOOD) for himself, and Mr. ROTH, Mr. RIBICOFF, and Mr. MOYNIHAN, proposes an unprinted amendment numbered 1991.

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

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

The amendment is as follows:

At the end of Title I of the Committee Amendment, add the following:

SEC. 1. CREDIT FOR CERTAIN TUITION.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44C. CERTAIN TUITION.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 35 percent of the tuition paid by him for the calendar year in which such taxable year begins to one or more eligible educational institutions for himself, his spouse, or any of his dependents (as defined in section 152).

"(b) MAXIMUM DOLLAR AMOUNT.—The maximum dollar amount allowable as a credit under subsection (a) with respect to tuition for any individual shall not exceed the applicable amount determined under the following table:

| "Calendar year: | Applicable amount: |
|---|---|
| 1978 | $100 |
| 1979 | 150 |
| 1980 or 1981 | 250 |

"(c) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.

"(d) PAYMENTS TAKEN INTO ACCOUNT.—

"(1) WHEN PAYMENTS MUST BE MADE AND EDUCATION FURNISHED.—Payments shall be treated as paid for any calendar year—

"(A) FOR 1978.—In the case of calendar 1978, only if such payments—

"(i) are made on or after August 1, 1978, and before February 1, 1979, and

"(ii) are for education furnished on or after August 1, 1978, and before January 1, 1979, or

"(B) FOR 1978 OR THEREAFTER.—In the case of any calendar year after 1978, only if such payments—

"(i) are made during such calendar year or during the 1-month period before or the 1-month period after such year, and

"(ii) are for education furnished during such calendar year.

"(2) TUITION MUST BE FOR GENERAL COURSE OF INSTRUCTION.—

"(A) IN GENERAL.—Tuition attributable to a course of instruction which is not a general course of instruction shall not be taken into account under subsection (a).

"(B) GENERAL COURSE OF INSTRUCTION DEFINED.—For purposes of subparagraph (A), the term 'general course of instruction' means a course of instruction for which credit is allowable toward—

"(i) a baccalaureate or associate degree by an institution of higher education, or

"(ii) a certificate of required course work at a vacational school,

but does not include any course of instruction which is part of the graduate program of the individual.

"(3) INDIVIDUAL MUST BE FULL-TIME STUDENT OR (FOR CALENDAR YEARS AFTER 1978) A QUALIFIED HALF-TIME STUDENT.—

"(A) IN GENERAL.—Amounts paid for the education of an individual shall be taken into account under subsection (a)—

"(i) for calendar year 1978 or 1979, only if such individual is a full-time student for such calendar year, or

"(ii) for any calendar year after 1979, only if such individual is a full-time student or a qualified half-time student for such calendar year.

"(B) FULL-TIME AND QUALIFIED HALF-TIME STUDENT DEFINED.—For purposes of this section—

"(i) The term 'full-time student' means any individual who, during any 4 calendar months during the calendar year, is a full-time student at an eligible educational institution.

"(ii) The term 'qualified half-time student' means any individual who, during any 4 calendar months during the calendar year, is a half-time student (determined in accordance with regulations prescribed by the Secretary) at an eligible educational institution. Regulations prescribed for purposes of the preceding sentence with respect to the determination of whether an individual is a half-time student shall not be inconsistent with regulations prescribed by the Commissioner of Education under section 411(a)(2)(A)(ii) of the Higher Education Act of 1965 for purposes of part A of title IV of such Act.

"(e) TUITION DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'tuition' means tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, including required fees for courses.

"(2) CERTAIN AMOUNTS NOT INCLUDED.—The term 'tuition' does not include any amount paid, directly or indirectly, for—

"(A) books, supplies, or equipment for courses of instruction, or

"(B) meals, lodging, transportation, or similar personal, living, or family expenses.

"(3) AMOUNTS NOT SEPARATELY STATED.—If an amount paid for tuition includes an amount for any item described in subparagraph (A) or (B) of paragraph (2) which is not separately stated, the portion of such amount which is attributable to such item shall be determined under regulations prescribed by the Secretary.

"(f) ELIGIBLE EDUCATIONAL INSTITUTION.—For purposes of this section—

"(1) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education, or

"(B) a postsecondary vocational school.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution described in section 1201(a) or 491(b) of the Higher Education Act of 1965 (as in effect on January 1, 1978).

"(3) POSTSECONDARY VOCATIONAL SCHOOL.—The term 'postsecondary vocational school' means—

"(B) the taxpayer files a joint return with his spouse under section 6013 for such taxable year.

"(h) DISALLOWANCE OF CREDITED EXPENSES AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed under any other section of this chapter for any amount paid for tuition for any individual except to the extent that such amount exceeds the amount necessary for the allowance of the maximum amount which may be allowed under this section for tuition for such individual for the taxable year. The preceding sentence shall not apply to any amount paid for tuition by any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such tuition for the taxable year.

"(i) TERMINATION.—No credit shall be allowed under this section for education furnished after December 31, 1981."

(b) LIMITATION ON EXAMINATION OF BOOKS AND RECORDS.—Section 7605 of such Code (relating to time and place of examination) is amended by adding at the end thereof the following new subsection:

"(d) EXAMINATION OF BOOKS AND RECORDS OF CHURCH-CONTROLLED SCHOOLS.—Nothing in section 44C (relating to credit for tuition) shall be construed to grant additional authority to examine the books of account, or the activities, of any school which is operated, supervised, or controlled by or in connection with a church or convention or association of churches (or the examination of the books of account or religious activities of such church or convention or association of churches) except to the extent necessary to determine whether the school is an eligible educational institution within the meaning of section 44C(f)(1)."

(c) TAX CREDIT NOT TO BE CONSIDERED AS FEDERAL ASSISTANCE TO INSTITUTION.—Any educational institution which enrolls a student for whom a tax credit is claimed under this Act shall not be considered to be a recipient of Federal assistance under this Act.

"(A) an area vocational education school as defined in subparagraph (C) or (D) of section 195(2) of the Vocational Education Act of 1963 (as in effect on January 1, 1978), which

"(B) is located in any State.

"(4) MARITAL STATUS.—The determination of marital status shall be made under section 143.

"(g) SPECIAL RULES.—

"(1) TREATMENT OF CERTAIN SCHOLARSHIPS AND VETERANS' BENEFITS.—

"(A) OFFSET AGAINST TUITION DOLLAR FOR DOLLAR.—For purposes of this section, any amount received as a nontaxable scholarship or educational assistance allowance for any period shall be treated—

"(i) as used for tuition attributable to such period, and

"(ii) as tuition not paid by the taxpayer.

"(B) NONTAXABLE SCHOLARSHIP OR EDUCATIONAL ASSISTANCE ALLOWANCE DEFINED.—For purposes of subparagraph (A), the term 'nontaxable scholarship or educational assistance allowance' means—

"(i) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) or similar award which is not includible in gross income, and

"(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code.

"(2) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER.—No credit shall be allowed to a taxpayer under subsection (a) for amounts paid for any calendar year for tuition for the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

"(3) SPOUSE.—No credit shall be allowed under subsection (a) for amounts paid for any calendar year for tuition for the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151(b) for the taxable year beginning in such calendar year, or

(d) EXPEDITED REVIEW OF CONSTITUTIONALITY OF TUITION CREDIT.—

(1) CERTIFICATION OF QUESTIONS OF CONSTITUTIONALITY.—In any action brought in a district court of the United States, including an action for declaratory judgment or injunctive relief, concerning the constitutionality of any provision of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) or any other provision of such Code relating to such section, the district court shall certify immediately all questions of constitutionality of such provision to the United States Court of Appeals for the circuit involved, which shall hear the matter sitting en banc.

(2) APPEAL TO SUPREME COURT.—Notwithstanding any other provisions of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the Court of Appeals.

(3) EXPEDITED CONSIDERATION.—It shall be the duty of the Court of Appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under paragraph (1).

(4) SEPARABILITY.—If any provision of section 44C of the Internal Revenue Code of 1954 (or any other provision of such Code relating to such action), or the application thereof to any person or circumstances, is held invalid, the remainder of such provisions, and the application of such provisions to other persons or circumstances, shall not be affected.

(e) DISREGARD OF REDUCTION OF TAX LIABILITY.—Any reduction in the income tax liability of any individual by reason of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) shall not be taken into account for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program of educational assistance or under any State or local program of educational assistance financed in whole or in part with Federal funds.

(f) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 of the following:

"Sec. 44C. Certain tuition."

(2) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out "credits allowable under—" and all that follows and inserting in lieu thereof "credits allowable under subpart A of part IV other than under sections 31, 39, and 43."

(3) Subsection (b) of section 6096 of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44B" and inserting in lieu thereof "44B, and 44C".

Sec. 1. Effective date.

The amendments made by section 2 of this Act shall apply to taxable years ending on or after August 1, 1978, with respect to amounts paid on or after such date for education furnished on or after such date.

Mr. PACKWOOD. Mr. President, this amendment is offered on behalf of myself, Senator ROTH, Senator RIBICOFF, and Senator MOYNIHAN. It is the tuition tax credit about which I have been speaking. I think nothing more needs to be said about it.

I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, first of all, I thank the distinguished Senator from Oregon for offering this amendment.

I think this proposal is one of the most significant advances that is being made in the current session of Congress, and I want to express my appreciation for the leadership he has shown in this area.

Mr. President, we have been fighting for years for the adoption of the tuition tax credit. I think it is a change of policy that is of utmost importance to the working people of America.

I am pleased to say that I think the conference committee which met last week has produced a tuition tax credit bill that the President can and should sign into law. The conference report on the Tuition Tax Relief Act provides tax credits to help offset the rising costs of a college education.

Many deserving young men and women are losing the opportunity to at-

tend college because of the increasing costs of both public and private schools.

As my distinguished colleague, the Senator from Oregon (Mr. PACKWOOD), pointed out, the increased costs are skyrocketing.

In the case of some of your prestigious private schools a year's education is costing as much as $10,000. Medical schools are even higher.

What that means is that for many families it is either impossible for their children to attend those schools or they almost have to go into bankruptcy to make the American dream for their family possible.

I must confess that the conference report has cut down the aid considerably because of budgetary restraints. I regret that that was necessary, because it does limit the advantage of this approach. It does mean it will not help as many students as I had hoped. But, nevertheless, it is an important fact that we are establishing a new principle with this legislation.

The bill provides a tax credit of 35 percent of tuition and fees for students in universities, colleges, junior and community colleges, and post-secondary and vocational schools.

For the first year the maximum credit is $100—that is for this year of 1978; $150 in 1979, and $250 in 1980 and 1981.

The tax credit would apply to students attending less than full time in 1980 but they must at least be attending college or post-secondary and vocational schools one-half of the time to be eligible for the credit.

The conference report is a modified version of the tuition tax credit bills that were passed by both the House and the Senate. As I say, the modifications do substantially reduce the overall cost of the bill, so that should answer critics who have raised the problem of budget restraints.

According to the Joint Committee on Taxation estimates the fiscal 1979 cost of this bill is only $330 million, which is considerably less than the administration's grant and loan program. When fully effective in fiscal 1981 the tuition tax credit will cost $968 million, also considerably less than the $1.2 billion cost of the President's program.

Mr. President, there are significant differences between the administration's proposal and the tuition tax credit, which is a bipartisan effort, Senator RIBICOFF, Senator MOYNIHAN being the leaders on the Democratic side, and Senator PACKWOOD and myself on the Republican side.

The most significant difference is the fact that under the tuition tax credit none of the money will be eaten up in redtape or administration. The full cost will benefit the people we are trying to help, the young men and the young women who want to go to school. Statistics show that for every $100 of help 1 to 3 percent additional children will attend college, so we will be promoting the national goal and objective of having a well-educated citizenry.

In 1979, as I mentioned, the cost of the tuition tax credit will be $330 million. The cost will rise to $539 million in 1980, to $968 million in 1981, and fall to $845 million in 1982.

There is no truth to the claim that some opponents of this legislation make that it will primarily benefit the wealthy. According to the Joint Committee on Taxation, 80 percent of the benefits of tuition tax credits will go to families earning less than $30,000 a year. The bulk of the benefits will go to middle-income families earning between $10,000 and $30,000 a year.

Mr. President, the Senate has clearly and repeatedly expressed its will in favor of the Roth-Packwood-Moynihan-Ribicoff college tax credit. In August 1976 the Senate adopted my proposal for a $250 college tax credit as an amendment to the tax reform bill by a 68-to-20 vote. The House conferees refused to accept the tax credit as an amendment to the tax reform bill, and committee leaders gave their commitment to allow a House vote on a separate bill.

Subsequently, the Senate approved the college tax credit in September 1976 by a 62-to-21 vote. But once against the House refused to consider it.

Last year the Senate approved the tax credit by a 61-to-11 vote as an amendment to the social security bill. But once again the House refused to allow it to come to a vote.

I might add that the reason the House leadership in both years refused to allow this legislation to come to a vote was that they knew it would be overwhelmingly adopted, so they used parliamentary tactics and procedures as a means of avoiding the House working its will.

This year, however, the House, by a 237-to-158 vote approved a tuition tax credit for colleges and elementary and secondary schools, and the Senate approved a college tax credit by a vote of 65-to-27.

Like my distinguished colleagues from Oregon, I was distressed and deeply disappointed that the Senate did not approve the elementary and secondary tuition tax credit.

Mr. President, I believe there is an urgent need for the adoption of tuition tax credits. Increasing costs, higher prices, and the growing tax burden are making it more and more difficult for students to attend college.

There is no doubt in my mind that a growing number of young Americans are being prevented from obtaining a college education because of the increasing costs.

As I said earlier, in the past few years the cost of a college education has skyrocketed. According to the Congressional Budget Office total annual college costs increased approximately 75 percent between 1967 and 1976. However, tuition and required fees, the only expenses which will be eligible for the tuition tax credit, have increased at a much faster rate.

According to the National Center for Educational Statistics, the average tuition and fees at a private university increased 93 percent between 1967 and 1976, from $1,297 to $2,505. For a public university, tuition and fees also increased 93 percent during the same 10-year period, from $283 to $549.

These tuition costs will continue to increase. According to the College Entrance Examination Board, the average annual total cost of a private university for the upcoming school year will be $5,110. For a public university, the average annual cost will be $3,054 for the 1978–79 school year. For a student entering college this fall, the total 4-year cost will be an estimated $17,500 for a public university and $30,000 for a private college. And if a parent has a 1-year-old child today, it has been estimated that it will cost $47,000 to send the child to a public university and $82,000 for a private university in the 1990's.

The administration and the Congressional Budget Office have argued that a tuition tax credit is not necessary because total college costs have not risen as fast as median income. According to a recent CBO report, total college costs increased 75 percent and median family income increased 78 percent between 1967 and 1976. The administration has seized upon these figures as "proof" that the average family is no worse off today than it was 10 years ago.

But the administration and CBO are totally ignoring an extremely important fact—that the tax burden on the average family has increased substantially during this same period and middle-income families have less disposable income to spend on a college education for their children.

According to a study by the Library of Congress' Congressional Research Service, the tax burden on median income families with college age children increased 135.4 percent between 1967 and 1976, as the following chart shows:

AVERAGE TAXES AND MEDIAN INCOME, 1967 AND 1976

| | Median income | Federal income tax | Social security tax | Average State and local taxes | Total taxes | After tax income |
|---|---|---|---|---|---|---|
| 1967 | 7,923 | 684 | 290 | 404 | 1,378 | 6,545 |
| 1976 | 14,164 | 1,395 | 829 | 1,020 | 3,244 | 10,920 |
| Percent change from 1967 to 1976 | 78.8 | 103.9 | 185.9 | 152.5 | 135.4 | 66.8 |

As this study shows, the after-tax income of median income families increased only 66.8 percent, and did not keep pace with the 75 percent increase in total college costs or the 93 percent increase in tuition and fees.

These figures clearly show the Federal Government is taking more money away from the average families of this country through higher taxes and inflation. The tuition tax credit is designed to reduce the average tax burden and allow taxpayers to keep more of their own money to spend on a college education for their children.

These increasing costs have had a considerable impact on the ability of middle-income students to attend college. According to Census Bureau figures, the enrollment rate of middle-income students has declined in the last 10 years. In fact, while the enrollment rate at the lowest income level has increased slightly, the enrollment rates of all other income levels have declined in the last 10 years.

I ask unanimous consent that a table showing the college enrollment rates be printed in the RECORD.

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

COLLEGE ENROLLMENT RATES

[In percent]

| Income | 1967 | 1976 | Rate change | Percentage change |
|---|---|---|---|---|
| 0 to $5,000 (constant dollars), 0 to $8,500 (current dollars) | 20.0 | 22.4 | +2.4 | +12 |
| $5,000 to $10,000 (constant dollars), $8,500 to $17,000 (current dollars) | 37.9 | 36.3 | −1.6 | −4 |
| $10,000 to $15,000 (constant dollars), $17,000 to $25,500 (current dollars) | 51.9 | 47.5 | −4.4 | −8 |
| $15,000 plus (constant dollars), $25,000 plus (current dollars) | 68.3 | 58.2 | −10.1 | −15 |

Source: Bureau of the Census, "Current Population Reports," Series P-20, No. 319, issued February 1978.

Mr. ROTH. Mr. President, there are millions of families today who are neither affluent enough to afford the high cost of college nor considered poor enough to qualify for the many different Government assistance programs their taxes make possible.

As I said, we are rapidly approaching a situation in this country where only the very affluent and the very poor will be able to attend college. The group in the middle—the very taxed— will be unable to afford it.

Mr. President, a tuition tax credit is the simplest and most equitable way to provide middle-income families relief from mounting college costs. A tuition tax credit will allow people to keep more of their own hard-earned money rather than send it to Washington. With a tuition tax credit, there is no administrative overhead, no forms to fill out, and no need to beg, plead poverty, or apply to the bureaucrat on the banks of the Potomac.

Working Americans, caught in the middle, do not want a Government handout. They merely want to keep more of what they earn to spend on something as basic as the right to send their own children to college.

Mr. President, the tuition tax credit is simple, direct, and easy to administer. And it is far more preferable than the administration's grant and loan program, which would only add more redtape and more problems to programs which HEW cannot even administer now.

I was shocked when I read the statement by the Secretary of HEW when he made the claim—a foolish claim, in my judgment—that this college tax credit will require a new bureaucracy. Nothing could be further from the truth. All it requires is an additional line on the income tax return. It will require no additional help, or very little if any, in the IRS; and in contrast to the college grant program, it will not require the college itself to add considerable staff to review, check, and administer the college grant program, as is now the case with the programs on the books.

During our Finance Committee hearings, Mr. President, I was impressed by a youngster from Michigan State who testified to the problem that he and his fellow students were having at Michigan State in getting help under existing programs. He mentioned the high cost to the college itself of hiring men and women to administer the program, the problems they were having in getting the forms and applications processed, and in many cases the assistance coming late in the school year.

In contrast to the claims of the Secretary of HEW, we will not be creating a new bureaucracy, but we will be creating a vehicle whereby working Americans, working parents, will be able to keep more of their own funds without baring their personal financial information—a matter which is deeply distressing to many Americans.

According to HEW Secretary Califano, 40 percent of the basic educational opportunity grant applications for the 1978–79 academic year have been rejected because they are incomplete or contain errors.

A Congressional Budget Office study said an expanded grant program "would involve a greater administrative burden" than the tuition tax credit.

This is directly contrary to the recent statement of Mr. Califano.

A recent HEW study of the existing student aid program found they were plagued with "managerial problems which have contributed to inefficiencies, inequities, abuse, and fraud." And the president of Syracuse University testified before the Senate Finance Committee that the existing student aid programs "are bewildering to potential applicants, have defied the ability of bureaucracies to administer them, and have resulted in a labyrinth of disconnected, overlapping, and uncoordinated parts."

The existing student loan program is in complete disarray. One out of every six loan recipients defaulted on their loans, including 316 in HEW and 6,783 Federal employees in all.

Mr. President, the college tax credit complements, not complicates, the existing student aid program. More importantly, the tuition tax credit establishes a precedent allowing taxpayers freedom of choice with their own dollars.

This is another step toward allowing the American people to keep more of their own hard-earned dollars to do with as they wish.

It all boils down to who working Americans' money belongs to—the Federal Government or the wage and salary earner.

The HEW Secretary believes the Federal Government has first claim on all workers' dollars. In his opposition to tuition tax credits, Mr. Califano appears to be fighting to save his empire. I hope President Carter sees through his rhetoric and signs this bill to provide relief to the hard-pressed taxpayers struggling to send their children to college.

As the distinguished Senator from Oregon pointed out, we are offering this amendment to the tax cut bill because we feel that it is important this legislation becomes law this year. Hopefully, the House and Senate will act timely on the conference report and the President will sign it. We want to make certain that this significant new step is not subject to a pocket veto. For that reason, we are offering it as an amendment to the tax cut.

Mr. President, Mr. Califano is apparently opposed to allowing people freedom of choice with their own tax dollar. I fear what he has been saying to the President is that the Federal Government has first claim on all the wage and salary dollars. In my judgment, he does not let facts or logic stand in his way in his attack on college tuition tax credit. Very frankly, the Califano approach of expanded loans and grants will lead to expanded fraud, redtape, and inefficiency.

The present system, as I have pointed out, is in severe disarray, fraud ridden, cumbersome, and costly. How Mr. Califano can say with a straight face that one line on the IRS form would increase the bureaucracy to handle paperwork is unbelievable.

The system he advocates is to expand a paperwork nightmare. It includes a 12-page form which, by his own admission, was filled out incorrectly by 40 percent of the students seeking tuition aid last semester. Currently, one out of six student loans are in default. Califano is apparently saying to bewilder is better, but we say to simplify is saner.

For every tuition increase of $250, colleges will lose up to 7.5 percent of their enrollment. This is a strong incentive for schools not to do so. Conversely, for every $100 decrease in college tuitions, a gain of up to 3-percent enrollment is realized. So I do not buy Mr. Califano's argument that universities will unquestionably raise their tuition. Instead, Mr. Califano appears to be fighting to save his empire.

As I say, I hope the President sees through his rhetoric and gives relief to the hard-pressed taxpayers struggling to educate their children.

Mr. President, I feel that we have an opportunity during the discussion of this tax legislation to move this Nation in a

new direction. I think it is important that the Congress, the Senate in particular, takes steps to get the country moving again, to get the economy growing without inflation, to restore once again hope and confidence to the working people.

I am very concerned that the tax legislation before us, which does have many beneficial things in it, forgets middle America. It contains proposals that are going to be of great help, great assistance, to those with incomes of $10,000 and less, and it also has proposals such as the capital gains proposal that will help particularly the affluent.

I do think that one of the most pressing needs of America is capital formation; that we have to modernize our industries; that we have to replace our obsolete plants with the most up-to-date modern technology, if we are going to be in a position to compete with our tough competitors in Western Europe in particular, and in Japan.

So I have been a supporter of these changes which help those on the low end of the economic scale and the other changes because I think it will move the economy in the right direction.

But I feel very strongly that we cannot adopt legislation that ignores the great middle class, the working people of this country. They are the ones that not only pay most of the taxes but who are doing the work providing the highest standard of living in the world. For that reason, I feel that it is very important, Mr. President, that this Congress commits itself to a new direction. I think the only way we can really get this country moving again is to enact substantial across-the-board tax rate reductions.

(Mr. BUMPERS assumed the chair.)

Mr. ROTH. It was something like 15 years ago that the late President Jack Kennedy said in a stirring message to the Congress that there were two roads to prosperity, that the Government could either increase its level of spending or the Government could reduce the tax burden on the American people and give the private economy a chance to grow and to expand.

Well, the President picked the tax reduction road, the Congress supported him, and the country experienced 5 years of unprecedented economic growth, high levels of employment, and low levels of inflation.

Unfortunately, because of the actions of this Congress the last 10 years, we have tried to spend our way to prosperity. We have seen the Federal budget grow by leaps and bounds. Roughly 5 years ago, it was $250 billion. Today, it is $500 billion and is projected to grow as high as $750 billion in the next 5 years. The result of these higher taxes and bigger budget deficits has been inflation or stagflation. I, for one, believe it is time that we tried a new economics based on lower tax rates, more meaningful jobs in the private sector for the working and for the poor. I think it is of greatest importance that we have real income growth without inflation.

So, Mr. President, I intend to offer, in a few minutes, an amendment to provide an across-the-board tax cut. Prior to doing so, I should like to point out how the current taxes are such a drag on the working people of America.

Mr. President, I have brought in a chart which is now at the rear of the Chamber, which I hope the Members of the Senate will study carefully as we proceed with the consideration of the tax legislation.

Mr. President, I think it is shocking what has happened to the average family of four, from the standpoint of inflation and the standpoint of Federal taxes. Today, in 1978, as the chart points out, a family of four earning $10,000 has only the purchasing power that a family of four had in 1965 when it had an income of $4,250. In other words, if a family of four earned roughly $4,000 in 1965, they have to earn $10,000 today—that is roughly 2½ times as much—to buy the same food, the same clothing, and the same shelter. At the same time, this wage earner has seen Federal taxes jump from $353 in 1965 to $1,051 in 1978. That is almost three times as much. The social security tax, for example, has gone up from $187 to $605. Inflation has increased his Federal income taxes from $166 to $446.

The sad part of the story, Mr. President, is that the worst does not appear to be behind us but ahead of us. According to figures that we have received from CBO, based on the administration's estimated inflation, the same man or woman, this same family of four, who currently earn $10,000, will have to earn $14,000 by 1983 to maintain the same standard of living. That is a jump of $4,000, or 40 percent higher than what he now secures.

I can say, from talking to men and women in my State of Delaware, that many of them are not optimistic that their employers, whether they be large or small, will be able to grant them cost-of-living increases that will keep them current with their standard of living. But even for those who are successful in getting those cost-of-living increases, they, too, will be facing a downward standard of living because of the impact of the high tax burden.

This same family of four, who currently is paying total Federal taxes—these are averages, of course—of roughly $1,051, will be paying $2,126 by 1983. That is roughly a doubling of the tax burden. In other words, the man or woman who pays $1,000 on $10,000 today will be paying $2,000 on $14,000 earnings and, of course, because of inflation, he or she will have to find ways and means of cutting corners or face, in all candor, a downward standard of living.

The same fact, Mr. President, is true of the family of four who earns $20,000 or $30,000. The family of four who earns $20,000 today only had to earn $8,500 13 years ago, in 1965. That family has seen its total Federal tax jump from $1,054 to $3,251. No wonder there is a tax revolt abroad in America.

Federal employees are relatively lucky, because, at least, we have granted cost-of-living increases so they have suffered no loss in their standard of living. But they, too, as the people in the private sector, are facing a great jump in their tax rate.

In 1965, the family who earned $8,500 was only paying 12.4 percent of its income in Federal taxes. Of course, that does not bring into consideration at all what has happened at the State and local levels. But that average tax rate of 12.4 percent has jumped, Mr. President, to 16.2 percent in 1978.

If you look down the road to what is going to happen to the same family in 1983, the lucky family who maintains cost-of-living increases will then have to earn $28,000.

But on that $28,000, it will be paying a total of $5,688 in taxes.

Mr. President, I ask unanimous consent that I may yield the floor to the Senator from Oregon without losing my right to the floor.

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

Mr. PACKWOOD. Mr. President, is the pending business the amendment on tuition tax credits that I offered?

The PRESIDING OFFICER. The pending question is the amendment of the Senator from Oregon to the committee substitute.

Mr. PACKWOOD. Mr. President, I withdraw that amendment.

The PRESIDING OFFICER. The Senator has that right.

UP AMENDMENT NO. 1992

(Subsequently numbered amendment No. 3880)

(Purpose: To add college tuition tax credits to H.R. 13511)

Mr. PACKWOOD. Mr. President, I send to the desk another amendment.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Oregon (Mr. PACKWOOD) proposes an unprinted amendment numbered 1992.

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

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

The amendment is as follows:

At the end of Title I of the bill, add the following:

SEC.—CREDIT FOR CERTAIN TUITION.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44C. CERTAIN TUITION.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 35 percent of the tuition paid by him for the calendar year in which such taxable year begins to one or more eligible educational institutions for himself, his spouse, or any of his dependents (as defined in section 152).

"(b) MAXIMUM DOLLAR AMOUNT.—The maximum dollar amount allowable as a credit under subsection (a) with respect to tuition for any individual shall not exceed the applicable amount determined under the following table:

| "Calendar year: | *Applicable amount:* |
|---|---|
| 1978 | $100 |
| 1979 | 150 |
| 1980 or 1981 | 250 |

"(c) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits alloweable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.

"(d) PAYMENTS TAKEN INTO ACCOUNT.—

"(1) WHEN PAYMENTS MUST BE MADE AND EDUCATION FURNISHED.—Payments shall be treated as paid for any calendar year—

"(A) FOR 1978.—In the case of calendar 1978, only if such payments—

"(i) are made on or after August 1, 1978, and before February 1, 1979, and

"(ii) are for education furnished on or after August 1, 1978, and before January 1, 1979, or

"(B) FOR 1978 OR THEREAFTER.—In the case of any calendar year after 1978, only if such payments—

"(i) are made during such calendar year or during the 1-month period before or the 1-month period after such year, and

"(ii) are for education furnished during such calendar year.

"(2) TUITION MUST BE FOR GENERAL COURSE OF INSTRUCTION.—

"(A) IN GENERAL.—Tuition attributable to a course of instruction which is not a general course of instruction shall not be taken into account under subsection (a).

"(B) GENERAL COURSE OF INSTRUCTION DEFINED.—For purposes of subparagraph (A), the term 'general course of instruction' means a course of instruction for which credit is allowable toward—

"(i) a baccalaureate or associate degree by an institution of higher education, or

"(ii) a certificate of required course work at a vocational school,

but does not include any course of instruction which is part of the graduate program of the individual.

"(3) INDIVIDUAL MUST BE FULL-TIME STUDENT OR (FOR CALENDAR YEARS AFTER 1979) A QUALIFIED HALF-TIME STUDENT.—

"(A) IN GENERAL.—Amounts paid for the education of an individual shall be taken into account under subsection (a)—

"(i) for calendar year 1978 or 1979, only if such individual is a full-time student for such calendar year, or

"(ii) for any calendar year after 1979, only if such individual is a full-time student or a qualified half-time student for such calendar year.

"(B) FULL-TIME AND QUALIFIED HALF-TIME STUDENT DEFINED.—For purposes of this section—

"(i) The term "full-time student' means any individual who, during any 4 calendar months during the calendar year, is a full-time student at an eligible educational institution.

"(ii) The term 'qualified half-time student' means any individual who, during any 4 calendar months during the calendar year, is a half-time student (determined in accordance with regulations prescribed by the Secretary) at an eligible educational institution. Regulations prescribed for purposes of the preceding sentence with respect to the determination of whether an individual is a half-time student shall not be inconsistent with regulations prescribed by the Commissioner of Education under section 411(a)(2)(A)(ii) of the Higher Education Act of 1965 for purposes of part A of title IV of such Act.

"(e) TUITION DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'tuition' means tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, including required fees for courses.

"(2) CERTAIN AMOUNTS NOT INCLUDED.—The term 'tuition' does not include any amount paid, directly or indirectly, for—

"(A) books, supplies, or equipment for courses of instruction, or

"(B) meals, lodging, transportation, or similar personal, living, or family expenses.

"(3) AMOUNTS NOT SEPARATELY STATED.—If an amount paid for tuition includes an amount for any item described in subparagraph (A) or (B) of paragraph (2) which is not separately stated, the portion of such amount which is attributable to such item shall be determined under regulations prescribed by the Secretary.

"(f) ELIGIBLE EDUCATIONAL INSTITUTION.—For purposes of this section—

"(1) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education, or

"(B) a postsecondary vocational school.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution described in section 1201(a) or 491(b) of the Higher Education Act of 1965 (as in effect on January 1, 1978).

"(3) POSTSECONDARY VOCATIONAL SCHOOL.—The term 'postsecondary vocational school' means—

"(A) an area vocational education school as defined in subparagraph (C) or (D) of section 195(2) of the Vocational Education Act of 1963 (as in effect on January 1, 1978), which

"(B) is located in any State.

"(4) MARITAL STATUS.—The determination of martial status shall be made under section 143.

"(g) SPECIAL RULES.—

"(1) TREATMENT OF CERTAIN SCHOLARSHIPS AND VETERANS' BENEFITS.—

"(A) OFFSET AGAINST TUITION DOLLAR FOR DOLLAR.—For purposes of this section, any amount received as a nontaxable scholarship or educational assistance allowance for any period shall be treated—

"(i) as used for tuition attributable to such period, and

"(ii) as tuition not paid by the taxpayer.

"(B) NONTAXABLE SCHOLARSHIP OR EDUCATIONAL ASSISTANCE ALLOWANCE DEFINED.—For purposes of subparagraph (A), the term 'nontaxable scholarship or educational assistance allowance' means—

"(i) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) or similar award which is not includible in gross income, and

"(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code.

"(2) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER.—No credit shall be allowed to a taxpayer under subsection (a) for amounts paid for any calendar year for tuition for the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

"(3) SPOUSE.—No credit shall be allowed under subsection (a) for amounts paid for any calendar year for tuition for the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151(b) for the taxable year beginning in such calendar year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for such taxable year.

"(h) DISALLOWANCE OF CREDITED EXPENSES AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed under any other section of this chapter for any amount paid for tuition for any individual except to the extent that such amount exceeds the amount necessary for the allowance of the maximum amount which may be allowed under this section for tuition for such individual for the taxable year. The preceding sentence shall not apply to any amount paid for tuition by any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such tuition for the taxable year.

(i) TERMINATION.—No credit shall be allowed under this section for education furnished after December 31, 1981."

(b) LIMITATION ON EXAMINATION OF BOOKS AND RECORDS.—Section 7605 of such Code (relating to time and place of examination) is amended by adding at the end thereof the following new subsection:

"(d) EXAMINATION OF BOOKS AND RECORDS OF CHURCH-CONTROLLED SCHOOLS.—Nothing in section 44C (relating to credit for tuition) shall be construed to grant additional authority to examine the books of account, or the activities, of any school which is operated, supervised, or controlled by or in connection with a church or convention or association of churches (or the examination of the books of account or religious activities of such church or convention or association of churches) except to the extent necessary to determine whether the school is an eligible educational institution within the meaning of section 44C(f)(1)."

(c) TAX CREDIT NOT TO BE CONSIDERED AS FEDERAL ASSISTANCE TO INSTITUTION.—Any education institution which enrolls a student for whom a tax credit is claimed under this Act shall not be considered to be a recipient of Federal assistance under this Act.

(d) EXPEDITED REVIEW OF CONSTITUTIONALITY OF TUITION CREDIT.—

(1) CERTIFICATION OF QUESTIONS OF CONSTITUTIONALITY.—In any action brought in a district court of the United States, including an action for declaratory judgment of injunctive relief, concerning the constitutionality of any provision of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) or any other provision of such Code relating to such section, the district court shall certify immediately all questions of constitutionality of such provision to the United States Court of Appeals for the circuit involved, which shall hear the matter sitting en banc.

(2) APPEAL TO SUPREME COURT.—Notwithstanding any other provisions of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the Court of Appeals.

(3) EXPEDITED CONSIDERATION.—It shall be the duty of the Court of Appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under paragraph (1).

(4) SEPARABILITY.—If any provision of section 44C of the Internal Revenue Code of 1954 (or any other provision of such Code relating to such section), or the application thereof to any person or circumstances, is held invalid, the remainder of such provisions, and the application of such provisions to other persons or circumstances, shall not be affected.

(e) DISREGARD OF REDUCTION OF TAX LIABILITY.—Any reduction in the income tax liability of any individual by reason of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) shall not be taken into account for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program of educational assistance or under any State or local program of educational assistance financed in whole or in part with Federal funds.

(f) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 of the following:

"Sec. 44C. Certain tuition."

(2) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out "credits allowable under—" and all that follows and inserting in lieu thereof "credits allowable under subpart A of part IV other than under sections 31, 39, and 43."

(3) Subsection (b) of section 6096 of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44B" and inserting in lieu thereof "44B, and 44C".

SEC. —. EFFECTIVE DATE.

The amendments made by section 2 of this Act shall apply to taxable years ending on or after August 1, 1978, with respect to amounts paid on or after such date for education furnished on or after such date.

Mr. PACKWOOD. Mr. President, this is the same amendment that I offered before, but in a slightly different form, tailored to provide the same tax credit provided by the House in conference, and I shall speak no further on it.

I thank the Senator from Delaware.

Mr. ROTH. Mr. President, I want to continue to point out what has happened to the working man and woman of America and why we see this phenomenon of a tax revolt hitting in all corners of this great land of ours. As I have indicated, no one here should be surprised if they stop and look at what has happened.

I was just pointing out that the family of four who has earnings of $20,000 will have to earn an additional $8,000 by 1983 to have the same purchasing power that they have today.

But unless we offer real tax relief on this floor, even those fortunate families that get the cost of living increases will find that they are facing downward mobility because they will be paying substantially higher Federal taxes.

Of course, in most cases, they will also be paying substantially higher taxes at the State and local levels, as well.

This family of four, now earning $20,000, pays more than $3,000 in taxes, $1,071 for social security taxes, and Federal income taxes of $2,180. This is a total of $3,251.

Those total Federal taxes will jump to $5,688 in 1983. That is almost double the taxes that they are paying now.

So why should anyone be surprised that the American people are angry, particularly when they see their money being spent on programs that do not seem to be solving problems.

I could continue this comparison, Mr. President. I could take the family of four, earning $30,000 today. Ten or 15 years ago, the family of four that had earnings of $30,000 were pretty fortunate. They were pretty well off compared with much of America. But today they also see an erosion of their purchasing power. They are facing serious problems. Those who have children of college age, in many cases, are finding it well near impossible to send their child or children to college. They are not eligible for aid from the Government. They are finding it very difficult to save the money necessary to pay for college education.

Two years ago, Mr. President, I ran for reelection and I had a group of blue collar workers come in to see me, and they allowed that they were going to support me this time because they were disturbed by what was happening in America.

These blue collar workers pointed out that they were earning roughly between $20,000 and $30,000, partly due to some overtime, and in other cases the wives or other members of the family were working. But together, there were many cases where they achieved what had been a lifetime dream of a family income of $20,000, or higher.

They were angry. They were angry as to what was happening to them because they said that they had always believed that by working hard they were going to retain more and they were going to live a better life.

Many of them had not gone to college. Some of them had not even completed high school. It was a dream of theirs that their young boy or girl would have that opportunity to go to college, or possibly graduate school.

One young worker was angry because he and his wife, both working, had wanted to buy a house and they were looking forward to owning their own home. But they had found on going out and looking at the houses which they were interested in—as they put it, they were not mansions, they were relatively modest houses, but the house of their dream—but the house that had cost a few years ago $25,000, $30,000, $35,000, was costing $65,000, $70,000, $75,000, or even higher.

So that despite the fact that their earnings had gone up and that they were both working, they were faced with not the prospect of realizing their dream, but with having difficulty maintaining their existing standard of living.

In the last 2 years, the situation has not gotten better, it has gotten worse.

The family of four that earns $30,000 today has the equivalent income of only $12,750 in 1965, or to put it another way, if they earned nearly $13,000 in 1965, to have the same purchasing power, to buy the same vegetables, food, to buy the same clothes, to rent the same place or buy the same house, they would have to have an income of $30,000 today.

But, again, as in the other illustrations, the total Federal tax burden has jumped up substantially from a total of $1,747 in 1965 to a total of $5,303, or almost 2½ times as much as that family of four paid in 1965.

Again, if that family is to be fortunate enough to maintain the equivalent in earnings, that $30,000 is going to have to rise or increase to a total of $42,077 in 1983.

Of course, if they have those additional earnings, they still will not live as well because the total Federal tax is going to jump from $5,303 to a total of $9,737, or almost twice as much.

The family that was paying 13.7 percent of its income to the Federal Government in 1965 will be paying a total of 23.1 percent of total income to the Federal Government through Federal income taxes and social security on the same equivalent income. That means they are working 25 percent of their time for the Federal Government, and of course you have to add to that whatever taxes they are paying for State and local government.

What I am saying, Mr. President, is that we are in the unfortunate, tragic situation that all working Americans are facing substantially higher taxes unless this Congress, this year, enacts legislation providing for a major tax reduction for all American working people.

Mr. President, every American family that has earnings of $10,300 or higher—or, for all practical purposes, every American family that has earnings in excess of $10,000—is facing a substantial tax increase unless this Congress moves beyond what we reported out of the Finance Committee and what was enacted by the House of Representatives.

UP AMENDMENT NO. 1993

(Subsequently numbered Amendment No. 3881)

(Purpose: To provide for a reduction in individual tax rates for taxable years beginning in calendar years 1979 through 1981)

Mr. ROTH. For those reasons, Mr. President, I send to the desk an amendment to the pending Packwood amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Delaware (Mr. ROTH) proposes an unprinted amendment numbered 1993 to the Packwood amendment numbered 1992.

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

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

The amendment is as follows:

At the end of the amendment, insert the following:

SEC.—CUTS IN RATES.

(a) IN GENERAL.—Section 1 (relating to tax imposed) is amended by striking out subsections (a), (b), (c), (d), and (e) and inserting in lieu thereof the following:

"(a) GENERAL RULE.—There is hereby imposed on the taxable income, for the taxable years beginning in the calendar years specified in subsection (b) (2), of every—

"(1) married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and every surviving spouse (as defined in section 2 (a)), a tax determined under the applicable schedule for the taxable year.

"(2) head of a household (as defined in section 2 (b)), a tax determined under the applicable schedule for the taxable year,

"(3) every individual (other than a surviving spouse as defined in section 2 (a) or the head of a household as defined in section 2 (b)) who is not a married individual (as defined in section 143) a tax determined under the applicable schedule for the taxable year, and

"(4) a married individual (as defined in section 143) who does make a single return jointly with his spouse under section 6013 a tax equal to one-half the tax which would be determined for an individual described in paragraph (1) with the same taxable income.

"(b) APPLICABLE SCHEDULES.—

"(1) APPLICATION OF SCHEDULES TO INDIVIDUALS.—For purposes of subsection (a) the applicable schedule for—

"(A) individuals described in subsection (a) (1) is schedule 2,

"(B) individuals described in subsection (a) (2) is schedule 3, and

"(C) individuals described in subsection (a) (3) is schedule 1.

"(2) APPLICATION OF SCHEDULES TO TAXABLE YEARS.—

"(A) CALENDAR YEAR 1979.—The schedules in effect for taxable years beginning in 1979 are as follows:

SCHEDULE 1

| If the amount of taxable income is— | | Then as tax before credit— | |
|---|---|---|---|
| Over— | But not over— | Enter | Of excess over— |
| $2,200 | $2,700 | 0+12% | $2,200 |
| $2,700 | 3,200 | $60+13% | 2,700 |
| $3,200 | 3,700 | 125+14% | 3,200 |
| $3,700 | 4,200 | 195+15% | 3,700 |
| $4,200 | 6,200 | 270+18% | 4,200 |
| $6,200 | 8,200 | 630+20% | 6,200 |
| $8,200 | 10,200 | 1,030+23% | 8,200 |
| $10,200 | 12,200 | 1,490+24% | 10,200 |
| $12,200 | 14,200 | 1,970+26% | 12,200 |
| $14,200 | 16,200 | 2,490+27% | 14,200 |
| $16,200 | 18,200 | 3,030+29% | 16,200 |
| $18,200 | 20,200 | 3,610+31% | 18,200 |
| $20,200 | 22,200 | 4,230+33% | 20,200 |
| $22,200 | 24,200 | 4,890+35% | 22,200 |
| $24,200 | 28,200 | 5,590+36% | 24,200 |
| $28,200 | 34,200 | 7,030+41% | 28,200 |
| $34,200 | 40,200 | 9,490+46% | 34,200 |
| $40,200 | 46,200 | 12,250+51% | 40,200 |
| $46,200 | 52,200 | 15,310+56% | 46,200 |
| $52,200 | 62,200 | 18,670+58% | 52,200 |
| $62,200 | 72,200 | 24,470+60% | 62,200 |
| $72,200 | 82,200 | 30,470+62% | 72,200 |
| $82,200 | 92,200 | 36,670+63% | 82,200 |
| $92,200 | 102,200 | 42,970+64% | 92,200 |
| $102,200 | | 49,370+65% | 102,200 |

SCHEDULE 2

| If the amount of taxable income is— | | Then as tax before credit— | |
|---|---|---|---|
| Over— | But not over— | Enter | Of excess over— |
| $3,200 | $4,200 | 0+12% | $3,200 |
| $4,200 | 5,200 | $120+13% | 4,200 |
| $5,200 | 6,200 | 250+14% | 5,200 |
| $6,200 | 7,200 | 390+15% | 6,200 |
| $7,200 | 11,300 | 540+18% | 7,200 |
| $11,200 | 15,200 | 1,260+21% | 11,200 |
| $15,200 | 19,200 | 2,100+24% | 15,200 |
| $19,200 | 23,200 | 3,060+27% | 19,900 |
| $23,200 | 27,200 | 4,140+31% | 23,200 |
| $27,200 | 31,200 | 5,380+35% | 27,200 |
| $31,200 | 35,200 | 6,780+37% | 31,200 |
| $35,200 | 39,200 | 8,260+40% | 35,200 |
| $39,200 | 43,200 | 9,860+42% | 39,200 |
| $43,200 | 47,200 | 11,540+45% | 43,200 |
| $47,200 | 55,200 | 13,340+46% | 47,290 |
| $55,200 | 67,200 | 17,020+49% | 55,200 |
| $57,200 | 79,200 | 22,900+51% | 67,200 |
| $79,200 | 91,200 | 29,020+54% | 79,200 |
| $91,200 | 103,200 | 35,500+56% | 91,200 |
| $103,200 | 123,200 | 42,220+58% | 103,200 |
| $123,200 | 143,200 | 53,820+60% | 123,200 |
| $143,200 | 163,200 | 65,820+62% | 143,200 |
| $163,200 | 183,200 | 78,220+63% | 163,200 |
| $183,200 | 203,200 | 90,820+64% | 183,200 |
| $203,200 | | 103,620+65% | 203,200 |

SCHEDULE 3

| If the amount of taxable income is— | | Then as tax before credit— | |
|---|---|---|---|
| Over | But not over | Enter | Of excess over |
| $2,200 | $2,700 | 0+12.0% | $2,200 |
| $2,700 | 3,200 | $60+12.5% | 2,700 |
| $3,200 | 3,700 | 122+13.5% | 3,200 |
| $3,700 | 4,200 | 190+14.0% | 3,700 |
| $4,200 | 5,200 | 260+16.0% | 4,200 |
| $5,200 | 6,200 | 420+16.5% | 5,200 |
| $6,200 | 8,200 | 585+19.0% | 6,200 |
| $8,200 | 10,200 | 965+20.5% | 8,200 |
| $10,200 | 12,200 | 1,375+22.5% | 10,200 |
| $12,200 | 14,200 | 1,825+23.5% | 12,200 |
| $14,200 | 16,200 | 2,295+25.5% | 14,200 |
| $16,200 | 18,200 | 2,805+26.5% | 16,200 |
| $18,200 | 20,200 | 3,335+29.0% | 18,200 |
| $20,200 | 22,200 | 3,915+30.0% | 20,200 |
| $22,200 | 24,200 | 4,515+33.0% | 22,200 |
| $24,200 | 26,200 | 5,175+33.5% | $24,200 |
| $26,200 | 28,200 | 5,845+35.5% | 26,200 |
| $28,200 | 30,200 | 6,555+38.0% | 28,200 |
| $30,200 | 34,200 | 7,315+39.0% | 30,200 |
| $34,200 | 38,200 | 8,875+43.0% | 34,200 |
| $38,200 | 40,200 | 10,595+44.0% | 38,200 |
| $40,200 | 42,200 | 11,475+46.5% | 40,200 |
| $42,200 | 46,200 | 12,405+48.0% | 42,200 |
| $46,200 | 52,200 | 14,325+51.0% | 46,200 |
| $52,200 | 54,200 | 17,385+52.0% | 52,200 |
| $54,200 | 62,200 | 18,425+53.5% | 54,200 |
| $62,200 | 66,200 | 22,705+54.5% | 62,200 |
| $66,200 | 72,200 | 24,885+55.5% | 66,200 |
| $72,200 | 78,200 | 28,215+56.5% | 72,200 |
| $78,200 | 82,200 | 31,605+58.0% | 78,200 |
| $82,200 | 90,200 | 33,925+58.5% | 82,200 |
| $90,200 | 92,200 | 38,605+59.5% | 90,200 |
| $92,200 | 102,200 | 39,795+60.0% | 92,200 |
| $102,200 | 122,200 | 45,795+61.5% | 102,200 |
| $122,200 | 142,200 | 58,095+62.5% | 122,200 |
| $142,200 | 162,200 | 70,595+63.5% | 142,200 |
| $162,200 | 182,200 | 83,295+64.0% | 162,200 |
| $182,200 | 202,200 | 96,095+64.5% | 182,200 |
| $202,000 | | 108,995+65.0% | 202,200 |

1975 TAX RATE SCHEDULES

[If you do not use one of the Tax Tables, figure your tax on the amount on Form 1040, line 47, by using the appropriate Tax Rule Schedule on this page. Enter tax on Form 1040, line 16a.]

SCHEDULE X—ESTATE TAXPAYERS NOT QUALIFYING FOR RATES IN SCHEDULE Y OR Z

| If the amount on Form 1040, line 47, is: | | Enter on Form 1040, line 16a: | |
|---|---|---|---|
| Not over $500 | | 12% of the amount on line 47. | |
| Over— | But not over— | | of the amount over— |
| $500 | $1,000 | $60+13% | $500 |
| $1,000 | $1,500 | $125+14% | $1,000 |
| $1,500 | $2,000 | $195+15% | $1,500 |
| $2,000 | $4,000 | $270+18% | $2,000 |
| $4,000 | $6,000 | $630+21% | $4,000 |
| $6,000 | $8,000 | $1,050+24% | $6,000 |
| $8,000 | $10,000 | $1,530+27% | $8,000 |
| $10,000 | $12,000 | $2,070+31% | $10,000 |
| $12,000 | $14,000 | $2,690+35% | $12,000 |
| $14,000 | $16,000 | $3,390+37% | $14,000 |
| $16,000 | $18,000 | $4,130+40% | $16,000 |
| $18,000 | $20,000 | $4,930+42% | $18,000 |
| $20,000 | $22,000 | $5,770+45% | $20,000 |
| $22,000 | $26,000 | $6,670+46% | $22,000 |
| $26,000 | $32,000 | $8,510+49% | $28,000 |
| $32,000 | $38,000 | $11,450+51% | $32,000 |
| $38,000 | $44,000 | $14,510+54% | $38,000 |
| $44,000 | $50,000 | $17,750+56% | $44,000 |
| $50,000 | $60,000 | $21,110+58% | $50,000 |
| $60,000 | $70,000 | $26,910+60% | $60,000 |
| $70,000 | $80,000 | $32,910+62% | $70,000 |
| $80,000 | $90,000 | $39,110+63% | $80,000 |
| $90,000 | $100,000 | $45,410+64% | $90,000 |
| $100,000 | | $51,810+65% | $100,000 |

SCHEDULE Y—MARRIED TAXPAYERS AND QUALIFYING WIDOWS AND WIDOWERS

[If you are a married person living apart from your spouse, see chapter 2 to see if you can be considered to be "unmarried" for purposes of using Schedule X or Z]

MARRIED TAXPAYERS FILING JOINT RETURNS AND QUALIFYING WIDOWS AND WIDOWERS

| If the amount on Form 1040, line 47, is: | | Enter on Form 1040, line 18a: | |
|---|---|---|---|
| Not over $1,000 | | 14% of the amount on line 47. | |
| Over— | But not over— | | of the amount over— |
| $1,000 | $2,000 | $140+15% | $1,000 |
| $2,000 | $3,000 | $290+16% | $2,000 |
| $3,000 | $4,000 | $450+17% | $3,000 |
| $4,000 | $8,000 | $620+19% | $4,000 |
| $8,000 | $12,000 | $1,380+22% | $8,000 |
| $12,000 | $16,000 | $2,200+25% | $12,000 |
| $16,000 | $20,000 | $3,260+28% | $16,000 |
| $20,000 | $24,000 | $4,300+32% | $20,000 |
| $24,000 | $28,000 | $5,000+36% | $24,000 |
| $28,000 | $32,000 | $7,100+39% | $28,000 |
| $32,000 | $36,000 | $8,660+42% | $32,000 |
| $36,000 | $40,000 | $10,340+45% | $36,000 |
| $40,000 | $44,000 | $12,140+48% | $40,000 |
| $44,000 | $52,000 | $14,000+50% | $44,000 |
| $52,000 | $64,000 | $18,060+53% | $52,000 |
| $64,000 | $76,000 | $24,420+55% | $64,000 |
| $76,000 | $88,000 | $31,020+58% | $76,000 |
| $88,000 | $100,000 | $37,800+60% | $88,000 |
| $100,000 | $120,000 | $45,180+62% | $100,000 |
| $120,000 | $140,000 | $57,580+64% | $120,000 |
| $140,000 | $160,000 | $70,380+60% | $140,000 |
| $160,000 | $180,000 | $83,880+68% | $160,000 |
| $180,000 | $200,000 | $87,180+88% | $180,000 |
| $200,000 | | $110,880+70% | $200,000 |

MARRIED TAXPAYERS FILING SEPARATE RETURNS

| If the amount on Form 1040, line 47, is: | | Enter on Form 1040, line 18n: | |
|---|---|---|---|
| Not over $500 | | 14% of the amount on line 47. | |
| Over— | But not over— | | of the amount over— |
| $500 | $1,000 | $70+15% | $500 |
| $1,000 | $1,500 | $145+16% | $1,000 |
| $1,500 | $2,000 | $225+17% | $1,500 |
| $2,000 | $4,000 | $310+19% | $2,000 |
| $4,000 | $6,000 | $690+22% | $4,000 |
| $6,000 | $8,000 | $1,130+25% | $6,000 |
| $8,000 | $10,000 | $1,630+28% | $8,000 |
| $10,000 | $12,000 | $2,190+32% | $10,000 |
| $12,000 | $14,000 | $2,830+36% | $12,000 |
| $14,000 | $16,000 | $3,550+39% | $14,000 |
| $16,000 | $18,000 | $4,330+42% | $16,000 |
| $18,000 | $20,000 | $5,170+45% | $18,000 |
| $20,000 | $22,000 | $6,070+48% | $20,000 |
| $22,000 | $26,000 | $7,030+50% | $22,000 |
| $26,000 | $32,000 | $9,030+53% | $28,000 |
| $32,000 | $38,000 | $12,210+55% | $32,000 |
| $38,000 | $44,000 | $15,510+58% | $38,000 |
| $44,000 | $50,000 | $18,990+60% | $44,000 |
| $50,000 | $60,000 | $22,590+62% | $50,000 |
| $60,000 | $70,000 | $28,790+64% | $60,000 |
| $70,000 | $80,000 | $35,190+66% | $70,000 |
| $80,000 | $90,000 | $41,790+68% | $80,000 |
| $90,000 | $100,000 | $48,590+69% | $90,000 |
| $100,000 | | $55,490+70% | $100,000 |

"(c) ESTATES AND TRUSTS.—In the case of an estate or trust taxable under this subsection, a tax determined in accordance with the following table:

SCHEDULE Z—UNMARRIED (OR LEGALLY SEPARATED) TAXPAYERS WHO QUALIFY AS HEADS OF HOUSEHOLD (SEE CHAPTER 2).

| If the amount on Form 1040, line 47, is: | | Enter on Form 1040, line 16a: | |
|---|---|---|---|
| Not over $1 000 | | 14% of the amount on line 47. | |
| Over— | But not over— | | of the amount over— |
| $1,000 | $2,000 | $140+16% | $1,000 |
| $2,000 | $4,000 | $300+18% | $2,000 |
| $4,000 | $6,000 | $660+18% | $4,000 |
| $6,000 | $8,000 | $1,040+22% | $6,000 |
| $8,000 | $10,000 | $4,480+23% | $8,000 |
| $10,000 | $12,000 | $1,940+25% | $10,000 |
| $12,000 | $14,000 | $2,440+27% | $12,000 |
| $14,000 | $16,000 | $2,980+28% | $14,000 |
| $16,000 | $18,000 | $3,540+31% | $16,000 |
| $18,000 | $20,000 | $4,160+32% | $18,000 |
| $20,000 | $22,000 | $4,800+35% | $20,000 |
| $22,000 | $24,000 | $5,500+36% | $22,000 |
| $24,000 | $26,000 | $6,220+38% | $24,000 |
| $26,000 | $28,000 | $6,980+41% | $26,000 |
| $28,000 | $32,000 | $7,800+42% | $28,000 |
| $32,000 | $36,000 | $9,480+45% | $32,000 |
| $36,000 | $38,000 | $11,280+48% | $26,000 |
| $38,000 | $40,000 | $12,240+51% | $38,000 |
| $40,000 | $44,000 | $13,260+52% | $40,000 |
| $44,000 | $50,000 | $15,340+55% | $44,000 |
| $50,000 | $52,000 | $18,640+58% | $50,000 |
| $52,000 | $64,000 | $19,760+58% | $52,000 |
| $64,000 | $70,000 | $26,720+59% | $64,000 |
| $70,000 | $76,000 | $30,260+61% | $70,000 |
| $76,000 | $80,000 | $33,920+62% | $76,000 |
| $80,000 | $88,000 | $36,400+63% | $80,000 |
| $88,000 | $100,000 | $41,440+64% | $88,000 |
| $100,000 | $120,000 | $49,120+66% | $100,000 |
| $120,000 | $140,000 | $62,320+67% | $120,000 |
| $140,000 | $160,000 | $75,720+88% | $140,000 |
| $160,000 | $180,000 | $89,320+69% | $160,000 |
| $180,000 | | $103,120+70% | $180,000 |

Internal Revenue Service.
Washington, D.C.

(b) REDUCTION IN 1980 INDIVIDUAL TAX RATES.—Effective for taxable years beginning in 1980, section 1 is amended to read as follows:

(a) PERMANENT REDUCTION.—Section 1 (relating to tax imposed) is amended to read as follows:

"SECTION 1. TAX IMPOSED.

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $3,200 | No tax. |
| Over $3,200 but not over $4,200 | 10% of excess over $3,200. |
| Over $4,200 but not over $5,200 | $100, plus 11% of excess over $4,200. |
| Over $5,200 but not over $6,200 | $210, plus 12% of excess over $5,200. |
| Over $6,200 but not over $7,200 | $330, plus 13% of excess over $6,200. |
| Over $7,200 but not over $11,200 | $460, plus 15% of excess over $7,200. |
| Over $11,200 but not over $15,200 | $1,060, plus 17% of excess over $11,200. |
| Over $15,200 but not over $19,200 | $1,740, plus 19% of excess over $15,200. |
| Over $19,200 but not over $23,200 | $2,500, plus 22% of excess over $19,200. |
| Over $23,200 but not over $27,200 | $3,380, plus 25% of excess over $23,200. |
| Over $27,200 but not over $31,200 | $4,380, plus 28% of excess over $27,200. |
| Over $31,200 but not over $35,200 | $5,500, plus 31% of excess over $31,200. |
| Over $35,200 but not over $39,200 | $6,740, plus 33% of excess over $35,200. |
| Over $39,200 but not over $43,200 | $8,060, plus 35% of excess over $39,200. |
| Over $43,200 but not over $47,200 | $9,460, plus 38% of excess over $43,200. |
| Over $47,200 but not over $55,200 | $10,980, plus 40% of excess over $47,200. |
| Over $55,200 but not over $67,200 | $14,180, plus 41% of excess over $55,200. |
| Over $67,200 but not over $79,200 | $19,100, plus 43% of excess over $67,200. |
| Over $79,200 but not over $91,200 | $24,260, plus 46% of excess over $79,200. |
| Over $91,200 but not over $103,200 | $29,780, plus 48% of excess over $91,200. |
| Over $103,200 but not over $123,200 | $35,540, plus 50% of excess over $103,200. |
| Over $123,200 but not over $143,200 | $45,540, plus 52% of excess over $123,200. |
| Over $143,200 but not over $163,200 | $55,940, plus 53% of excess over $143,200. |
| Over $163,200 but not over $183,200 | $66,540, plus 54% of excess over $163,200. |
| Over $183,200 but not over $203,200 | $77,340, plus 55% of excess over $183,200. |
| Over $203,200 | $88,340, plus 56% of excess over $203,200 |

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every individual who is the head of household (as defined in section 2(b) a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $2,200 | No tax. |
| Over $2,200 but not over $2,700 | 10% of excess of $2,200. |
| Over $2,700 but not over $3,200 | $50, plus 10.5% of excess over $2,700. |
| Over $3,200 but not over $3,700 | $102.50, plus 11.5% of excess over $3,200. |
| Over $3,700 but not over $4,200 | $160, plus 12% of excess over $3,700. |
| Over $4,200 but not over $5,200 | $220, plus 13% of excess over $4,200. |
| Over $5,200 but not over $6,200 | $350, plus 13.5% of excess over $5,200. |
| Over $6,200 but not over $8,200 | $485, plus 15.5% of excess over $6,200. |
| Over $8,200 but not over $10,200 | $795, plus 16.5% of excess over $8,200. |
| Over $10,200 but not over $12,200 | $1,125, plus 18% of excess over $10,200. |
| Over $12,200 but not over $14,200 | $1,485, plus 19% of excess over $12,200. |
| Over $14,200 but not over $16,200 | $1,865, plus 20.5% of excess over $14,200. |
| Over $16,200 but not over $18,200 | $2,275, plus 21.5% of excess over $16,200. |
| Over $18,200 but not over $20,200 | $2,705, plus 24.5% of excess over $18,200. |
| Over $20,200 but not over $22,200 | $3,195, plus 25.5% of excess over $20,200. |
| Over $22,200 but not over $24,200 | $3,705, plus 27.5% of excess over $22,200. |
| Over $24,200 but not over $26,200 | $4,255, plus 28% of excess over $24,200. |
| Over $26,200 but not over $28,200 | $4,815, plus 29.5% of excess over $26,200. |
| Over $28,200 but not over $30,200 | $5,405, plus 32% of excess over $28,200. |
| Over $30,200 but not over $34,200 | $6,045, plus 33.5% of excess over $30,200. |
| Over $34,200 but not over $38,200 | $7,385, plus 37% of excess over $34,200. |
| Over $38,200 but not over $40,200 | $8,865, plus 38% of excess over $38,200. |
| Over $40,200 but not over $42,200 | $9,625, plus 39% of excess over $40,200. |
| Over $42,200 but not over $46,200 | $10,405, plus 40.5% of excess over $42,200. |
| Over $46,200 but not over $52,200 | $12,025, plus 44% of excess over $46,200. |
| Over $52,200 but not over $54,200 | $14,665, plus 44.5% of excess over $52,200. |
| Over $54,200 but not over $62,200 | $15,555, plus 45% of excess over $54,200. |
| Over $62,200 but not over $66,200 | $19,155, plus 46% of excess over $62,200. |
| Over $66,200 but not over $72,200 | $20,995, plus 47% of excess over $66,200. |
| Over $72,200 but not over $78,200 | $23,815, plus 47.5% of excess over $72,200. |
| Over $78,200 but not over $82,200 | $26,665, plus 49% of excess over $78,200. |
| Over $82,200 but not over $90,200 | $28,625, plus 50% of excess over $82,200. |
| Over $90,200 but not over $92,200 | $32,625, plus 51% of excess over $90,200. |
| Over $92,200 but not over $102,200 | $33,645, plus 51.5% of excess over $92,200. |
| Over $102,200 but not over $122,200 | $38,795, plus 53% of excess over $102,200. |
| Over $122,200 but not over $142,200 | $49,395, plus 54% of excess over $122,200. |
| Over $142,200 but not over $152,200 | $60,195, plus 54.5% of excess over $142,200. |
| Over $152,200 but not over $162,200 | $65,645, plus 54.5% of excess over $152,200. |
| Over $162,200 but not over $182,200 | $71,095, plus 55% of excess over $162,200. |
| Over $182,200 but not over $202,200 | $82,095, plus 55.5% of excess over $182,200. |
| Over $202,200 | $93,195, plus 56% of excess over $202,200. |

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLD).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a houusehold as defined in section 2(b)) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $2,200 | No tax. |
| Over $2,200 but not over $2,700 | 10% of excess over $2,200. |
| Over $2,700 but not over $3,200 | $50, plus 11% of excess over $2,700. |
| Over $3,200 but not over $3,700 | $105, plus 12% of excess over $3,200. |
| Over $3,700 but not over $4,200 | $165, plus 13% of excess over $3,700. |
| Over $4,200 but not over $6,200 | $230, plus 14% of excess over $4,200. |

| | |
|---|---|
| Over $6,200 but not over $8,200 | $510, plus 16% of excess over $6,200. |
| Over $8,200 but not over $10,200 | $830, plus 18% of excess over $8,200. |
| Over $10,200 but not over $12,200 | $1,190, plus 19% of excess over $10,200. |
| Over $12,200 but not over $14,200 | $1,570, plus 21% of excess over $12,200. |
| Over $14,200 but not over $16,200 | $1,990, plus 22% of excess over $14,200. |
| Over $16,200 but not over $18,200 | $2,430, plus 24% of excess over $16,200. |
| Over $18,200 but not over $20,200 | $2,910, plus 27% of excess over $18,200. |
| Over $20,200 but not over $22,200 | $3,450, plus 29% of excess over $20,200. |
| Over $22,200 but not over $24,200 | $4,030, plus 30% of excess over $22,200. |
| Over $24,200 but not over $28,200 | $4,630, plus 31% of excess over $24,200. |
| Over $28,200 but not over $34,200 | $5,870, plus 36% of excess over $28,200. |
| Over $34,200 but not over $40,200 | $8,030, plus 41% of excess over $34,200. |
| Over $40,200 but not over $46,200 | $10,490, plus 43% of excess over $40,200. |
| Over $46,200 but not over $52,200 | $13,070, plus 48% of excess over $46,200. |
| Over $52,200 but not over $62,200 | $15,950, plus 49% of excess over $52,200. |
| Over $62,200 but not over $72,200 | $20,850, plus 51% of excess over $62,200. |
| Over $72,200 but not over $82,200 | $25,950, plus 52% of excess over $72,200. |
| Over $82,200 but not over $92,200 | $31,150, plus 54% of excess over $82,200. |
| Over $92,200 but not over $102,200 | $36,550, plus 55% of excess over $92,200. |
| Over $102,200 | $42,050, plus 56% of excess over $102,200. |

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013 a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $1,600 | No tax. |
| Over $1,600 but not over $2,100 | 10% of excess over $1,600. |
| Over $2,100 but not over $2,600 | $50, plus 11% of excess over $2,100. |
| Over $2,600 but not over $3,100 | $105, plus 12% of excess over $2,600. |
| Over $3,100 but not over $3,600 | $165, plus 13% of excess over $3,100. |
| Over $3,600 but not over $5,600 | $230, plus 15% of excess over $3,600. |
| Over $5,600 but not over $7,600 | $530, plus 17% of excess over $5,600. |
| Over $7,600 but not over $9,600 | $870, plus 19% of excess over $7,600. |
| Over $9,600 but not over $11,600 | $1,250, plus 22% of excess over $9,600. |
| Over $11,600 but not over $13,600 | $1,690, plus 25% of excess over $11,600. |
| Over $13,600 but not over $15,600 | $2,190, plus 28% of excess over $13,600. |
| Over $15,600 but not over $17,600 | $2,750, plus 31% of excess over $15,600. |
| Over $17,600 but not over $19,600 | $3,370, plus 33% of excess over $17,600. |
| Over $19,600 but not over $21,600 | $4,030, plus 35% of excess over $19,600. |
| Over $21,600 but not over $23,600 | $4,730, plus 38% of excess over $21,600. |
| Over $23,600 but not over $27,600 | $5,490, plus 40% of excess over $23,600. |
| Over $27,600 but not over $33,600 | $7,090, plus 41% of excess over $27,600. |
| Over $33,600 but not over $39,600 | $9,550, plus 43% of excess over $33,600. |
| Over $39,600 but not over $45,600 | $12,130, plus 46% of excess over $39,600. |
| Over $45,600 but not over $51,600 | $14,890, plus 48% of excess over $45,600. |
| Over $51,600 but not over $61,600 | $17,770, plus 50% of excess over $51,600. |
| Over $61,600 but not over $71,600 | $22,770, plus 52% of excess over $61,600. |
| Over $71,600 but not over $81,600 | $27,970, plus 53% of excess over $71,600. |
| Over $81,600 but not over $91,600 | $33,270, plus 54% of excess over $81,600. |
| Over $91,600 but nto over $101,600 | $38,670, plus 55% of excess over $91,600. |
| Over $101,600 | $44,170, plus 56% of excess over $101,600. |

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of every estate and trust taxable under this subsection a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $500 | 10% of taxable income. |
| Over $500 but not over $1,000 | $50, plus 11% of excess over $500. |
| Over $1,000 but not over $1,500 | $105, plus 12% of excess over $1,000. |
| Over $1,500 but not over $2,000 | $165, plus 13% of excess over $1,500. |
| Over $2,000 but not over $4,000 | $230, plus 15% of excess over $2,000. |
| Over $4,000 but not over $6,000 | $530, plus 17% of excess over $4,000. |
| Over $6,000 but not over $8,000 | $870, plus 19% of excess over $6,000. |
| Over $8,000 but not over $10,000 | $1,250, plus 22% of excess over $8,000. |
| Over $10,000 but not over $12,000 | $1,690, plus 25% of excess over $10,000. |
| Over $12,000 but not over $14,000 | $2,190, plus 28% of excess over $12,000. |
| Over $14,000 but not over $16,000 | $2,750, plus 31% of excess over $14,000. |
| Over $16,000 but not over $18,000 | $3,370, plus 33% of excess over $16,000. |
| Over $18,000 but not over $20,000 | $4,030, plus 35% of excess over $18,000. |
| Over $20,000 but not over $22,000 | $4,730, plus 38% of excess over $20,000. |
| Over $22,000 but not over $26,000 | $5,490, plus 40% of excess over $22,000. |
| Over $26,000 but not over $32,000 | $7,090, plus 41% of excess over $26,000. |
| Over $32,000 but not over $38,000 | $9,550, plus 43% of excess over $32,000. |
| Over $38,000 but not over $44,000 | $12,130, plus 46% of excess over $38,000. |
| Over $44,000 but not over $50,000 | $14,890, plus 48% of excess over $44,000. |
| Over $50,000 but not over $60,000 | $17,770, plus 50% of excess over $50,000. |
| Over $60,000 but not over $70,000 | $22,770, plus 52% of excess over $60,000. |
| Over $70,000 but not over $80,000 | $27,970, plus 53% of excess over $70,000. |
| Over $80,000 but not over $90,000 | $33,270, plus 54% of excess over $80,000. |
| Over $90,000 but not over $100,000 | $38,670, plus 55% of excess over $90,000. |
| Over $100,000 | $44,170, plus 56% of excess over $100,000." |

(c) PERMANENT REDUCTION IN 1981 INDIVIDUAL INCOME TAX RATES.

(1) PERMANENT REDUCTIONS.—Section 1 (relating to tax imposed) is amended to read as follows:

"SECTION 1. TAX IMPOSED.

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $3,200 | No tax. |
| Over $3,200 but not over $4,200 | 8% of excess over $3,200. |
| Over $4,200 but not over $5,200 | $80, plus 9% of excess over $4,200. |
| Over $5,200 but not over $6,200 | $170, plus 10% of excess over $5,200. |
| Over $6,200 but not over $7,200 | $270, plus 11% of excess over $6,200. |
| Over $7,200 but not over $11,200 | $380, plus 13% of excess over $7,200. |
| Over $11,200 but not over $15,200 | $900, plus 15% of excess over $11,200. |
| Over $15,200 but not over $19,200 | $1,500, plus 17% of excess over $15,200. |
| Over $19,200 but not over $23,200 | $2,180, plus 19% of excess over $19,200. |
| Over $23,200 but not over $27,200 | $2,940, plus 21% of excess over $23,200. |
| Over $27,200 but not over $31,200 | $3,780, plus 24% of excess over $27,200. |
| Over $31,200 but not over $35,200 | $4,740, plus 27% of excess over $31,200. |
| Over $35,200 but not over $39,200 | $5,820, plus 29% of excess over $35,200. |
| Over $39,200 but not over $43,200 | $6,980, plus 31% of excess over $39,200. |
| Over $43,200 but not over $47,200 | $8,220, plus 33% of excess over $43,200. |
| Over $47,200 but not over $55,200 | $9,540, plus 35% of excess over $47,200. |
| Over $55,200 but not over $67,200 | $12,340, plus 36% of excess over $55,200. |
| Over $67,200 but not over $79,200 | $16,660, plus 37% of excess over $67,200. |
| Over $79,200 but not over $91,200 | $21,100, plus 40% of excess over $79,200. |
| Over $91,200 but not over $103,200 | $25,900, plus 42% of excess over $91,200. |
| Over $103,200 but not over $123,200 | $30,940, plus 44% of excess over $103,200. |
| Over $123,200 but not over $143,200 | $39,740, plus 46% of excess over $123,200. |
| Over $143,200 but not over $163,200 | $48,940, plus 47% of excess over $143,200. |
| Over $163,200 but not over $183,200 | $58,340, plus 48% of excess over $163,200. |
| Over $183,200 but not over $203,200 | $67,940, plus 49% of excess over $183,200. |
| Over $203,200 | $77,740, plus 50% of excess over $203,200. |

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every individual who is the head of household (as defined in section 2(b)) a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $2,200 | No tax. |
| Over $2,200 but not over $2,700 | 7.5% of excess over $2,200. |
| Over $2,700 but not over $3,200 | $37.50, plus 8.5% of excess over $2,700. |
| Over $3,200 but not over $3,700 | $80, plus 9.5% of excess over $3,200. |
| Over $3,700 but not over $4,200 | $127.50, plus 10% of excess over $3,700. |
| Over $4,200 but not over $5,200 | $177, plus 11% of excess over $4,200. |
| Over $5,200 but not over $6,200 | $287, plus 11.5% of excess over $5,200. |
| Over $6,200 but not over $8,200 | $402, plus 13% of excess over $6,200. |
| Over $8,200 but not over $10,200 | $662, plus 14.5% of excess over $8,200. |
| Over $10,200 but not over $12,200 | $952, plus 16% of excess over $10,200. |
| Over $12,200 but not over $14,200 | $1,272, plus 16.5% of excess over $12,200. |
| Over $14,200 but not over $16,200 | $1,602, plus 18.5% of excess over $14,200. |
| Over $16,200 but not over $18,200 | $1,972, plus 19% of excess over $16,200. |
| Over $18,200 but not over $20,200 | $2,352, plus 21% of excess over $18,200. |
| Over $20,200 but not over $22,200 | $2,772, plus 21.5% of excess over $20,200. |
| Over $22,200 but not over $24,200 | $3,202, plus 23.5% of excess over $22,200. |
| Over $24,200 but not over $26,200 | $3,672, plus 24% of excess over $24,200. |
| Over $26,200 but not over $28,200 | $4,152, plus 25.5% of excess over $26,200. |
| Over $28,200 but not over $30,200 | $4,662, plus 27.5% of excess over $28,200. |
| Over $30,200 but not over $34,200 | $5,212, plus 29% of excess over $30,200. |
| Over $34,200 but not over $38,200 | $6,372, plus 32.5% of excess over $34,200. |
| Over $38,200 but not over $40,200 | $7,672, plus 33.5% of excess over $38,200. |
| Over $40,200 but not over $42,200 | $8,342, plus 34.5% of excess over $40,200. |
| Over $42,200 but not over $46,200 | $9,032, plus 35.5% of excess over $42,200. |
| Over $46,200 but not over $52,200 | $10,452, plus 38.5% of excess over $46,200. |
| Over $52,200 but not over $54,200 | $12,762, plus 39% of excess over $52,200. |
| Over $54,200 but not over $62,200 | $13,542, plus 39.5% of excess over $54,200. |
| Over $62,200 but not over $66,200 | $16,702, plus 40% of excess over $62,200. |
| Over $66,200 but not over $72,200 | $18,302, plus 40.5% of excess over $66,200. |
| Over $72,200 but not over $78,200 | $20,732, plus 41% of excess over $72,200. |
| Over $78,200 but not over $82,200 | $23,192, plus 42.5% of excess over $78,200. |
| Over $82,200 but not over $90,200 | $24,892, plus 44% of excess over $82,200. |
| Over $90,200 but not over $92,200 | $28,412, plus 45% of excess over $90,200. |
| Over $92,200 but not over $102,200 | $29,312, plus 45.5% of excess over $92,200. |
| Over $102,200 but not over $122,200 | $33,862, plus 47% of excess over $102,200. |
| Over $122,200 but not over $142,200 | $43,262, plus 48% of excess over $122,200. |
| Over $142,200 but not over $152,200 | $52,862, plus 48.5% of excess over $142,200. |
| Over $152,200 but not over $162,200 | $57,712, plus 48.5% of excess over $152,200. |
| Over $162,200 but not over $182,200 | $62,562, plus 49% of excess over $162,200. |
| Over $182,200 but not over $202,200 | $72,362, plus $49.5% of excess over $182,200. |
| Over $202,200 | $82,262, plus 50% of excess over $202,200. |

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $2,200 | No tax. |
| Over $2,200 but not over $2,700 | 7% of excess over $2,200. |
| Over $2,700 but not over $3,200 | $35, plus 9% of excess over $2,700. |
| Over $3,200 but not over $3,700 | $80, plus 10% of excess over $3,200. |
| Over $3,700 but not over $4,200 | $130, plus 11% of excess over $3,700. |
| Over $4,200 but not over $6,200 | $185, plus 12% of excess over $4,200. |
| Over $6,200 but not over $8,200 | $425, plus 13% of excess over $6,200. |
| Over $8,200 but not over $10,200 | $685, plus 16% of excess over $8,200. |
| Over $10,200 but not over $12,200 | $1,005, plus 17% of excess over $10,200. |
| Over $12,200 but not over $14,200 | $1,345, plus 18% of excess over $12,200. |
| Over $14,200 but not over $16,200 | $1,705, plus 20% of excess over $14,200. |
| Over $16,200 but not over $18,200 | $2,105, plus 21% of excess over $16,200. |
| Over $18,200 but not over $20,200 | $2,525, plus 23% of excess over $18,200. |
| Over $20,200 but not over $22,200 | $2,985, plus 24% of excess over $20,200. |
| Over $22,200 but not over $24,200 | $3,465, plus 26% of excess over $22,200. |
| Over $24,200 but not over $28,200 | $3,985, plus 27% of excess over $24,200. |
| Over $28,200 but not over $34, 200 | $5,065, plus 31% of excess over $28,200. |
| Over $34,200 but not over $40,200 | $6,925, plus 36% of excess over $34,200. |
| Over $40,200 but not over $46,200 | $9,085, plus 38% of excess over $40,200. |
| Over $46,200 but not over $52,200 | $11,365, plus 42% of excess over $46,200. |
| Over $52,200 but not over $62,200 | $13,885, plus 43% of excess over $52,200. |
| Over $62,200 but not over $72,200 | $18,185, plus 44% of excess over $62,200. |
| Over $72,200 but not over $82,200 | $22,585, plus 45% of excess over $72,200. |
| Over $82,200 but not over $92,200 | $27,085, plus 48% of excess over $82,200. |
| Over $92,200 but not over $102,200 | $31,885, plus 49% of excess over $92,200 |
| Over $102,200 | $36,785, plus 50% of excess over $102,200. |

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013 a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $1,600 | No tax. |
| Over $1,600 but not over $2,100 | 8% of excess over $1,600. |
| Over $2,100 but not over $2,600 | $40, plus 9% of excess over $2,100. |
| Over $2,600 but not over $3,100 | $85, plus 10% of excess over $2,600. |
| Over $3,100 but not over $3,600 | $135, plus 11% of excess over $3,100. |
| Over $3,600 but not over $5,600 | $190, plus 13% of excess over $3,600. |
| Over $5,600 but not over $7,600 | $450, plus 15% of excess over $5,600. |
| Over $7,600 but not over $9,600 | $750, plus 17% of excess over $7,600. |
| Over $9,600 but not over $11,600 | $1,090, plus 19% of excess over $9,600. |
| Over $11,600 but not over $13,600 | $1,470, plus 21% of excess over $11,600. |
| Over $13,600 but not over $15,600 | $1,890, plus 24% of excess over $13,600 |
| Over $15,600 but not over $17,600 | $2,370, plus 27% of excess over $15,600. |
| Over $17,600 but not over $19,600 | $2,910, plus 29% of excess over $17,600. |
| Over $19,600 but not over $21,600 | $3,490, plus 31% of excess over $19,600. |
| Over $21,600 but not over $23,600 | $4,110, plus 33% of excess over $21,600. |
| Over $23,600 but not over $27,600 | $4,770, plus 35% of excess over $23,600. |
| Over $27,600 but not over $33,600 | $6,170, plus 36% of excess over $27,600. |
| Over $33,600 but not over $39,600 | $8,330, plus 37% of excess over $33,600. |
| Over $39,600 but not over $45,600 | $10,550, plus 40% of excess over $39,600. |
| Over $45,600 but not over $51,600 | $12,950, plus 42% of excess over $45,600. |
| Over $51,600 but not over $61,600 | $15,470, plus 44% of excess over $51,600. |
| Over $61,600 but not over $71,600 | $19,870, plus 46% of excess over $61,600. |
| Over $71,600 but not over $81,600 | $24,470, plus 47% of excess over $71,600. |
| Over $81,600 but not over $91,600 | $29,170, plus 48% of excess over $81,600. |
| Over $91,600 but not over $101,600 | $33,970, plus 49% of excess over $91,600. |
| Over $101,600 | $38,870, plus 50% of excess over $101,600." |

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of every estate and trust taxable under this subsection a tax determined in accordance with the following table:

| "If the taxable income is: | The tax is: |
|---|---|
| Not over $500 | 8% of taxable income. |
| Over $500 but not over $1,000 | $40, plus 9% of excess over $500. |
| Over $1,000 but not over $1,500 | $85, plus 10% of excess over $1,000. |
| Over $1,500 but not over $2,000 | $135, plus 11% of excess over $1,500. |
| Over $2,000 but not over $4,000 | $190, plus 13% of excess over $2,000. |
| Over $4,000 but not over $6,000 | $450, plus 15% of excess over $4,000. |
| Over $6,000 but not over $8,000 | $750, plus 17% of excess over $6,000. |
| Over $8,000 but not over $10,000 | $1,090, plus 19% of excess over $8,000. |
| Over $10,000 but not over $12,000 | $1,470, plus 21% of excess over $10,000. |
| Over $12,000 but not over $14,000 | $1,890, plus 24% of excess over $12,000. |
| Over $14,000 but not over $16,000 | $2,370, plus 27% of excess over $14,000. |
| Over $16,000 but not over $18,000 | $2,910, plus 29% of excess over $16,000. |
| Over $18,000 but not over $20,000 | $3,490, plus 31% of excess over $18,000. |
| Over $20,000 but not over $22,000 | $4,110, plus 33% of excess over $20,000. |
| Over $22,000 but not over $26,000 | $4,770, plus 35% of excess over $22,000. |
| Over $26,000 but not over $32,000 | $6,170, plus 36% of excess over $26,000. |
| Over $32,000 but not over $38,000 | $8,330, plus 37% of excess over $32,000. |
| Over $38,000 but not over $44,000 | $10,550, plus 40% of excess over $38,000. |
| Over $44,000 but not over $50,000 | $12,950, plus 42% of excess over $44,000. |
| Over $50,000 but not over $60,000 | $15,470, plus 44% of excess over $50,000. |
| Over $60,000 but not over $70,000 | $19,870, plus 46% of excess over $60,000. |
| Over $70,000 but not over $80,000 | $24,470, plus 47% of excess over $70,000. |
| Over $80,000 but not over $90,000 | $29,170, plus 48% of excess over $80,000. |
| Over $90,000 but not over $100,000 | $33,970, plus 49% of excess over $90,000. |
| Over $100,000 | $38,870, plus 50% of excess over $100,000." |

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1980.

(c) Section 101 of the bill will not apply after the date of enactment of the bill.

Mr. ROTH. Mr. President, my amendment provides across-the-board tax rate reductions of approximately 33 percent, phased in over a 3-year period. In order to conform to the second budget resolution, the first year rate reductions in my amendment are phased in more slowly than in the original Roth-Kemp Tax Reduction Act. Under this amendment, Roth-Kemp would reduce tax rates by about 7 percent across the board in fiscal 1979 and then more rapidly in the second and third years.

The amendment I am offering today, in effect, substitutes across-the-board rate reductions for the individual tax cuts approved by the Finance Committee. My amendment would retain the other individual tax changes approved by the committee, including the $1,000 personal exemption, the increased earned income credit and the various other changes.

In addition, my amendment would not affect any of the business tax cuts or capital gains tax changes approved by the committee. I believe the Senate should be allowed to work its will on these other proposals.

The fiscal 1979 impact of my amendment will substitute $8.8 billion in across-the-board tax rate cuts for the $8 billion approved by the committee.

However, while the committee bill is just a 1-year tax cut, my amendment would provide a 3-year tax cut which will offset the massive new tax increases now facing the American people.

The excessive tax burden on working Americans has reached the breaking point. In the past 10 years, total taxes increased 158 percent, while wages increased only 113 percent.

Last year, Americans paid $548 billion in total taxes, $37 billion more than was spent on food, clothing, and housing.

In my judgment, the tax bill now pending before the Senate shortchanges most of the working people of this country. By failing to provide real across-the-board tax relief to middle-income taxpayers, the vast majority of Americans will face higher taxes next year.

Under the Senate tax bill, every family of four earning more than $10,000 will pay higher taxes next year, because of the social security and inflation-induced tax increases in 1978 and 1979.

Mr. President, I ask unanimous consent that a table showing the tax impact of the Senate bill on families of four be printed in the RECORD.

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

IMPACT OF SENATE BILL ON FAMILY OF 4

| | Social security and inflation tax increases | | Total tax increases | Senate tax cuts | Net change |
|---|---|---|---|---|---|
| | 1978 | 1979 | | | |
| Income: | | | | | |
| $8,000 | $148 | $138 | $286 | −$396 | −$110 |
| $10,000 | 108 | 96 | 204 | −192 | +12 |
| $15,000 | 92 | 74 | 166 | −97 | +69 |
| $17,500 | 179 | 99 | 278 | −146 | +132 |
| $20,000 | 203 | 252 | 455 | −196 | +259 |
| $25,000 | 230 | 457 | 687 | −290 | +397 |
| $30,000 | 267 | 494 | 761 | −356 | +405 |
| $40,000 | 403 | 630 | 1,033 | −574 | +459 |

Mr. ROTH. Mr. President, my proposal to reduce tax rates across-the-board by approximately 33 percent—from the present 14 to 70 percent rates to rates ranging between 8 and 50 percent—would unleash the private sector of our economy. By reducing marginal tax rates, Roth-Kemp will increase the incentive to work, save, invest, and produce, resulting in higher economic growth, more jobs, and less Government spending on unemployment and welfare benefits.

Fifteen years ago, President Jack Kennedy said there were two roads to prosperity, either through increased Federal spending or by loosening the restraints the tax system imposes on our free enterprise system. Kennedy chose the tax reduction road and the private economy expanded at unprecented levels. No one—and I underscore this—has ever said economic conditions today are identical to the conditions in the early 1960's, but it is clear the road we have taken in the last decade of increased Federal spending, big deficits, higher taxes, and more inflation, has been a dismal failure.

I believe we need a new economics based on lower taxes, more jobs in the private sector, and income growth without inflation. These substantial tax cuts I am proposing must be viewed in the context of the pending social security tax increases and the automatic tax increases caused by inflation.

According to the Joint Committee on Taxation, social security and inflation will increase taxes by at least $283 billion over the next 5 years.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. ROTH. I am happy to yield to the distinguished Senator from Nebraska.

Mr. CURTIS. I commend the distinguished Senator from Delaware upon his grasp of the basics of our economy and the need for tax reform.

Is it true that the Senator's proposal would grant relief to all individual taxpayers? Is that correct?

Mr. ROTH. That is correct.

Mr. CURTIS. How would that tax reduction be applied?

Is it a percentage reduction of what they are paying now, or how do we bring about the tax reduction?

Mr. ROTH. The proposed tax cut is an across-the-board reduction in all individual tax rates. It measures roughly 33 percent over the 3 years.

I might say this to the distinguished Senator: Our goal is to reduce tax rates from 70 percent on the high end to 50 percent and on the low end from 14 to 8 percent.

Mr. CURTIS. This would be phased in over a period of 3 years; is that correct?

Mr. ROTH. That is correct. We propose to phase this in.

Mr. CURTIS. What would be the effective date of it?

Mr. ROTH. It would be effective January 1, 1979.

Mr. CURTIS. How much tax relief would there be for the first year?

Mr. ROTH. For the first year the effective tax relief would be $8.8 billion.

Mr. CURTIS. How much percentagewise so far as the individual is concerned?

Mr. ROTH. That would be roughly 7 percent.

Mr. CURTIS. If this proposal passes what percent could we anticipate the second year?

Mr. ROTH. The second year would be 13 percent and the third year would be 10 percent.

Mr. CURTIS. So it would make a total of about 33 percent?

Mr. ROTH. That is correct.

Mr. CURTIS. In other words, we would lessen the tax burden on the American people about a third?

Mr. ROTH. That is correct.

Mr. CURTIS. But would phase it in over 3 years?

Mr. ROTH. The Senator is absolutely right.

Mr. CURTIS. These other formulas have their merits if they are not overdone. But would the tax proposal offered by the distinguished Senator from Delaware grant significant tax relief to the middle class?

Mr. ROTH. I say to the distinguished Senator from Nebraska that a principal objective of our proposal is to give some real tax relief to the working people of America, those making $10,000, $20,000, $30,000, $40,000 a year. The answer is yes, it would give very substantial tax relief. It is the only proposal I know that would give real tax relief to the working people.

Mr. CURTIS. And this group that the Senator describes is a group whose economic well-being means a great deal to the overall economy of the country. Is that not correct?

Mr. ROTH. Absolutely.

I point out to the Senator that for the first time in America the average working family faces the prospect of a lower style of life, despite the fact that

in many cases the wife is going to work and the children are working. The impact of higher taxes and the impact of inflation means that they are finding it difficult to maintain the same lifestyle and, in fact, face downward mobility instead of the American dream that if you work hard you are going to lead a better life in the years ahead.

Mr. CURTIS. If a tax reduction bill is properly constructed, is it not true that it can very likely result in increased revenues?

Mr. ROTH. Absolutely. The form of the tax cut makes a very substantial difference. Many of our tax cuts in the past, as the Senator well knows, have been designed merely to promote demand. What we are trying to do through our tax cut is to increase incentives and expand the supply side of the economy. By reducing the tax rates, the marginal tax rates, we are increasing the incentive to save, to invest, and to promote capital formation in the private sector. It will help modernize our industry, it will help to develop new plants, all of which means jobs in the private sector.

Mr. CURTIS. Is it not true that on many occasions in the past so-called experts, including those in the Treasury Department, have said that a certain tax reduction would lessen the revenues, and then after it was enacted, and the year went by, they found that instead of lesser revenues, it increased the revenues? Has that not been a common experience?

Mr. ROTH. The Senator is absolutely correct.

For example, in the case of the Kennedy round, and the distinguished Senator was then a Member of the Senate, the Treasury predicted that there was going to be a $89 billion loss as a result of the general tax reduction. Subsequently it was shown that instead of a $89 billion loss, there was a $54 billion gain.

So, one of the problems we have had with people in the Government is that they do not seem to understand that the kind of form of tax cut makes a very substantial difference in the effect or impact it has on the economy, and what we are trying to do here is to create some buoyancy, some lift in the economy, so that we have real growth without inflation.

Mr. CURTIS. Mr. President, if the distinguished Senator will yield further, I wish to point out that I hold in my hand a table concerning the tax reductions from 1963 to 1968 inclusive. It shows in one column what the U.S. Treasury estimated the revenue loss would be and in the lower column what actually happened, and in those 6 tax years the Treasury estimated total losses of $89 billion, but the Treasury actually gained $54 billion.

I ask unanimous consent that this table prepared by the minority staff of the Committee on Finance be printed in the RECORD at this point.

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

FEDERAL REVENUE GAINS FROM TAX RATE REDUCTION, 1963-68

[In billions of dollars]

| | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | Total |
|---|---|---|---|---|---|---|---|
| U.S. Treasury estimated revenue losses | −2.4 | −5.2 | −13.3 | −20.0 | −23.7 | −24.4 | −89 |
| Actual revenue gains | +7.0 | +6.0 | +4.0 | +14.0 | −19.0 | +4.0 | +54 |
| Difference in estimates | | | | | | | 143 |

Mr. CURTIS. Mr. President, if the Senator will yield further, this group of working people whom we choose to call the middle class, are they not a group that in the main are not getting direct Government benefits such as aid with their medical bills, assistance with their housing, assistance with food bills, and all the various Government programs that have been provided for those individuals with little or no income?

Mr. ROTH. That is correct.

Mr. CURTIS. I thank the Senator for yielding and I commend him on his presentation.

Mr. ROTH. I thank the distinguished Senator from Nebraska for his questions.

I, too, wish at this stage to pay respect to Senator CURTIS who, of his own volition, is leaving the Senate this year. I have enjoyed the opportunity of serving with him, not only as a Member of the Senate, but I have enjoyed serving with him as our minority leader on the Finance Committee.

The Senator has always been forthright and an extremely hard worker. As one of the newer members of the Finance Committee in the Senate, I have always found him most cooperative in insuring that the younger members of the Finance Committee had a full opportunity to have their say on legislation as it proceeded through that committee.

Mr. President, as I said a few minutes ago, I believe we need a new economics based on lower taxes, more jobs, and income growth without taxation.

These substantial tax cuts I am proposing must be viewed in the context of the pending social security tax increases and the automatic tax increases caused by inflation.

According to the Joint Committee on Taxation, social security and inflation will increase taxes by at least $283 billion over the next 5 years.

I ask unanimous consent that a table showing these 5-year tax increases be included in the RECORD at this point.

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

PENDING TAX INCREASES

[In billions]

| | 1979 | 1980 | 1981 | 1982 | 1983 |
|---|---|---|---|---|---|
| Social security | 7.0 | 12.7 | 24.2 | 32.6 | 35.3 |
| Inflation | 13.4 | 22.4 | 32.8 | 44.9 | 58.7 |
| Total | 20.4 | 35.1 | 57.0 | 77.5 | 94.0 |

Mr. ROTH. Net of these tax increases, Roth-Kemp is not so massive that it would generate excess demand inflation, or larger budget deficits. In fact, unless taxes are substantially reduced, the massive new tax increases will reduce consumer demand and push the economy into another recession.

In addition to offsetting the pending tax increases, phased in tax reductions are needed to impose disclipline on the budget. By reducing taxes over the next 3 years, Congress and the Budget Committee will know exactly how much revenue is available, and Government spending levels can be tailored to fit the available revenue. Rather than committing tax revenues to spending programs, we will be committing these tax revenues to tax cuts for the American people.

In testimony before the Finance Committee, Dr. Alan Greenspan reinforced this point:

> Our problem is we tend to spend whatever we have. The advantage of Roth-Kemp is that it would restore a significant part of the normal increase in tax revenues coming from economic growth to the taxpayers, rather than employing them for new expenditure programs. It is not Roth-Kemp that is inflationary, it is the process of Federal outlays which Roth-Kemp may succeed in curbing.

Mr. President, the Roth-Kemp amendment will provide substantial tax cuts to all taxpayers, increase the progressivity of our tax system, increase real GNP growth, create millions of new jobs, and increase personal income savings, and investments.

Make no mistake about it, unless this amendment is adopted, the vast majority of working Americans will continue to pay higher taxes over the next 5 years. I urge the adoption of this amendment.

I yield the floor.

Mr. STEVENS. Mr. President, I was disappointed to learn that the Senate Finance Committee had failed to approve the Roth-Kemp tax cut proposal during its consideration of the Revenue Act of 1978. The tax legislation now before the Senate does not offer what it promised—real tax reductions for the majority of Americans. The Senate version is an improvement over the House tax reductions but still does not adequately offset the effects of inflation and the recently enacted social security tax hikes.

Being from Alaska, I have a special interest in tax cut legislation, and am frank to admit it. Alaskans have the dubious honor of paying the highest per capita taxes in the United States. In fact, we have over twice the tax burden of the average taxpayer in the Lower 48.

While it is true that we also have the highest per capita incomes in the country, these incomes are a function of the high cost of living and do not represent above average living standards. An annual income of $22,000 in Alaska, for instance, is comparable to a $14,000 salary in the Lower 48. The purchasing power of a dollar is nearly cut in half when Alaskans have to spend $1 dollar to buy a loaf of bread and $3 dollars for a gallon of milk.

The high cost of living in my State does more than distort the income levels, however. It results in disproportionate taxation because Alaskans are forced into higher tax brackets—brackets with rates based on average statistics for the contiguous States. Income levels may be 59 percent higher, but our taxes are an incredible 121 percent higher! We cannot afford to have a piece of tax legislation which does not offer relief from this confiscatory level of taxation.

The Roth-Kemp tax cut proposal is a must if Congress is serious about its commitment to cut taxes and get our economy going again. Every time the Government increases tax collection, it takes with it a larger portion of the taxpayers work incentive, innovation, and productivity. What incentive is left for the average taxpayer who sees a substantial percentage of his earned income going to Government programs which yield insufficient results and bring about an increased demand for additional spending to make them effective? How much effort can we expect a taxpayer to expend toward attaining a better job, with a better salary, when the net financial gain from his efforts is marginal, at best?

Mr. President, in Anchorage alone, 40 percent of the households have two working spouses. The effect of the two incomes in my State is to give the average family of four an income level of about $50,000 a year. But, as I said, with Alaska's high costs, they obtain a standard of living which would be the equivalent to that of a family earning $25,000 in the South 48.

It is apparent that many of our wives are working in order to pay Uncle Sam, because the husbands cannot earn enough money to both pay the high level of taxes and meet the high cost of living in Alaska.

Yet the strange thing is that even as salaries or wages rise, the average increases may be less than the rate of inflation. For instance, last year, the increase in per capita income was 4 percent.

That is less than half the rate of inflation, so that in effect, while nominal incomes rose, Alaskans real purchasing power dropped. And as nominal incomes increased, the workers were forced into higher tax brackets. This creates a disincentive to young Alaskans to produce more, because the more they produce, the larger the percentage of real income going to Uncle Sam.

I think that it is high time we did something to reverse this trend and restore incentives, particularly the incentive to our young people to try to better themselves, to get better jobs and to produce more for the benefit of the whole country.

Opponents of this tax cut claim that the cost of the legislation is too great, and that such a substantial reduction in taxes would be inflationary. I do not believe that is true. By cutting taxes, we allow taxpayers to retain a greater portion of their incomes so they can decide how this money, which would otherwise go to our Government, will be spent or saved; and if it is put into savings, it will create more jobs by easing the burden of interest rates and making it possible for the economy—our free enterprise economy—to expand.

The assumption of those who oppose this tax cut is that a dollar spent by the Government is more productive than a dollar spent by an individual on consumption, or savings, or investment.

I believe that the individual makes the best choice as to how his dollars can best be used. It is the individual who really brings about the total operations of the laws of supply and demand in a free enterprise economy. It is only the collective judgment of the individuals that can bring about the optimum use of our dollars.

I think that if we can reverse the trend of bringing more and more money to Washington, we can reduce the demand for more and more public service jobs, more and more temporary employment, and more and more high cost administrative programs.

I am hopeful that the Senate will adopt the Roth-Kemp tax cut proposal. While I do not claim it will solve our Nation's economic problems in and of itself, it certainly will be a step in the right direction, and it will give the power of making decisions back to those who are best able to make our system work; the individuals who are earning the money, trying to meet the needs of their families, and trying to prepare for their own future through savings, investment, or retirement plans.

We need, I believe, to adopt the Roth-Kemp proposal in order to restore the incentive that is essential to bringing about the solutions to our economic problems; and those solutions rest, in my judgment, with the individual and not with Government.

Mr. FORD. Mr. President, is there a time limit on the bill?

The PRESIDING OFFICER (Mr. ANDERSON). There is no time limit.

Mr. FORD. Mr. President, the Revenue Act of 1978 is extremely important to the people of this Nation. The economy is sluggish. We are battling inflation; we are seeking to give relief to taxpayers who are fighting the pressures between higher inflation and higher tax bites; and we are deeply concerned with the formulation of a fair system of taxation. Equity is always a difficult objective to achieve. There is a balance between the individual taxpayers and business, among various classes of taxpayers, between small business and large business, and other groups.

In formulating the bill, we must enact a measure that is fair to all segments of the community. I feel very strongly that we must consider several guidelines. First, we should reduce the taxes for wage earners to offset inflation and the social security increases. Second, we should increase incentives for capital investment. Third, we should avoid excessive reductions that would be inflationary. Fourth, we should stimulate the economy to provide job opportunities and to improve productivity efficiency. Fifth, we should assist business in remaining competitive in the international market. Sixth, we should give special consideration to small businesses, and when I refer to small businesses, I am referring to those with a gross taxable income under $200,000.

Our actions on the Senate floor must be to give a balanced consideration to these guidelines as we consider each part. I have sought to review the Finance Committee bill from this perspective. There are many parts of the bill which are commendable and which I support. There are others that I feel do not provide an equitable balance and need to be changed.

I am extremely disappointed that the tax cut for middle income families was not higher. The proposal barely offsets the 1979 social security tax increase and the net effect of 1 year's inflation. On the other hand, relief afforded high income taxpayers exceeded these increases manyfold. The middle income wage earners are the backbone of this country. They are the stabilizing force in the community. They are the individuals that do not have tax loopholes because their primary income is wages. They deserve a greater reduction and the bill should be amended to give more tax relief to this important class of taxpayers.

I support reductions in the capital gains taxes. On the other hand, I think that the Finance bill goes too far. Nearly 30 percent of the benefits go to less than 1 percent of the taxpayers. The public is very much concerned about the low taxes paid by high-income families. In fairness, the facts of the matter are often exaggerated, but public concern is genuine and widespread, and the Senate must take note of it. A minimum tax with teeth must be enacted to assure that the high-income families cannot shelter their income from tax to a greater extent than now permitted.

Venture capital is extremely important, and I agree that some change needs to be made. The present rate is too high, but a balance must exist so that overall the reductions are distributed equitably among various classes of taxpayers.

The low-income families receive assistance in the bill and the Finance Committee should be commended for the work it achieved in this area. I strongly support the changes in the earned income credit, the effort to employ the hard-core unemployed, the increased tax credit for the elderly, and the improvements in the retirement plan provisions. I think that the committee used good judgment. I was very much pleased, and I think the committee made a correct decision in retaining DISC and deferral. I think the increase in personal exemp-

tion is long overdue. But, I do feel that this increase is more transparent than real because it does not make that much difference when you consider that the temporary tax credit is repealed.

I do feel very strongly that there was an imbalance in the bill between large corporations and small businesses.

Small businesses make a valuable contribution to this Nation—employing nearly one-half of the employees. They deserve—and should receive—greater consideration. I believe that improvements should be made in the depreciation provisions for small businesses, and I was very disappointed that the jobs tax credit was repealed. The latter had its greatest benefit for small businesses, and I think that it will be a major setback if we repeal it.

I was disappointed that the social security provisions were included in the tax bill. At the same time we are talking about ceilings on Federal spending we are authorizing the expenditure of an additional $700 million. I feel very strongly that the social security legislation needs to be reviewed. The burden that we placed on individuals and small businessmen across the Nation is great, and relief is needed. In particular, providing $500 million for fiscal relief for State and local welfare costs does not help the Commonwealth of Kentucky very much at all. It really is directed to a small group of States and the tax bill is no place to include this provision. The merits are not the issue. The fact is that the social security programs need to be evaluated, but not as part of the general revenue bills.

I would strongly urge my colleagues not to load this bill with all of their "pet" provisions. What we do not need at this point is a "Christmas tree" bill. We owe the American public a serious review of our system of taxation. We have an obligation to enact a balanced approach that lends equity to all classes of taxpayers. To this end, the bill needs to be changed to give greater relief to middle-income classes of taxpayers and to small businessmen. We must reduce the excessive relief given to high income individuals through a tighter minimum tax.

Mr. President, I think it is extremely important that we maintain the reduction within limits to avoid a major inflationary impact.

The committee's bill is not too far off for the current year, but does have excessive impact in future years. I feel that our actions not only should consider 1979, but fiscal years 1980 and 1981. It is shortsighted for us to consider 1979 and 1980 only because of the budget resolution. We should look ahead to determine the effect it will have on our efforts to balance the Federal budget in 1981. The Senate has set that goal and each piece of legislation should reflect that objective.

Formulation of a tax bill is never easy. The Finance Committee has worked long and hard and is to be commended. In general, I agree with the bill but I will support changes to improve a better distribution of the reduction among classes of taxpayers, specifically, to increase the reduction for middle-income wage earners and small businessmen.

Again, Mr. President, I encourage my colleagues to limit their amendments to provisions that relate to the formulation of a fair system of taxation.

Mr. HARRY F. BYRD, JR. 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. NELSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ANDERSON). Without objection, it is so ordered.

Mr. LONG. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside long enough for the Senator from Colorado (Mr. HASKELL) to offer an amendment, and I ask unanimous consent that the time on the amendment be limited to 40 minutes to each side, a total of 80 minutes to be divided equally between the Senator from Colorado and the manager of the bill.

The PRESIDING OFFICER. Is the Senator suggesting that both amendments be laid aside?

Mr. LONG. Yes. I further ask unanimous consent that when the Senate has voted on the amendment by the Senator from Colorado, that the Senate resume consideration of the two amendments presently pending.

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

## PRESIDENTIAL VETO OF PUBLIC WORKS APPROPRIATION BILL

Mr. NELSON. Mr. President, I would like to comment for about 60 seconds.

The House of Representatives sustained the President's veto of the public works bill by a vote of 223 to 190. I just want to take this opportunity to commend the President of the United States for vetoing that public works bill and insisting that Congress revise its approach to these public works projects in the field of flood control and reclamation.

As we look through those projects, we will find a substantial number of them getting their costs-benefit ratio based upon interest rates as low as 2¾ percent, and a bunch of them based upon interest rates of 3½ percent. Almost all of the ones the President is opposing, with possibly an exception or two, would have a cost-benefit ratio of less than 1 if they were paying the current cost of money to the Government.

What the President has done is a good blow for rational policy respecting public works projects, and also a good blow in behalf of partially containing some of the powerfully influential inflationary forces that the country faces today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

## REVENUE ACT OF 1978

The Senate continued with the consideration of the bill.

Mr. LONG. Mr. President, is the Senator from Colorado ready to call up his amendment?

Mr. HASKELL. Yes.

Mr. LONG. Then I suggest the Senator call up his amendment.

UP AMENDMENT NO. 1994

(Purpose: To extend for two years and modify the Federal income tax credit for employment of new employees and to delay the effective date of certain corporate rate reductions)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HASKELL), for himself, Mr. HATHAWAY, and Mr. LAXALT, proposes an unprinted amendment No. 1994.

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

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

The amendment is as follows:

On page 284, between lines 7 and 8, insert the following:

Subtitle C—JOBS CREDIT EXTENSION

SEC. 323. JOBS CREDIT EXTENSION.

(a) IN GENERAL.—Section 44D (relating to credit for employment of certain new employees) is amended to read as follows:

"SEC. 44D. CREDIT FOR EMPLOYMENT OF CERTAIN NEW EMPLOYEES.

"(a) GENERAL RULE.—At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle the amount determined under section 54.

"(b) ELECTION.—

"(1) IN GENERAL.—An election under subsection (a) shall be made in such manner as prescribed by the Secretary.

"(2) TIME FOR FILING ELECTION.—An election under subsection (a) shall be effective for any taxable year only if filed on or before the last day for filing a claim for refund under section 6511 for such taxable year.

"(3) REVOCATION.—An election under subsection (a) for any taxable year may be revoked at any time on or before such last day.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart D.".

(b) AMOUNT OF CREDIT.—Section 54 (relating to the amount of the credit for employment of certain new employees) is added as follows:

"SEC. 54. AMOUNT OF CREDIT.

"(a) DETERMINATION OF AMOUNT.—The amount of the credit allowable by section 44B for a taxable year beginning in any calendar year shall be an amount equal to 35 percent of the excess of the aggregate unemployment insurance wages paid during such calendar year over 102 percent of the aggregate unemployment insurance wages paid during the preceding calendar year.

"(b) MINIMUM PRECEDING YEAR WAGES.—For purposes of determining the amount of the credit under subsection (a) with respect to any calendar year, the amount of the aggregate unemployment insurance wages paid

during the preceding calendar year shall be deemed to be not less than 50 percent of the amount of such wages paid during the calendar year in which the taxable year begins.

"(c) $25,000 PER YEAR LIMITATION ON CREDIT.—Except as provided in subsection (d), the amount of the credit determined under this section for any employer (and the amount of the credit allowable by section 44D to any taxpayer) with respect to any calendar year shall not exceed $25,000.

"(d) ADDITIONAL 10 PERCENT CREDIT FOR HANDICAPPED INDIVIDUALS.—

"(1) IN GENERAL.—The amount of the credit allowable by section 440 for any taxable year beginning in any calendar year (determined without regard to this subsection) shall be increased by an amount equal to 10 percent of the unemployment insurance wages paid by the employer to handicapped individuals during the calendar year in which such taxable year begins.

"(2) ONLY FIRST YEAR TAKEN INTO ACCOUNT.—For purposes of this subsection, unemployment insurance wages may be taken into account with respect to any individual only to the extent attributable to services rendered during the 1-year period beginning with his first payment of wages.

"(3) ONLY FIRST $6,000 WAGES TAKEN INTO ACCOUNT FOR ANY INDIVIDUAL.—For purposes of this subsection, the unemployment insurance wages paid during any calendar year which are taken into account with respect to any individual shall not exceed $6,000 reduced by the amount of unemployment insurance wages paid by the employer to such individual during the preceding calendar year.

"(4) 20-PERCENT LIMITATION.—The amount of the credit allowable by reason of this subsection for any taxable year shall not exceed one-fifth of the credit determined for such year under this section without regard to this subsection and subsection (c).

"(5) The amount of the credit allowable under section 44D shall be reduced by any amount of credit allowed under section 44B (relating to targeted jobs credit)."

"(e) DEFINITIONS.—For purposes of this subpart—

"(1) UNEMPLOYMENT INSURANCE WAGES.—Except as otherwise provided in this subpart, the term 'unemployment insurance wages' has the meaning given to the term 'wages' by section 3306(b).

"(2) AGRICULTURAL LABOR.—If the services performed by any employee for an employer during more than one-half of any pay period (within the meaning of section 3306 (d)) taken into account with respect to any calendar year constitute agricultural labor (within the meaning of section 3306(k)), the term 'unemployment insurance wages' means with respect to the remuneration paid by the employer to such employee for such year, an amount equal to so much of such remuneration as constitutes 'wages' within the meaning of section 3121(a), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

"(3) RAILWAY LABOR.—If more than one-half of the remuneration paid by an employer to an employee during the calendar year is remuneration for service described in section 3306(c)(9), the term 'unemployment insurance wages' means, with respect to such employee for such year, an amount equal to so much of the remuneration paid to such employee during such year as is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

"(4) HANDICAPPED INDIVIDUAL.—The term 'handicapped individual' means any individual who—

"(A) has (i) a physical or mental impairment which substantially limits one or more of such individual's major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment, or

"(3) has a physical or mental disability which, for such individual constitutes or results in a substantial handicap to employment, and

"(C) has been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

"(i) an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

"(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

"(f) RULES FOR APPLICATION OF SECTION.—For purposes of this subpart—

"(1) REMUNERATION MUST BE FOR TRADE OR BUSINESS EMPLOYMENT WITHIN UNITED STATES.—

"(A) IN GENERAL.—Remuneration paid by an employer to an employee during any calendar year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in the United States in the trade or business of the employer.

"(B) EMPLOYMENT ON AMERICAN VESSEL.—For purposes of subparagraph (A), remuneration paid by an employer to a citizen of the United States for employment on, or in connection with, an American vessel (within the meaning of section 3306 (c)) shall be treated as remuneration for services performed in the United States in a trade or business of the employer.

"(2) SPECIAL RULE FOR CERTAIN DETERMINATIONS.—Any determination as to whether paragraph (1) of this subsection, or paragraph (2) or (3) of subsection (e), applies with respect to any employee for any calendar year shall be made without regard to subsections (a) and (b) of section 52.".

(c) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 52 (relating to special rules) is amended by striking out "December 31, 1975" each place it appears and inserting in lieu thereof "December 31, 1977".

(2) Subsection (e) of section 52 (relating to change in status from self-employed to employee) is amended to read as follows:

"(e) CHANGE IN STATUS FROM SELF-EMPLOYED TO EMPLOYEE.—If—

"(1) during any calendar year an individual has net earnings from self-employment (as defined in section 1402(a)) which are attributable to a trade or business, and

"(2) for any portion of the succeeding calendar year such individual is an employeee of such trade or business

then, for purposes of determining the credit allowable for a taxable year beginning in such succeeding calendar year, the employee's aggregate unemployment insurance wages for such calendar year shall be increased by an amount equal to so much of the net earnings referred to in paragraph (1) as does not exceed $6,000.".

(3) Subsection (g) of section 52 (relating to estates and trusts) is amended by striking out "$100,000" each place it appears in paragraph (3) and inserting in lieu thereof "$25,000".

(4) Subsection (i) of section 52 (relating to $50,000 limitation in the case of married individuals filing separate returns) is amended—

(A) by striking out "$50,000" each place it appears and inserting in lieu thereof "$12,500"; and

(B) by striking out "$100,000" and inserting in lieu thereof "$25,000".

(5) Subsection (j) of section 52 (relating to certain short taxable years) is amended to read as follows:

"(j) CERTAIN SHORT TAXABLE YEARS.—If the employer has more than one taxable year beginning in any calendar year, the credit under this subpart shall be determined for the employer's last taxable year beginning in that calendar year.".

(6) Section 280C (relating to deductibility for portion of wages for which credit is claimed under section 44B) is amended by striking out "No" and inserting in lieu thereof "In the case of any taxable year for which an election is in effect under section 44B, no".

(7) Section 202(e) of the Tax Reduction and Simplification Act of 1977 is amended—

(A) by inserting "and before January 1, 1981," after "December 31, 1976,"; and

(B) by inserting "and carryovers" after "carrybacks".

(d) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply with respect to taxable years beginning after December 31, 1978, and before January 1, 1981.

(2) The amendments made by subsection (a) and subsection (c)(6) shall apply with respect to taxable years beginning after December 31, 1976, and before January 1, 1981.

(3) Section 51(f)(1)(B) of the Internal Revenue Code of 1954, as added by subsection (b) of this section, shall apply to taxable years beginning after December 31, 1976, and before January 1, 1981.

On page 237, strike out lines 18 and 19, and insert in lieu thereof the following:

"(5)(A) 47 percent of so much of the taxable income as exceeds $100,000 for taxable years beginning before October 1, 1979; and

"(B) 46 percent of so much of the taxable income as exceeds $100,000 for taxable years beginning after September 30, 1979."

Mr. HASKELL. This amendment is sent to the desk on behalf of myself, the distinguished Senator from Maine (Mr. HATHAWAY) and the distinguished Senator from Nevada (Mr. LAXALT). I also believe, but I have not doublechecked, that the Senator from Hawaii is a cosponsor of the bill.

Mr. President, 2 years ago we adopted a jobs tax credit for employers who would increase their employment over the employment level of prior years.

Mr. President, at that time the expiration date of this jobs tax credit was December 31, 1978. So unless we do something, this job tax credit, which I may say has the support of all small business organizations, will expire.

Mr. President, the new amendment which has just been sent to the desk provides for a simplification of that jobs tax credit in that there is only one test rather than three. That is, if employees are increased over a level of 102 percent of the previous year, then eligibility is given for the credit. The credit is limited to $2,100 for each additional employee. The credit is limited by a ceiling; that is, that no one employer may take more than $25,000 of credit for this particular job tax credit.

The cost, in fiscal year 1979, is $400 million. In order to keep within budgetary constraints, we have postponed for 1 year the reduction in 1 percentage point of the corporate rate. That is that under this bill, major corporations would pay 47 percent in the succeeding year and then the rate would go to 46 percent thereafter.

Basically, what we have done, Mr. President, is pick up by this amendment $351 million. We have decreased the revenue loss by $751 billion for 1

budget year, by postponing 1 percent of the 2 percent reduction and the cost of the jobs credit is $400 million. Therefore, this would provide an extra $351 million in revenue. Since the bill before the Senate already exceeds budgetary limits, this obviously is a desirable situation.

I should mention that in the bill, there is a so-called targeted credit. That is, if you employ people, for example, on welfare, then you get a credit. This was the administration's idea. Such a credit, while being desirable in and of itself, will not help small business. In the hearings on this credit, the unanimous testimony was that, whereas big business has the capability of training for job skills and job habits—small business does not have this capability. The targeted credit would be of absolutely no service to them whatsoever. Therefore, I propose this small business credit, along with the distinguished Senators that I have mentioned, which would be available, for small business.

Clearly, you could not take a double credit. The statute is drawn so that you either get the credit under the jobs tax credit or you get a credit under targeted if you have employed a targeted person.

Let us put in perspective basically what this credit does. The National Alliance for Business, which is a big business group, testified at the hearing in the Committee on Finance that almost 80 percent of new jobs created in the past 10 years have been by small business. This is big business talking about small business, and I think that is very significant.

What has been the impact of the existing credit which we are amending for simplification purposes? What has been the effect of this credit over the past 2 years since it has been in effect? The testimony of the National Federation of Independent Businesses estimates that the existing credit has created over 300,000 jobs. The Treasury Department has testified that partial returns for 1977 show that business claimed credit for the creation of more than 522,000 jobs. Mr. President, all this in the face of lack of promotion by the Internal Revenue Service.

The Internal Revenue Service has been very slow; they have been very meager in bringing this to the attention of the taxpayers. As a matter of fact, their failure to really promote this credit has led the Governor of Vermont, on his own, to send out a mailing to all small businessmen in Vermont about this credit existence. Therefore, it is my opinion that no real test has been made of the job creation impact.

Let us compare now the situation under the tax laws relating to small business and major business. We all know that the investment tax credit is basically helpful to capital-intensive industry and, therefore, has been particularly helpful to the major corporations of our Nation. We all know that small business, as opposed to being capital-intensive, is labor-intensive. I merely state that this general jobs credit is to small business what the investment credit and ADR are to big business. I also submit, Mr. President, that the innovations, the creativity, the competition, and the basic efficiency of our country lies in the small business sector as opposed to large business. The reason for that, I submit, Mr. President, is very, very simple: in small business, the operator of the business has a major economic stake in the business and, therefore, naturally, he is more creative, he is more diligent, and he is more efficient.

Let us not forget, Mr. President, that this has a $25,000 cap.

Nobody can take any more credit than $25,000, and it will help to lower the 5.9 unemployment rate we now have. The credit will help the small business sector even further to employ people, over and beyond the 300,000 which the National Federation of Independent Business attributes to the credit.

Let me say also that in addition to the NFIB, the National Small Business Association (NSBA), the legislative council of the NSBA which represents between 4 and 5 million small businesses in this country, all support the credit.

Furthermore, the Small Business Association of New England supports this credit.

Now, let us, Mr. President, put this in perspective. What, for example, is the expense of job creation with this particular method as opposed to other methods.

I would like to quote from the Upjohn Institute for Employment Research:

> Based on the estimates of this study, the employment tax credit program appears to be the least costly fiscal method of stimulating employment. The reasons for this result are straightforward. First, firms pay part and generally most of the cost of jobs created through the labor market to affect the decrease in taxes is a traditional demand-side management policy which must stimulate aggregate demand, increase prices, and work through the labor market to affect the demand of firms for labor. Consequently, each dollar of the traditional tax cut only indirectly affects aggregate supply. As a result, the employment tax credit is more cost efficient through its direct effect on aggregate supply and employment.

Mr. President, at this moment, I know there are others who wish to talk. I reserve the remainder of my time.

Mr. MATSUNAGA. Will the Senator from Colorado yield?

Mr. HASKELL. I will yield; but, Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 26 minutes remaining.

Mr. MATSUNAGA. Will the Senator yield 3 minutes?

Mr. HASKELL. I yield 3 minutes to the Senator.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that Christine Domzal and Edwin Ing of my staff be granted the privilege of the floor during the debate and votes on the measure now pending.

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

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that I be made a cosponsor of the amendment offered by the Senator from Colorado.

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

Mr. MATSUNAGA. Mr. President, I rise in support of the amendment offered by the Senator from Colorado—the amendment to extend for 2 years the existing jobs tax credit program.

The jobs tax credit is the only Federal incentive to create private sector employment today and it is needed now more than ever before.

Although the jobless rate had dipped to 5.7 percent in June from 6.1 percent in May, and unemployment averaged 5.9 percent during this year's second quarter, economists fear a rise in unemployment during the remainder of the year.

The recent drop in the unemployment percentage occurred only because of a temporary decline in the number of people entering the work force. It is certain that the number of people seeking jobs in the coming months will grow and the unemployment rate will rise. The private sector cannot generate enough jobs to hire these new workers.

In August, total employment grew only by 156,000 jobs, far less than the monthly average increase for the first half of the year of 368,000 jobs. A Labor Department economist stated in the Wall Street Journal of September 5, 1978, that employment growth clearly is slowing down.

Therefore, the present jobs tax credit must be extended to provide the necessary incentive for job creation.

In addition, this credit is necessary to correct the historic bias in favor of capital-intensive businesses. In the past, large businesses have enjoyed an investment tax credit to pay for new capital equipment. However, labor-intensive businesses have not enjoyed a similar tax benefit. In forging a tax program to stimulate the economy, this committee must concentrate both on capital-intensive and labor-intensive businesses.

Also, it should be noted that this credit is directed specifically at small businesses. Small businesses have provided 80 percent of the new jobs created in the past year. And this sector can create the jobs in the future necessary to provide for our growing work force.

I, therefore, urge the Senate to extend the existing jobs tax credit program.

I thank the Senator for yielding.

Mr. HATHAWAY. Will the Senator yield 5 minutes?

Mr. HASKELL. Yes.

The PRESIDING OFFICER. The Senator from Maine.

Mr. HATHAWAY. Mr. President, I am very happy to be a cosponsor of the amendment of the distinguished Senator from Colorado.

I would like to point out at the outset that in our economy, in general, it is small business that has furnished the competition, particularly in recent years, that we have lost to the big businesses.

I think at a time when we are particularly interested in inflation, it is interesting to note that there are 200 industries in this country—industries, not companies, but industries—which are essentially noncompetitive and which are

dominated, by and large, by big businesses.

The guidepost for determining competitiveness is that in all of these industries the market is dominated by four or fewer corporations.

We find many instances of this. IBM in the computer field, I think, dominates to the tune of about 80 percent. We know what the situation is in the steel industry and the automobile industry and the oil industry.

It is small business that is helping to keep prices down for the consumers through its competitive nature.

I would like to note also that, in the bill that is before us, small business gets very little in the way of tax breaks. I think it is big business in the bill that is getting the lion's share of these breaks, and, actually, it should be the other way around.

Now, the amendment that has been offered by the Senator from Colorado was adopted by the House and the Senate, the general jobs credit, in 1977, and has been in operation for 1 year.

It seems to me, if, for no other reason, we ought to continue this worthwhile program for at least another year, and that is all this amendment asks for.

Last year, as a result of this amendment, business generally, and small businesses in particular, were able to increase their employment, and the unemployment rate has dropped considerably as a result of that.

The provision is designed, of course, to reduce the high national unemployment rate which still remains with us. Since it is going to last for only 1 year, we will have a chance to look it over again at the end of the next year and see whether it is needed to be continued.

The Finance Committee eliminated this general credit and adopted a credit that is targeted to certain groups of unemployed. This certainly is an admirable objective, but I think we still need the general credit to help small businesses.

Generally, small businesses, as we all know, are labor intensive, not capital intensive. The large businesses have the advantage of the investment tax credit. To be sure, the small businesses also have, but they do not have anywhere near the need for it nor the chance to avail themselves of it that the large businesses have.

In answer to the objection that I am sure is going to be raised, that we are going to be rewarding businesses that are going to employ additional people anyway, we could say the same thing about the investment tax credit, which is a much larger group, because we are rewarding, and have been over the years, large businesses that were going to make investments anyway, by giving them an investment tax credit in addition to that.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HATHAWAY. Will the Senator yield me 2 additional minutes?

Mr. HASKELL. I yield.

Mr. HATHAWAY. I thank the Senator for the additional time.

Mr. President, it should be noted that many of the small businesses that have availed themselves of the general tax credit have worked to hire people in the targeted groups; but in many instances, these targeted groups, which are enumerated in the bill, are not in the area where the small businesses are located, so small businesses cannot avail themselves of the opportunity of hiring some of the targeted groups.

In addition, we have the CETA program, which is designed to help the structurally unemployed. The large businesses are in a much better position to aid these targeted groups.

The regulations and rules that will be forthcoming with respect to the hiring of the targeted groups undoubtedly will be quite complicated and will be another burden to place upon small businesses, which already are overburdened with the paperwork requirements imposed upon them by the Federal Government. The larger businesses are much better able to handle such additional paperwork.

Finally, as I said at the outset, the credit has been available for 1 year. I think it is worthwhile to continue it. I was mistaken when I said earlier that the amendment continues it for only 1 year. It continues it for 2 additional years. But certainly that is not too long a time for Congress to go along with a program that has proved to be very worthwhile.

Mr. GRAVEL addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HASKELL. Mr. President, how much time do we have remaining on the proponents' side?

The PRESIDING OFFICER. Sixteen minutes.

Mr. HASKELL. Senator LAXALT would like to speak. Will 6 minutes be adequate?

Mr. GRAVEL. Two or three minutes will be adequate. Let us make it 2 minutes.

Mr. HASKELL. I yield to the Senator.

Mr. GRAVEL. Mr. President, I associate myself with the remarks that have been made.

I was a cosponsor and author of the proposition when it was in the committee. The committee chose to move on a more targeted basis. I believe that was good. Also, I think what was needed was a broader brush, and this does it.

There is an offset in revenue here with respect to a delay in the corporate tax cut, which I think is desirable. We should cut corporate rates at this point in time. However, the situation today is that we have had an increase in employment because a lot of the industries—particularly small business—were not prepared to make a long-term commitment to a capital investment. Now, with the diminution in the capital gains and the corporate tax and accelerated depreciation, we hope that American enterprise will make that long-term investment, that capital investment. That, to some degree, will have an effect on the unemployment statistics in this country; because as the new machines come on line, the first to go will be the least able people.

So, as we move forward to increase our productivity, a window is going to be created in the unemployment picture, and the only chance we will have to fight that problem will be with this kind of credit going right at the structurally unemployed.

It is almost a situation in which you have to take the switch and run it into the job market. We cannot do that with the Government. To some degree, we can be the employer of last resort, but that is not a fundamental answer to the problem. What we have to do is to have our private enterprise—and in this particular case, the free base of private enterprise, the small businesses—aggressively out there, seeking to grab these individuals and pull them into the job market, and make every effort to do it. There is no way these business enterprises can do that unless an effort is made to give them some financial incentive to do it, and that is what this proposal is.

Without this proposal, it will not happen. These people will continue to be a drag on our economic society; and, believe me, we are going to pay one way or the other. We are going to pay in our judicial system, in servicing these people as they come on line, and we are going to pay for their incarceration when that is required.

It is a great deal easier to pay at this point, when we can make these people self-respecting, gainfully employed. The only way to do it is to force the situation and to enlist the support of American enterprise, the full base of the business community—not only big business, which we already have taken care of in this bill, but also small business, which is what this proposition is all about.

So I hope the managers of the bill will accept this amendment and take it to conference and fight for its survival.

I wish to add my words of commendation to the Senator from Colorado, who has led a valiant fight in this regard.

Mr. HASKELL. I thank the distinguished Senator from Alaska.

Mr. President, I do not know whether there are opponents to this amendment, but I would like to reserve the remainder of my time for Senator LAXALT.

Mr. LONG. Mr. President, I yield myself 5 minutes.

I ask unanimous consent that the Senator may offer his amendment en bloc.

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

Mr. LONG. It really has two facets to it.

Mr. HASKELL. That is true.

Mr. LONG. Mr. President, the Senator seeks to help small business further, and that is a very noble cause. I applaud him for his interest in small business. However, I point out that we are doing very well by small business in this bill.

For example, under present law, small businessmen in the zero to $25,000 bracket pay a tax of 20 percent; and under this bill, the tax rate they would pay would be reduced to 17 percent. That, right there, is a reduction of 15 percent of the taxes that small business people would pay on the first $25,000. From the point of view of a person making $25,000, $750 is not small potatoes. That is a very substantial amount of money. It in-

creases very substantially their net income.

Then, in the bracket of $25,000 to $50,000, small business would pay 22 percent, and that is reduced by the bill to 20 percent. So in that bracket there is another 10-percent cut in taxes.

In the bracket of $50,000 to $75,000, small business pays, as does big business, 48 percent. In this case, they would pay only 30 percent. Senators can see that that is a reduction of a very substantial amount in their taxes. I have not calculated it, but that is a very big cut in the taxes they would pay on that additional $25,000.

In the area between $75,000 and $100,000, where presently they pay 48 percent, small business would pay only 40 percent—another 20-percent cut in what they would pay in that tax bracket.

In the area from $100,000 up, they would get the same cut that everybody else gets, which would be from 48 percent to 46 percent.

That, Mr. President, plus the targeted jobs credit that is in this bill, which works out very much toward the advantage of small business, is a tremendous advantage to small business.

In fairness, I think this is one of the best bills that ever has been brought before the Senate, so far as the small businessman is concerned. In the bill, we do dispense with a program that we feel has served its day. In its day, it was a good idea, and we think its day has come and gone. That was the program that provided that you would get a tax credit if you hired some additional person. When that provision became law last year, we had more than 7 percent of the people in this country unemployed, and we were trying to reduce unemployment and get it under control.

We now have less than 6 percent of the people unemployed. The problem is under control. Where we need to work on employment now is for these people who are going to have a difficult time getting a job whether you have good times or bad. These are young people who dropped out of college, in some cases those who are concentrated in the ghetto areas, those who have been disadvantaged by education or heredity or whatever, people who really are going to have a very difficult time getting a job. That is referred to as structural unemployment, including the hardcore poverty cases.

Some of these people were not only poorly educated, but they did not get the advantages that other people got in the home. Some of them for whatever reasons have a negative attitude toward life. Some of them have sort of a Don't-give-a-damn attitude toward employment. And anyone who hires them is really doing society a real great favor because those people are a burden on us. We have to directly or indirectly provide services for them. Those are young people, in the main, who we want to help get into the mainstream. But we provide very enormous tax subsidies in this bill targeted on the hardcore unemployed to help people to provide jobs for those people.

The Senator is not seeking to strike that. He approves of it just as we do. But he also wants to maintain the provision that we feel was a good idea at the time, but which we do not think any longer serves a purpose. It seems to a majority of us on the committee that we would be better advised not to reward with a tax advantage an employer because he hires one more person but to reward the employer if he hires one of these people who is going to have a hard time getting a job for the kind of reasons that I have described.

Further, Mr. President, the Senator's amendment would seek to find the revenue to pay for it, and I applaud the Senator for his fiscal responsibility in that respect, by reducing the tax cut that the other corporations would get. For example, the Senator's tax cut for small businesses would range anywhere from 10 percent up to about 50 percent in the total corporate income taxes that small business people would pay. The larger corporations that employ large numbers of people and that really should be encouraged to expand and put more people to work get less than a 5-percent cut the way it is now under this bill, and the Senator would fix it so they would only get about a 2-percent cut, compared to the 5-percent cut in the bill.

Mr. President, Senators will hear all kinds of complaints, and I think in fairness they will be justified complaints, by the people from the larger companies, the larger employers who after all are doing a good job for society, just like small business is doing. Senators will hear bitter complaints from those people to say: "Well, look, you already started out by giving small business about four times the tax cut in percentage terms that you gave us. Why did you have to do this extra thing to say that even the little bit we got, even the 5-percent tax cut, was too much if we are making over $100,000 in income a year?"

Is not 5 percent little enough to do for large businesses if in some of these small business categories we provide tax cuts of as much as 20 percent and even in the minimum situation provide them a tax cut of 10 percent? Is not 5 percent little enough for us?

I do not know how Senators would propose to answer that complaint. I do not propose to try to defend that. I will have to say that the bill should be a balanced bill. All corporations and all business people are paying more taxes because of the effect of inflation, and we think that they should all be urged to do more. We should have some stimulation for all of them, and I would think, Mr. President, that we would be well advised to try to have a balanced bill and a bill that would provide some tax relief all along the line and that would recognize the fine service that people do in all branches.

May I point out, Mr. President, that in the area between $50,000 and $75,000 small business now pays a tax of 48 percent; under this bill that would go down to 30 percent. That amounts to a 38-percent cut for the small business people on that income. I am for that. But if we are going to give a 38-percent cut for small business in that area, there are other companies, be they the telephone company or the automobile company, or the company that manufactures just anything, that are making more than $100,000. Are they so undeserving that they should not have more than a 2-percent cut? If we could afford a 38-percent cut for the company making between $50,000 and $75,000, on that $25,000, can we not afford better than a 2-percent cut for those making over $100,000? I would think that we can.

In order, Mr. President, that the cut will be shared throughout the economy and that all businesses, be they large or small, will have some incentive to go forward in the areas where they think they can do the most good, we will provide a tax cut for all corporations rather than a rather lopsided one for some without any meaningful tax cut for the others.

Therefore, Mr. President, as much as I applaud the Senator's very noble intent, his fine work for small business, I do not believe that this amendment should be agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. HASKELL. Mr. President, I shall respond to my friend from Louisiana. In the first place, on the targeted jobs credit the testimony was that the targeted credit, the administration's proposal, could not be used by small business. That is No. 1.

No. 2, there are many small businesses which operate either as sole proprietorships, partnerships, or subchapter S corporations. Therefore, a corporate rate tax cut, such as my friend from Louisiana is talking about, does not help them at all.

Also my friend from Louisiana refers to the fact that employment has improved. He is absolutely correct, and I agree with him. But I believe that we have quite a ways to go. I hope that the target for full employment will be somewhere around 4 percent. We are now at 5.9 percent. Fortunately in my State of Colorado we are 4.4 percent. But I say that this provides to the small businessman, certainly to the sole proprietor, to the partnership, to the subchapter S corporation, a real, and possibly the only advantage given under this bill.

I concur with my colleague from Louisiana that the small corporation does get a tax cut. I would point out, however, that I am not trying to eliminate the major corporation tax cut. My friend from Louisiana uses a 5-percent figure. I assume he is taking 5 percent of 48 percent, which is roughly 2 percent.

All I am doing is saying of that 2 percent, 1 percent of it be postponed.

So I hope that the Senate will adopt this amendment.

I reserve the remainder of my time.

Mr. LONG. Mr. President, the Senator from Colorado, I believe, is more reasonable than the group for which he speaks. I have never known the Senator to be unreasonable in what he demanded, of anybody in the Senate. But I do believe the small business group is being unreasonable. Let me explain why.

Over on the House side the small business people were asked, "Which would you rather have, would you rather have a cut in the rates that you pay or would you rather have this small business tax credit for hiring an additional employee?"

They said to the House Ways and Means people that they would prefer to have the cut in the rates. So on the House side the House committee gave them what they asked for, which was a cut in the rates, which, incidentally, is the same thing big business would prefer.

If you look at all the benefits they might have, they would rather you cut the rate than any other thing because that leaves them the decision of what they are going to do with their money, the unfettered decision of what they would do with their tax saving. I do not blame them for seeking that way. So they take the completely understandable view that they would rather have a cut in the rate than the job credit for hiring another employee.

They got it.

When it came to the Senate they said, "We think that is all very nice and we appreciate all that was done by the House, but we would like to have the right to have the credit for hiring additional employees also."

So those who support the Senator's amendment are proposing to let these people have their cake and eat it, too. Not only would they have the rate cut but they would get the additional credit as well.

I submit, Mr. President, when you really get down to it both the House and the Senate is doing more for small business than for big business to begin with. Big business, the big corporations—it is relatively meaningless to them to have the cuts at the lower level applying to income under $100,000, but it means a great deal to small business. So when we do what we have done in the House and in the committee for small business, and then add this to it, at the expense of the other guy who is not getting anything like the tax cut the others are really getting, Mr. President, I think that is asking too much.

That reminds me of one of my good friends whom the good Lord called home to his reward, and I am sure his reward was very great in Heaven. But he would come here year after year from Louisiana representing the American Hospital Association. What he would do as a hospital administrator from Louisiana would be to come to Washington at the time the House had passed the bill and he would go to the American Hospital Association and say, "Now, the House has been good to us, but if you could only have one more thing in addition to what the House did, what would that be?"

So then they would tell him, and he would come to me and he would say, "You know, Russell, if you will just get this one thing, we will be satisfied."

Well, the House thought they were satisfied to begin with when they took care of him over there. But then he would come back with the one thing they wanted the most, and at least some of us in the Senate committee would have the feeling that we were a bunch of Scrooges if we did not do something more for him when, in fact, the House had been good to him.

I submit Senators need have no fear that if this bill becomes law as it is that the small business community will regard this as anything other than a landmark bill, doing, perhaps, more than any bill that has been passed here—if there has been one that does more I am not familiar with it—but doing as well as almost any bill in history has done for small business, giving them fiscal relief and tax incentives. They need have no fear. They can vote for this bill and go home and tell their small businessmen, "Look what I did. I voted to say in the first bracket we will give you a 15-percent cut; in the second bracket, we will give you a 9-percent cut; in the third bracket we will give you a 38-percent cut; in the fourth bracket we will give you a 17-percent cut."

In addition to that, these job credits are worked out in such a fashion that they are very good for small business, very good indeed. Even the things that are done that could benefit the larger businessmen are tailored so they can also be useful to small business.

I really believe, Mr. President, that the bill before us does a great deal for small business. As a matter of fact, even in the bill we passed in 1976, the Secretary of the Treasury complained bitterly that that bill was lopsided in favor of small business when we passed that one. In this bill we go beyond what was done then to make this still a better deal for small business.

I cannot blame them. Any business group is asking for something more. But, on the other hand, those of us in the Senate ought to consider the problems of others, and when we do, in my judgment, it would be unfair and it would be unbalanced to provide more for small business when they have received so very much in this bill the way it stands.

Mr. HATHAWAY. Mr. President, will the Senator yield for a few minutes?

Mr. HASKELL. I yield.

Mr. HATHAWAY. Mr. President, I would just like to point out that the tax cut the Senator from Louisiana says small business is going to get, of course big business will get also. It does not make as much difference to IBM as to the small business making $50,000 to $100,000 a year. They still get the same tax cut.

I would also like to point out, Mr. President, that the amount of revenue loss from the job tax credit will be about $400 million a year, and this would stay fairly constant because there is a cap on it of $25,000.

But let us look at the tables in the report, and we see that by the year 1983 this is what big business is going to get in the way of the investment tax credit, which will amount to over $7 billion, and we are informed reliably by Treasury that 75 percent of the investment tax credit goes to big business; that the ADR, the depreciation range, adopted by the Senate Finance Committee will amount to almost $3 billion by 1983, and 94 percent of that goes to big business.

So I think I can say very justifiably that the Committee on Finance bill is heavily weighted in favor of big business, and that even with the adoption of the Haskell amendment it will still be so weighted, but at least this will move it in the direction of helping small business.

Let me reiterate that we have only had this really in effect for about 1 year. Let us just try it for another 2 years. It will undoubtedly help to reduce the unemployment rate. Certainly that is an objective this Congress will have in mind until we reach the targeted goal of about 4 percent. I think it is very worthwhile when the cost of the revenue loss is only $400 million a year to go on with this worthwhile program for at least another 2 years.

Mr. HASKELL. Mr. President, first, I ask unanimous consent that the distinguished Senator from Indiana (Mr. LUGAR) be added as a cosponsor to this amendment.

The PRESIDING OFFICER (Mr. GLENN). Without objection, it is so ordered.

Mr. HASKELL. Mr. President, I merely have two things: First, this credit does not substitute itself for the targeted credit. That stays. But the targeted credit can only be availed of by big business. Small business does not have the wherewithal, the capabilities, to train the type of people for the targeted credit.

Second, Mr. President, do not forget, I say to my colleagues, that there are hundreds of thousands of small businesses which operate as sole proprietorships, partnerships, and subchapter S corporations, and they get no benefit whatever from the rate reduction mentioned by my friend from Louisiana.

Mr. HATHAWAY. Mr. President, will the Senator yield on that point? I am glad the Senator reminded me of it. I would just like to point out that targeted credit does not have a cap of $25,000, but it goes up to 90 percent of the net taxable income of the corporation. So, it is much larger than what the small businesses will be able to avail themselves of.

Mr. HASKELL. I thank my friend from Maine.

I would be prepared, unless somebody on our side has anything further to say, to yield back my time if the floor manager of the bill is prepared to do so.

Mr. LONG. Mr. President, I will join the Senator in yielding back time in a moment or two. Let me just use a few moments, but not much.

Mr. President, what the Senator said with respect to big business getting the investment tax credit applies equally to small business. They get it as well, and both benefit from that. That is how it ought to be.

With regard to the asset depreciation range incentive previously the big corporations could use it and the small ones could not because it was just too complicated for the small companies to fool around with.

But we have simplified it in this bill, and we expect that a great number of

small business corporations will now begin to use this asset depreciation range, and they will have available to them this asset depreciation range provision, just as do those other larger concerns.

It gets down to a simple matter of equity: You want, in effect, to deny the larger concerns 50 percent of what we regarded to be a balanced tax cut, so as to shift that much to small business, when, on balance, you are already giving small business, in terms of percentages, a far greater break than you are giving to the larger concerns anyway.

In other words, as it stands now, the discrepancy is about 2 to 1 at a minimum for the smaller concerns. Is that not enough? Do you want to make it 4 to 1, or 8 to 1? That would be, in my judgment, just too much, if we are trying to have a balanced bill.

Mr. President, I would hope that we would not agree to the amendment, because I honestly feel the committee has done a conscientious job of trying to treat all groups fairly, and when we have reduced the tax rates for big business by 5 percent and for small business in those brackets by an average of about 20 percent, a 4 to 1 margin favoring small business, I should think that is enough, rather than to make it 8 to 1 favoring small business, at the expense of the other guy.

I repeat, at the expense of the other guy, who is getting the short end already. That just does not make real good sense, Mr. President, and therefore I hope the Senator's amendment will not be agreed to.

Mr. HASKELL. It seems we have a contest to see who gets the last word.

Just one final point, Mr. President. I think we should remember that what the Senator from Louisiana is talking about in terms of rates helps those small businesses operating in corporate form. Of course, it also helps big business.

This job tax credit would go to people who are running businesses themselves, sole proprietorships, partnerships, and subchapter S corporations.

I wish I had figures on the percentage of small businesses that fall into that category. Unfortunately, I do not, but my guess is that a very substantial majority of businesses throughout the land fall into that category.

Mr. HATHAWAY. Mr. President, I would point out to the distinguished chairman of the Finance Committee that maybe the ADR simplification will help a little bit, so that they will have to file one less form than formerly; but the small businesses we are talking about do not have the assets to depreciate. They are businesses that are labor intensive, and that is why we need this credit.

Mr. HASKELL. Mr. President, I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. Is all remaining time yielded back?

Mr. LONG. Hold on just a minute, Mr. President. The Senator has made an additional point; I want to respond to the additional point.

The Senator from Colorado said some of these small businesses are operating as proprietorships and partnerships. That is true; but let us keep in mind that tax avoidance is the greatest in that very area of partnerships and proprietorships.

So while it is true that in some instances individuals pay very high rates, anyone who wants to incorporate is permitted to do so. So why do they operate as individuals? Generally because it is to their advantage to do it that way. More often than not they are operating that way because they will have to pay fewer taxes than they would the other way.

Mr. HASKELL. A lot of people do not operate in corporate form merely because of the expense of incorporation.

The PRESIDING OFFICER. Is all remaining time yielded back?

Mr. LONG. Mr. President, before I yield back my time, I understand the Senator from Indiana might want to make a unanimous-consent request.

Mr. BAYH. I appreciate that, but give me just a few more moments.

Mr. LONG. Does the Senator want the yeas and nays on his amendment?

Mr. HASKELL. Yes.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

● Mr. LAXALT. Mr. President, I am pleased to speak on behalf of the Haskell-Laxalt jobs tax credit amendment. I find this measure attractive for a number of reasons. First, it has a proven, successful track record. Second, it is relatively simple and easy to administer. Third, and perhaps most important, it is of benefit to the small business community, a group too often ignored by our complex tax and Government regulatory apparatus.

For all practical purposes, the Haskell-Laxalt provision extends the existing jobs tax credit through December 31, 1980. What this means is that a tax credit of up to $2,100 per new employee is available to any employer who incrementally increases his employees. The only major change from existing law is that the overall ceiling is reduced to $25,000 from $100,000. This is the equivalent of 12 new jobs per employer.

The general jobs tax credit has a proven track record. The National Federation of Independent Business has estimated that, for the 2-year period since the creation of the credit in 1976, some 300,000 new jobs were created. It is a matter of Treasury record that the businesses have claimed the credit for more than 522,000 jobs during this same period. If these figures are even close to the mark, the cost to Government, which is estimated at $1.1 billion, would have been recouped by a factor of more than eight, by the savings produced by the drop in unemployment alone. It has been estimated that a 1-percent drop in unemployment saves the Government $16 billion.

An additional benefit of the jobs tax credit is its administrative simplicity. A distinct advantage to the general, as opposed to the targeted, jobs tax credit, is the reduced complexity. From a small employer's standpoint, a targeted credit adds a whole new dimension of complexity which makes it difficult for small firms to take advantage of it. Small businesses, whose chief methods of employee recruitment are walk ins' résumés on file and advertisements, are at a distinct disadvantage in locating and certifying select population groups, as compared to larger businesses with established accounting and legal assistance.

In theory, of course, a targeted credit could be employed by any firm. But as a practical matter, only the larger firms will actually take advantage of it. This is for two reasons: First, small businessmen will shy away from the extra effort and redtape involved in finding and hiring someone from specified targeted groups, and second, over two-thirds of the small business community is located away from areas having significant targeted populations.

To my mind, it is time we did something concrete for our labor-intensive small businesses. Small business is that sector of the economy which creates jobs. According to a big business group, the National Alliance for Business, small firms accounted for almost 80 percent of the new jobs created in the past 10 years. Capital-intensive big business already has the investment credits, ADR, and other capital-related tax devices. Labor-intensive small business, on the other hand, bears the brunt of Government regulation and redtape and has far less access to tax advantages than capital-intensive firms.

Mr. President, I believe that in the relatively short time it has been in existence, the general jobs tax credit has proved its utility. I think it has been successful, and has played a significant role in reducing unemployment and saving the Government money. It is the only incentive in the tax code aimed at labor-intensive, small firms. If it is allowed to die at the same time social security taxes and the minimum wage are scheduled to go up, the job-creating momentum of our small business firms could be sharply curtailed.

Mr. President, I believe the general job tax credit should be extended, and I urge my colleagues to support the Haskell-Laxalt amendment.●

The PRESIDING OFFICER. Is all remaining time yielded back?

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

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

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Colorado (Mr. HASKELL). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MAGNUSON. Mr. President, can we have order in the Senate?

The PRESIDING OFFICER. The point has been made that there is not order in the Chamber. The point is well taken.

The clerk will suspend until there is

order in the Senate. May we have order, please?

The clerk will proceed.

The assistant legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Missouri (Mr. EAGLETON) is absent on official business.

Mr. STEVENSON. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The PRESIDING OFFICER. Is there any Senator in the Chamber who has not voted?

The result was announced—yeas 51, nays 42, as follows:

[Rollcall Vote No. 446 Leg.]

YEAS—51

| | | |
|---|---|---|
| Abourezk | Griffin | McGovern |
| Allen | Hart | McIntyre |
| Anderson | Haskell | Melcher |
| Bartlett | Hatch | Morgan |
| Bayh | Hatfield, Mark O. | Pell |
| Biden | Hatfield, Paul G. | Riegle |
| Burdick | Hathaway | Sarbanes |
| Cannon | Heinz | Sasser |
| Chiles | Helms | Scott |
| Clark | Humphrey | Sparkman |
| Culver | Laxalt | Stafford |
| DeConcini | Leahy | Stevens |
| Dole | Lugar | Stevenson |
| Durkin | Magnuson | Stone |
| Ford | Matsunaga | Thurmond |
| Garn | McClure | Weicker |
| Goldwater | | Zorinsky |
| Gravel | | |

NAYS—42

| | | |
|---|---|---|
| Baker | Hayakawa | Packwood |
| Bellmon | Hodges | Pearson |
| Bentsen | Hollings | Percy |
| Bumpers | Inouye | Proxmire |
| Byrd, Harry F., Jr. | Jackson | Randolph |
| Byrd, Robert C. | Javits | Ribicoff |
| Case | Johnston | Roth |
| Chafee | Kennedy | Schmitt |
| Cranston | Long | Schweiker |
| Curtis | Mathias | Stennis |
| Danforth | Metzenbaum | Talmadge |
| Eastland | Moynihan | Wallop |
| Glenn | Muskie | Young |
| Hansen | Nelson | |
| | Nunn | |

NOT VOTING—7

| | | |
|---|---|---|
| Brooke | Eagleton | Williams |
| Church | Huddleston | |
| Domenici | Tower | |

So the amendment (UP No. 1994) was agreed to.

Mr. HATHAWAY. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

## APPOINTMENT OF ADDITIONAL CONFEREE—H.R. 13635

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. BAYH be added as a conferee on the Defense appropriations bill.

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

AMENDMENT NO. 3846

Mr. NELSON. Mr. President, I send to the desk an amendment and ask that it be printed.

Mr. President, this amendment provides a 3-year depreciation on the first $25,000 of capital investment.

I submitted two previous amendments. In the technical drawing of those amendments they mistakenly eliminated the accelerated depreciation in the current law which was not my intent.

So I send this amendment to the desk and I withdraw amendments 3690 and 3809 which were improperly drafted amendments that I submitted yesterday.

The PRESIDING OFFICER. The amendment will be received and printed.

## REVENUE ACT OF 1978

The Senate continued with the consideration of the bill.

UP AMENDMENT NO. 1993

The PRESIDING OFFICER. By previous agreement, the Senate will proceed to the consideration of unprinted amendment No. 1993 to unprinted amendment No. 1992. There is no time limit. The Senate will resume consideration of amendment 193.

Mr. HATCH addressed the Chair.

Mr. MUSKIE. Mr. President, I understand there is a new procedure for the purpose of getting the privilege of the floor for staff up to a limited number. I need more than that to serve my responsibilities as chairman of the Committee on the Budget, so I understand I must request unanimous consent on the floor.

The PRESIDING OFFICER. The Senator is correct.

Mr. MUSKIE. I ask unanimous consent that the following staff members be accorded the privilege of the floor during debate and all votes on the Revenue Act of 1978: John McEvoy, Ira Tannenbaum, Karen Williams, Lewis Shuster, Liz Tankersley, Jill Scheu, Tony Carnevale, Darla Schecter, and George Merrill.

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

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

Mr. HATCH. I am delighted to yield.

Mr. DECONCINI. I ask unanimous consent that Jerry Bonham and Romano Romani of my staff be accorded the privilege of the floor during consideration of the tax bill.

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

Mr. DECONCINI. I thank the Senator from Utah.

Mr. HATCH. Mr. President, I rise in support of the amendment of the distinguished Senator from Delaware (Mr. ROTH), because I am a vociferous supporter of the Roth-Kemp bill, which I think can really solve many of the problems of America, because it rewards the producers of America and gives opportunity to those who are presently having difficulty getting jobs. What the Roth-Kemp bill does is put the incentives into the private sector, where they really belong, anyway, and allows those who are producers to have the opportunity to save more. By saving more, of course, they can invest more, they can expand more, they can expend their capital assets. They can provide new corporations and new businesses, create jobs, and reduce the number of people who are on the unemployment, medicaid-medicare, food stamp, and welfare transfer payments rolls to the point that we might be able ultimately to reduce the expenditures of Government while producing a dynamic economy instead of the static economy we are in right now, where we continually fluctuate between inflation and stagflation.

I think Roth-Kemp has much merit. I think I need to list a few reasons why I am for Roth-Kemp.

WHY I AM FOR KEMP-ROTH

I favor the Kemp-Roth tax rate reduction bill, because it would provide more and better opportunities for all Americans. It is hard for people to get ahead, particularly those at the bottom of the ladder, in an economy in which real economic growth is sluggish. Consequently, various groups use the political process in an attempt to increase their share of limited opportunities. This leads to politically imposed quotas which divide and polarize our great society. The Kemp-Roth bill would remove some of the tax barriers to savings and investment. The economy would then grow much faster, generating more opportunities for all.

I favor the Kemp-Roth bill, because it would provide more financial and political independence for all Americans. When taxes and inflation are high and economic growth is low, people cannot set aside enough out of their own earnings to provide for their retirement or for unexpected hardships such as unemployment. As a result they become increasingly dependent upon Government programs such as social security, the solvency of which is threatened by the low rate of economic growth, and their financial independence is reduced. Other groups, particularly the disadvantaged, become the welfare dependents of politicians. It is hard to be politically independent when your living standards depends on what the Government gives you. By generating more private sector income, the Kemp-Roth bill would strengthen both the social security system and the ability of people to achieve financial and political independence from Government.

I favor the Kemp-Roth bill, because it would save the taxpayers the money that they lose to inflation and the money that the Government has to spend on unemployment programs. Everyone agrees that the Kemp-Roth bill would produce a large number of new taxpaying jobs in the private sector. The only disagreement is over how large a number. The more people who are earning, the less the individual's tax bill needs to be; and the fewer who are in need of unemployment programs, the less the need for tax revenues. For too long the Government's economic policy has consisted of increasing the demand for goods and services, but not their supply. The result has been higher and higher prices. The Kemp-Roth bill brings incentives back into our

economy and focuses on increasing supply to match demand so that prices do not have to continue to rise.

During the past number of months, a number of analyses have been prepared by Jude Wanniski, who is a thoroughgoing student of the Roth-Kemp bill, who is former associate editor of the Wall Street Journal, and president of Polyconomics, Inc., Morristown, N.J.

I find these particular analyses very intriguing and very important.

INTRODUCTION: THE PROBLEM

In the last decade, the U.S. economy has experienced a combination of problems unique in our history: Stagnation and inflation.

The productivity of the economy has fallen steadily since the late 1960's. The value of the U.S. capital stock, as measured by the stock market, is roughly one-third its value (in real, noninflated terms) compared to February 1966. And the purchasing power of the U.S. dollar has fallen by roughly two-thirds in the 1970's.

Conventional economic wisdom has no solution to this malaise. It argues that inflation can only be decreased through austerity. Stagnation can only be overcome by inflation.

THE DIAGNOSIS AND WHY HANSEN-STEIGER, ROTH-KEMP

Consider the axiomatic phrase: "Inflation is too much money chasing too few goods." It is the key to understanding the twin problems of inflation and stagnation. Traditional political economists can end inflation by producing less money, but stagnation remains. Or they can end the stagnation problem by encouraging greater production of goods, but inflation remains as long as money is being created at a greater pace.

The challenge for the political economist is to find a way to both increase the supply of goods and restrain the creation of money. The Hansen-Steiger, Roth-Kemp tax cut amendments are part of that strategy.

TWO STEPS TO CONVENTIONAL ECONOMIC STRATEGY

First. Conventional economic strategy has been to attempt an increase in the supply of goods by: (a) increasing Government spending on goods; or by (b) lowering taxes on the private sector, which leaves consumers more money to spend on goods.

These methods necessarily mean deficit financing by Government and a consequent rise in interest rates.

Second. The next conventional step is to increase the money supply in an attempt to drive down interest rates. But the increased supply of money leads to an increase in the general price level. Economic strategy, under both Democratic and Republican administrations, has been trapped by this paradox, unable to find a simultaneous solution to stagnation and inflation.

ENTER THE PROGRESSIVE TAX SYSTEM

First. To make this dilemma even more difficult, conventional economic strategy must also face up to the inherent problem of the progressive tax system.

Second. Progressive income taxes came into being in the early part of this century. You can think of the progressive system simply as a sliding scale, with lower rates at one end progressing up to higher rates at the other. With tax progressions on both capital and labor, a rise then in the general price level induced by excessive money creation forces the price of both capital and labor to go, if you will, sliding up the progressive tax scale to higher rates of taxation.

Third. Capital and labor then trade the same goods and services in the marketplace, but at the higher price level they must pay higher marginal tax rates, giving a greater share of their production to Government.

Fourth. With capital and labor paying in more to Government—keeping a smaller share of what they produce—they are discouraged from increasing, or sometimes even maintaining, their present levels of production. This is the linkage conventional economic theory is reluctant to face: An increase in the supply of money, intended to drive down interest rates, instead pushes capital and labor into higher tax progressions, eroding incentives to produce, and simultaneously giving us inflation and stagnation.

THE NIXON ECONOMICS AND THE NEED FOR HANSEN-STEIGER

This phenomenon of stagflation began to unfold in earnest in 1969, not because of excessive money creation, but through an explicit reduction of production incentives. In that year, President Nixon agreed to a sharp increase in the marginal tax rate on capital gains, to almost 50 percent from 25 percent. This sharp reduction in the rewards to capital for undertaking new, high-risk enterprise brought on the recession of 1969–70.

In 1971, the Nixon administration attempted to pull out of the recession by encouraging sharp increases in the money supply. But this increased the pace at which both capital and labor have been driven into higher tax progressions.

Today, in 1978, the Hensen-Steiger bill would merely redress this primary error of economic policy by returning to the level of capital-gains tax rates of 1969.

A COMPLEMENT TO HANSEN-STEIGER

The Roth-Kemp bill merely complements this process; its tax cuts are meant largely to offset the adverse impact of inflation on the real rates of taxation paid by capital and labor. It does this by reducing marginal tax rates on personal incomes by one-third over a 3-year period.

This particular amendment provides for 7-percent tax rate reduction in the first year, a 13-percent tax rate reduction in the second year, and 10 percent in the third year.

The Roth-Kemp tax cuts are commonly described as a "drastic" measure. Yet to fully offset the adverse impact of the inflation of the 1970's would take an immediate and whopping increase of more than 60 percent in personal income thresholds, while leaving the tax rates themselves frozen. Compared to this, Roth-Kemp is merely a modest attempt to get back to a sense of reasonableness in Federal income taxation. And, of course, because the cuts are phased in over the next 3 years, the adjustment they make, all the while, would be offset by continuing inflation.

THE NATURE OF THE CRITICISM OF ROTH-KEMP

The critics of Roth-Kemp operate with at least one basic flaw: They fail to treat inflation as a special problem in an environment of progressive tax systems. As a result, they fail to distinguish between average taxes and marginal tax rates. For the conventional economic theorist, the world is made up of stable prices, and a given tax rate has no dynamic economic effect; therefore, the individual, in conventional thinking, cannot be inflated into higher tax brackets.

Let me illustrate this fallacy in thinking with the following:

An economy can thrive even with a marginal tax rate of 100 percent, if the income at which the rate is encountered is very high, say $1 million per day (in other words, Government would confiscate 100 percent of any amount earned above $1 million per day). But if money loses so much of its value that $1 million can only purchase a loaf of bread, all production would stop after the baker had sold his first loaf each day; the Government would confiscate all subsequent loaves as income tax. Average "taxes" collected by the Government would collapse to near zero even as marginal tax rates climbed to near total confiscation.

THE LAFFER CURVE

The instrument we use to examine this dynamic effect is the Laffer curve, which applies the law of diminishing returns to tax rate policy. The Laffer curve merely enables us to think in dynamic, rather than static, terms when we consider the effects of inflation on marginal tax rates.

The curve does not speak to "average" tax rates, which have no relevance in determining individual economic actions. The curve applies to individual economic activity, in which each individual faces a different marginal tax rate.

In spite of this, critics of the Laffer curve and of Roth-Kemp insist on speaking of average taxes, average savings rates, and average incomes in their economic analysis.

The foremost critic of Roth-Kemp, Prof. Walter Heller, makes what might seem to be a powerful case against the legislation by accepting, as all economists do, the validity of the Laffer curve, and then arguing that the point of diminishing returns on the curve has not been reached. He does so by focusing entirely on average taxes.

But remember, in the baker example, average taxes can drop toward zero as individuals are pushed toward the highest marginal rates. Clearly, it should not be an objective of economic policy to reduce average taxes, which can be done by impoverishing the economy via confiscatory marginal rates. Yet, this is what Mr. Heller mistakenly believes to be the theory behind Roth-Kemp.

I might add that the Laffer curve has been around for centuries. The other day, I put an article into the RECORD which shows that in the 14th century, an Arabic scholar actually elucidated the

Laffer curve very well. I believe that was either in the RECORD of yesterday or the day before.

THE NATURE OF THE CRITICISM OF HANSEN-STEIGER

Criticisms of the Hansen-Steiger capital gains proposal are social, not economic. The Carter administration opposes the measure on the grounds that it benefits the rich. Treasury follows this by asserting that the lower rates will cost $2 billion in revenue flow.

The response from the economics profession as a whole—liberal and conservative—has been to reject the Treasury prediction, which assumes lower rates will have zero impact on production incentives. Economists mav disagree on how powerful an effect Hansen-Steiger would have in expanding the U.S. production and tax base, but literally all conservative economists—those associated with the Republican Party, for example, agree that the Hansen-Steiger tax rate reduction will finance itself in the first year by several times $2 billion by an increase in revenues from all sources.

Liberal economists, who may disagree with Hansen-Steiger on social grounds, by and large—publicly or privately—accept the potency of this measure on output and revenues.

ANALYSIS NO. 2

Again, the failure to distinguish between average and marginal tax rates distorts any economic analysis of Hansen-Steiger, Roth-Kemp. The criticisms are further flawed by being static rather than dynamic. That is, the critics assume the impact of a tax rate cut will come only on the demand side of the economy, by increasing consumption. A dynamic analysis would take into account the increase in the economy's incentives to expand capacity itself, either in quantity terms or quality terms—more goods or better goods.

I think these are things that have to be taken into consideration as we consider this amendment, which would reduce tax rates by 30 percent over the next 3 years—at 7 percent for the first year, 13 percent for the second year, and 10 percent for the third year. I do not think there is any question that this would be a very healthful thing for our economy.

The foremost critic of Roth-Kemp, Prof. Walter Heller, makes what might seem to be a powerful case against the legislation by accepting, as all economists do, the validity of the Laffer curve, and then arguing that the point of diminishing returns on the curve has not been reached. He does this by focusing entirely on average taxes.

In his July 12 essay in the Wall Street Journal, Mr. Heller asks:

> Have tax pressures increased sharply since the mid-1960s and perhaps brought us closer to the breaking point? Comparative figures assembled regularly by the OECD show total U.S. taxes at 27.3 percent of GNP in 1966 and 29.6 percent in 1976, hardly enough of an increase for tax cuts to trigger much bigger responses today than in the mid-60s. Besides, with top income tax rates at 50 percent and 70 percent instead of 91 percent, there is less tax disincentives to remove.

The confusion here is between averages and margins. Individuals do not face average tax rates, they face marginal rates (that is, the percent Government will tax on any additional $1 earned). In fact, if progressive marginal rates are unnecessarily high, their lowering could produce higher average taxes to the benefit of everyone.

WEST GERMANY AND INDIA

This brings to mind the critics who continually ask why West Germany is now doing so much better economically than the United States and yet allows a greater percentage of its national income to flow through its Government; that is, average taxes in West Germany are higher than in the United States.

The answer is that West Germany's marginal tax rates are lower than in the United States—50 percent at the top, no capital gains tax rate at all.

India is in almost the exact opposite position. India taxes at such an extraordinarily high marginal tax rate (67 percent at $12,000), only a dribble of revenues are available for State spending. Only 9 percent of India's GNP is spent by the national government. Marginal rates are high, average taxes very low.

HAVE DISINCENTIVES BEEN REMOVED?

Professor Heller's point that "there is less tax distincentives to remove," because tax rates were brought down since 1964 is only partly true. The tax burden today would probably be intolerable had rates not been brought down in 1964.

What Mr. Heller fails to recognize is that individuals pay taxes by calculating rates multiplied by income thresholds. Although tax rates have come down some since 1964, income thresholds during this time have more than doubled through inflation alone. Moreover, Mr. Heller fails to note the huge bite on capital gains added since 1964, which pushed effective marginal tax rates on investment income back toward the 91-percent level.

FAULTY VIEW OF SAVINGS

The propensity to view the economy as a collective, in which an average has meaning, extends to Professor Heller's view of savings. The supply-oriented economists, led by Laffer, argue that lower Federal income tax rates will so expand production that a temporary fall in revenues, should one occur, would easily be financed through an expansion of savings.

Yet, in his June 28 testimony before the Joint Economic Committee of Congress, Mr. Heller asks:

> Why, in the face of Laffer's assertions, has "Denison's Law" held true through thick and thin for the past 100 years or so? Edward F. Denison of Brookings has found that U.S. gross private domestic saving has been virtually invariant year-in and year-out in the face of high taxes, low taxes, or virtually no taxes.

Again, Professor Heller fails to recognize that "average" savings rates need not increase at all in order that savings as a whole increase. He would agree that everything produced is either consumed now or saved for future consumption. If high marginal tax rates are discouraging production, both consumption and savings are held back. If those unnecessarily high tax rates are eased, inviting greater production, both consumption and savings increase.

In other words, as the so-called economic pie increases, the slice saved for the future can remain the same proportionate size, in accordance with Denison's Law. But its absolute size increases.

Denison found that the savings rate has remained constant at 16 percent of the total pie. His "Law" is meaningless, because it is a static tool, not a dynamic one. Observe that by increasing the radius of an 8-inch pie to 10 inches, a 25-percent increase, the slice that is 16 percent of the total expands to 50 square inches from 32, a 56-percent increase.

THE PROHIBITIVE RANGE

As a graphic depiction of the "law of diminishing returns," the Laffer curve simply states an eternal verity. There is a point at which adding an extra straw will break the camel's back. Professor Heller appears to accept this notion, but then argues that the point has not been reached.

And he goes on to say:

> And even if there was something to the Laffer thesis, who is to say that we are in a high enough tax zone to produce those dire effects of higher rates and delightful effects of lower rates that Laffer postulates?

Having, in effect, accepted the Laffer curve, Mr. Heller cannot logically argue that we are not in the prohibitive range (where tax cuts will yield additional revenues) unless he is also prepared to argue that we are in the productive range (where tax rates can be raised to produce dramatic revenue gains). Instead, Professor Heller completes his remarks by recommending a "moderate cut of $15 or $20 billion (or even $25 billion if monetary policy tightens a lot) * * *."

In the demand-oriented world of Professor Heller, there is no need to specify where the $25 billion in tax cuts should be made, as long as there is an additional $25 billion that can go into consumer demand for goods and services. The quickest way to do this, which is the advice President Carter got last year, is through tax rebates, an idea the supply-oriented economists say is counterproductive, having no incentive effects at all.

LAFFER'S UNCERTAINTY

In his July 12 essay in the Wall Street Journal, Professor Heller quotes Professor Laffer as having told Newsweek:

> There's more than a reasonable probability that I'm wrong.

The statement does not accurately reflect Laffer's belief that there is a very high probability he is right, but that there is no way for a single mind to know precisely the optimum point on the curve. Determining that point comes through competition in the political marketplace.

THE MELLON TAX CUTS

In the 1920's, Treasury Secretary Andrew Mellon found himself in a similar position of defending his proposals for sharp tax rate reductions. Mellon used an analogy which is as valid in today's environment as it was earlier this century.

Henry Ford, he said, could produce 1,000 automobiles and charge $1 million each, or he could produce 1,000,000 automobiles and charge $1,000 each. Ford revenues would be the same in each instance. Ford, though, is pushed to finding the optimum point because he has competition. The result is the maximum number of units at the lowest possible price.

The public sector, Mellon continued, has the same range of alternatives in selecting the optimum tax rates, which is the "price" it charges for public goods and services. By its nature, though, the public sector has no competition, but is monopolistic. Political leaders must find the optimum point on the curve by internal competition. As in the economic marketplace, tension is between price and volume. If the one political party stresses tax rate reduction when rates are in the prohibitive range of the curve, as was the case in Mellon's time, that party would be expected to win more elections. And vice versa. If another party goes in the opposite direction, ignoring the need for tax relief when tax rates are in the prohibitive range, that party would be expected to lose more elections.

The point is, it is inappropriate to ask Laffer or any other single economist where exactly we are on the Laffer curve. That point is determined through political competition, based, of course, on the advice of political economists. And, today, virtually all supply-side economists have concluded there is a very high probability tax rates have been inflated into the prohibitive range, and can be reduced with no revenue loss or with self-financing.

IF LAFFER IS WRONG

Professor Heller concludes, in his July 12 essay in the Wall Street Journal, that if Laffer is wrong, he may be leading the Republican Party "over the cliff."

What will occur if Laffer is wrong?

Treasury estimates that Roth-Kemp has a first year cost of $20 billion in receipts. That combined total, notice, is lower than the $25 billion Professor Heller said he would accept if money were kept tight. Under absolutely static conditions, in which there is no supply response in the economy to the lower tax rates, the worst possible condition would be an increase in the Federal deficit by $20 billion.

ROTH-KEMP AND INFLATION

With Federal expenditures constant, this would mean the American people would finance $20 billion more in Federal outlays with bonds and $20 billion less in taxes. Individuals, in aggregate, would produce and consume the same amount of goods and services in this static world, but interest rates would be marginally higher. This reflects the fact that the future economy would have to produce $20 billion more in goods and services that would have to be taxed out of the productive sector to pay off the additional bonds.

There is, even in this worst case, no direct "inflationary" effect. Inflation, which is a decline in the monetary standard—in this case the dollar—results from excessive money creation in the absence of restraint.

Professor Heller's further criticism of Roth-Kemp is as follows:

(1) Unlike the 1960s, we are now in an inflationary environment. Where the Kennedy tax rate reduction worked exactly as planned, a similar strategy today will not work.

(2) Roth-Kemp would quickly cause inflation by bringing about capacity bottlenecks. Utilization rates in today's economy are low, but only low enough to respond to a one-year tax cut, not the three-year reductions of Roth-Kemp.

Again, this is a static approach that assumes the impact of Roth-Kemp will come only on the demand side, increasing consumption, with no increase in the economy's incentives to expand capacity itself, either in quantity terms or quality terms.

THE SPENDING ISSUE

Roth-Kemp has attracted support from economists who are not supply oriented. These theorists believe the proposal surely will lose revenues, but this will force government into greater prudence.

The difference here is a matter of intention and not final results. In the dynamic scenario envisioned by the supply-side economists, passage of Hansen-Steiger, Roth-Kemp will lead to sizable reductions in public expenditures for social-support programs. But this would be a natural process that unfolds as a result of economic expansion.

In other words, individuals now being supported wholly or partly by the government "safety net" of welfare payments, food stamps, unemployment benefits, medicaid, et cetera, will be drawn into the expanding private sector from the attraction of lower marginal tax rates. They not only stop drawing resources from the productive economy through tax/spending transfer payments. They become contributors to the treasuries of Federal, State, and local governments.

THE ADMINISTRATION'S STATIC SPENDING PROJECTIONS

There is an implied forecast in the Carter administration budget that nothing can be done to reverse the process by which American citizens are forced to turn to social-support transfers.

Indeed, the administration appears to make straight-line projections along an upward slope for social spending. The vision of the future is one or more people cramming into the safety net, fewer people in the productive sector. Thus, spending projections are as static as revenue projections.

Yet the Carter budget office plans on benefiting from inflation. The budget forecasters assume annual rates of inflation in excess of 6 percent in the next 5 years, and then calculate an increased revenue flow to the Treasury as a result of an upward shift of the entire work force into higher tax brackets. Again, they give zero allowance for the continuing disincentive effects of this process.

If President Carter is wrong, as a result of the counsel he is getting, the 6-percent inflation he assumes over the next 5 years will accelerate the economic contraction of the last dozen years. Incentives to production will continue to collapse, the tax base will shrink, and revenues will decline in real terms even as they climb in inflated terms. The safety net will be crammed with even more numbers of Americans demanding transfer payments in order to survive.

THE DYNAMIC SCENARIO

On the other hand, supply-side economists expect the reverse situation to occur with passage of Hansen-Steiger and Roth-Kemp:

(1) an increase in real revenues through expansion of the tax/production base; and

(2) reduction in transfer payment expenditures at federal, state and local levels as individuals become ineligible for such payments by virtue of being elevated into more rewarding private sector employment.

CAN FEEDBACKS BE EXPECTED?

Excluding social security, social-support transfers at all levels of government are now roughly $220 billion. The number will, of course, continue to expand, if only nominally through inflation, with a high probability of expansion in real terms if tax rates are not adjusted downward to permit economic expansion. In 3 years, the phase-in of Roth-Kemp, the number would go to $260 billion merely by a 6-percent inflation and to $290 billion if there is also a 2-percent increase in real terms.

If Hansen-Steiger, Roth-Kemp bring about the expected economic expansion, Government transfer payments would shrink.

If they shrink by one-third, Government outlays are reduced by almost $100 billion per year.

If they are reduced by one-sixth, outlays fall by $50 billion.

If a tenth of transfers are eliminated, the number falls by $29 billion per year.

These are precisely the kinds of calculations made by liberal Keynesians in support of Government spending programs; that is, $100 billion "Marshall Plans" for urban renewal. The point, though, is that there are such feedback effects—in either spending programs or tax rate reductions—and it is reasonable to assume they will go a long way toward financing the Hansen-Steiger, Roth-Kemp measures.

TREASURY'S FALLACY

Treasury estimates Roth-Kemp would lose $98 billion in revenues over the 3-year period. Treasury's argument is based on the fallacy that says the $20 billion cost of the first year's tax reduction can be set against current revenue projections, with the assumption that revenues will continue to expand in the second and third years, both nominally and in real terms, to reach $98 billion.

In other words, the Government is inflating the work force into higher tax brackets in order to produce greater revenues, and then complaining that Roth-Kemp will cause a loss to Treasury from that inflated income stream.

IN CONCLUSION

The upshot is that the supply-side economists believe with absolute certainty that the Republican tax program

will have a dynamic effect on both revenues and spending. That is, when Treasury so assertively concludes the measures would lose a hard $100 billion over 3 years, supply-side economists are certain this dire prediction will not be the case.

Almost no economist of any persuasion would disagree on this point. There would be some economic expansion that would both increase revenues above the projected Treasury path and there would also be a reduction in spending for social-support programs below the projected Treasury path.

Professor Laffer and the supply-side economists believe there is a high probability the combination of higher revenues and lower spending would finance the tax cuts entirely. And even if a short-term revenue shortfall should occur at the Federal level, which remains a possibility, they believe the total increase in national savings will more than cover this amount. As a result, there would be no crowding-out of private capital by Treasury borrowings.

Insofar as this reduces pressure on the monetary authority to be excessive in its money creation, the effect of the Hansen-Steiger, Roth-Kemp amendments would be to retard inflationary forces. There would be less money chasing more goods, a simultaneous blow against the twin problems of stagnation and inflation.

(Mr. SPARKMAN assumed the chair).

Mr. HATCH. What about Roth-Kemp and its inflationary effects? Will not Roth-Kemp create a sudden and huge surge in consumer spending, creating the inflationary situation of too many dollars chasing too few goods? Even if investment spending increases at this time as capital stock is put in place, will not this too be inflationary, particularly in the short run?

There are two effects of a tax rate reduction along the lines of Roth-Kemp. One, which this question addresses, is the increase in after-tax incomes of workers and investors.

In the first year of Roth-Kemp, this increase "in consumer pockets" would amount to $20 billion in a gross economy 100 times as large. But while $20 billion goes, in effect, into consumer pockets, $18 billion comes right out as a result of increased social security taxes and inflation-related tax increases. This $2 billion net is only one-thousandth the size of the economy itself—hardly enough to overwhelm capacity with great surges in consumer demand as the gloomy inflation scenarios predict.

In addition, to the degree the economy sees that this $2 billion must be paid back to finance the bonds that make it available, the economy will save, not spend, the $2 billion. Particularly in the lowest income classes, where credit is often necessary for survival, the net result of Roth-Kemp would tend to play down debt, thus going into savings, not consumption.

The second, more important effect of Roth-Kemp is to remove unnecessarily high barriers to production. That is, a lower tax rate not only affects the current paycheck—or interest payment, or dividend check. It holds out greater incentive to work, save or invest in the future. The increased willingness of workers to produce plus the increased willingness of capital to assemble workers in new or added enterprise—there now being a greater reward for such effort—lifts the entire economy to a higher level of efficiency. Even if the physical effort expended, in aggregate, remains the same, production of goods and services increases by increased efficiency—productivity.

As to the effects of increased investment spending, a tax rate reduction cannot focus on either labor or capital to the exclusion of the other. If tax rates on labor were zero and tax rates on capital 100 percent, there would be no employment, thus no enterprise, and no revenues. Roth-Kemp, of course, applies across-the-board on the incomes of workers, savers and investors.

There would also be no short-run inflationary effect from Roth-Kemp. The economy simply does not await actual passage of a tax cut to begin expanding work, saving and investment. The closer Congress gets to passing Hansen-Steiger and Roth-Kemp, and as White House resistance subsides, the more buoyant the economy will become.

Federal, State, and local tax revenues have, without doubt, increased already on the mere anticipation of lower Federal rates. That is, as individual workers, savers and investors "gear up" to take advantage of the lower rates, their taxed transactions and incomes provide increased revenue flows.

Another question that is commonly asked about the Roth-Kemp tax-rate reduction bill is, where is the U.S. economy today on the so-called Laffer curve?

It is inappropriate to ask where a nation as a whole is on the Laffer curve, which is an instrument to analyze only "individual" economic actions. Some individuals face low marginal tax rates, some confiscatory rates. And the measure of total economic activity is the result of the summation of these individual calculations.

But a nation as a whole does not face a marginal tax rate and thus cannot be placed on the Laffer curve, except as a rough, anecdotal expression of the collective problem of excessive taxation of individuals. It is clear that millions of individuals work and save less than we would like because they have been pushed into higher marginal tax brackets. Thus, if tax rates were reduced at the margin, saving and growth would increase.

Another question: How did Roth-Kemp arrive at the 30 percent tax cut figure—10 percent each year for 3 years?

If inflation is the major fear of Roth-Kemp, why not expand the tax cut time frame to 5 years, beginning the first year at a relatively low tax cut rate, increasing it year by year at an increasing rate?

Roth-Kemp is designed as an ex poste adjustment of tax rates to offset the debilitating inflation rates of the 1970's. If the progressive income tax rates had been indexed since 1970 to annually adjust for the rate of inflation, thereby preventing real increases in tax rates from occurring, the income thresholds would have been adjusted upward by more than 60 percent in that period—except that if the rates had been indexed, the deficits, contraction and inflation would not have been as severe as we have experienced.

In light of this, Roth-Kemp's 30 percent tax cut over 3 years is a relatively modest attempt to return to a sense of reasonableness in Federal income taxation.

As to the second question, Representative KEMP originally planned a 1-year adjustment, conceding to requests for a cautious phase-in. To extend the phase-in over 5 years would not adjust for the inflation the Carter administration forecasts for the future, let alone the last 8 years of inflation.

In other words, those in the present administration have given up. They pretty well say they cannot do anything about inflation. And, of course, as they plod along with measures like Humphrey-Hawkins, so-called labor reform, and measures such as that, it seems what they are really doing is saying, "In terms of our desire to serve these special interest groups, we literally cannot do anything about inflation."

And it seems to me that is what they are saying. In that light, the Roth-Kemp tax reduction over 3 years really is a very modest measure to attempt to cope with inflation.

Another question: What about Roth-Kemp helping to maintain or even enlarge our present Federal deficit? Deficits have the inflationary effect—Federal borrowing, crowding out, et cetera—of pushing up interest rates, which usually results in pressure on the Federal Reserve to increase the money supply. Is not the only safeguard against inflation in this situation some kind of accompanying cut or limitation in Federal spending?

Prudence—restraint in the expenditure of public funds—is always helpful to the Treasury and Federal Reserve in the management of public finance. And today's vigilant congressional efforts to restrain spending should be maintained.

But it is the opinion of a growing number of economists that not more than a reasonable fraction of the congressional effort should be invested in this endeavor. By this they mean that if half of Congress devotes itself to increasing Federal outlays, and the other half devotes itself to decreasing Federal outlays, there remains no political leadership devoted to economic growth. This, essentially, has been the condition of the past dozen years, although I would hasten to add that I think the half which is increasing Federal outlays has exceeded the half which is trying to cut Federal outlays.

Moreover, it does not seem realistic to expect that $50 or $60 billion deficits can suddenly be ended by trimming back Federal outlays. The public demands collective expenditures for social support programs during periods of collective economic contraction, which the United States has been experiencing for more than a decade. In fact, the public will even tolerate large waste in spending programs to insure that as many of their fellow citizens as possible are assisted.

by collective effort, during this contraction period.

The approach Roth-Kemp and Hansen-Steiger take is to end the economic contraction—which brought about the increase in Federal expenditures in the first place—and invite a period of economic growth by removing tax disincentives to commerce.

Both proposals are a suggestion that the time and intellectual resources of Congress be concentrated on expanding the economy's productive base, which, of course, expands the tax base as well. In such an expansion, we would expect the public demand for Federal outlays to diminish as the threat to their fellow citizens caused by contraction is ameliorated.

Another question: Norman Ture estimates the Roth-Kemp tax cuts will increase capital investment by $113 billion—more than a 30-percent jump—in "real" dollars. This would be an investment boom without precedent; larger than the jump in investment between 1965 and 1972.

Writing in the National Journal, journalist Robert Samuelson comments that "even if business wanted to increase investment that much, shortages in supplies and the needed machinery and materials almost certainly would rise." Samuelson adds that without offsetting cuts in Federal expenditures, such huge tax reductions would risk creating an enormous surge in spending which would lead either to a dangerous accelerating of inflation or to a crippling credit crunch.

Accepting, for purposes of discussion, the validity of Dr. Ture's numbers, it is beyond our understanding of all variety of economic theory how a privately-financed boom in capital investment could do all the terrible things imagined by Mr. Samuelson. Economists of all theoretical schools, including Marxists, would dismiss the Samuelson scenario. Any economist would welcome a $113 billion increase in capital investment, privately financed, if he could get it.

The more pertinent question goes to Dr. Ture's estimate of a 30 percent increase in real terms, greater than the investment jump between 1965 and 1972. Supply-side economists believe such an increase is within the realm of possibility because they believe the U.S. economy in 1978 is operating well below its potential, certainly at a far lower speed than it was achieving in 1965. Government statisticians, who can only measure quantity of production and static utilization rates—based on past rates of capital investment, dispute the supply-side theorists. But the electorate seems aware that the economy is dragging along, especially in quality measures, relative to the pre-inflation era.

The next question: If the Roth-Kemp tax cut proposal were enacted today, how would interest rates be affected in 1979, 1980, and 1981?

Interest rates are, for the most part, a function of monetary policy. But if we can assume, for analytical purposes, that monetary policy stays constant, interest rates would be lower with Roth-Kemp. This is because supply-side economists believe marginal tax rates are now in the prohibitive range of the Laffer curve, and Roth-Kemp would expand the productive base, the tax base and revenues. The economy's savings pool would expand with production and there would be "crowding in," not "crowding out" in the capital markets.

Remember, too, that income tax rates are part of the wedge between borrowers and lenders. That is, there is an "interest rate paid" by the borrower and an "interest rate received" by the lender.

The difference is the amount taken by the Government in taxes. When this wedge is reduced through a lowering of the tax rate, we would expect the interest rate paid by the borrower to fall, even though a part of the decreased wedge goes to a greater interest rate received by the lender.

Supporters of Roth-Kemp point to the high levels of business investment as a result of the Kennedy tax cuts in the 1960's. But did not corporate investment increase because, at around the same time of the Kennedy tax cuts, the investment tax credit was introduced along with the much-needed reform of depreciation guidelines?

Granted, Roth-Kemp may raise dividends and retained earnings, but there is no reason to believe it would result in dramatically higher levels of corporate investment.

The investment tax credit and reform of depreciation guidelines no doubt had beneficial effects on business expansion. But these measures are biased toward favoring mature enterprises and do little to encourage new growth and young enterprise, which our economy today sorely needs to renew itself.

The investment tax credit has probably not been as beneficial to the economy as a whole as its proponents believe. It explicitly prejudices the entrepreneur's selection of the factors of production in favor of physical capital, against labor. To the degree labor is displaced, even temporarily, the cost to Government of social support programs would increase.

With Roth-Kemp, higher levels of corporate investment would flow, in the first instance, from encouragement of new enterprise and new corporate investment, as the pretax costs of all factors of production would fall and the potential rewards to risk capital would increase dramatically, facing not a marginal tax rate at the top of 70 percent, but of 50 percent.

I think these questions certainly are answered and answerable.

We are in a recovery stage with persistently high inflation and one of our largest budget deficits ever. Now you are asking us to take a bold economic gamble—Roth-Kemp—based largely on historic anecdotes that show major tax cuts will increase revenues. What hard economic data do you have to support such a notion?

Today a growing number of economists believe our present inflation and large budget deficits are chiefly the result of a major inefficiency in the U.S. economy caused largely by high marginal tax rates. Individuals are not saving, investing, or working at desirable rates or in desirable ways.

A clear sign of this inefficiency is the existence of today's large "cash" or "subterranean" marketplace outside the official tax paying economy. The Government provides no hard economic data on this marketplace—because it exists outside the vision of the tax collector. But academic estimates are on the order of $200 billion. Lower marginal tax rates on capital and labor would draw part of this cash economy into the official tax paying economy, making the total economy more efficient and expanding the tax base as well.

Today's stock market is perhaps even harder evidence of inefficiency in the economy. The stock market is a precise measure of the value, after taxes, of the Nation's capital stock, that is, the economy's ability to produce a given flow of goods and services in the future and to reward the producers so they will sense the value of their efforts.

The Dow Jones industrial average touched 1,000 in February 1966, as the market forecast highly efficient production flows from the capital stock. The DJI has not been close to 1,000 since then, in 1966 dollars, and is now below 900 in current dollars. For the stock market to now value the Nation's capital stock as highly as it did in 1966, the DJI would have to be roughly 2,500 or more.

You might say the economy today is not so much unemployed as it is underemployed, with individual workers and investors operating well below potential to the detriment of the economy as a whole. They operate below their potential because tax rates are discouragingly high, standing as impediments to commerce.

Of course, much is said about the revenue reflows from Roth-Kemp, but not enough is said of the effects of increased savings. Chase Econometrics estimates that personal savings, retained earnings, and other capital inflows will rise enough from the tax rate reductions found in Roth-Kemp to cover any added deficit, should there be such, and still leave enough saving left over to increase net investment substantially. This would deliver an enormous noninflationary boost to real growth and productivity.

Prof. Walter Heller says the Roth-Kemp tax cuts "would simply overwhelm our existing productivity capacity with a tidal wave of increased demand and sweep away all hopes of curbing deficits and containing inflation." Roth-Kemp supporters respond that the proposed cuts are not nearly as large as Heller claims. What is the truth of the matter?

Professor Heller and other opponents of Roth-Kemp think of a tax cut only in terms of the number of dollars it dumps into the economy. This is supposed to stimulate "demand" and purchasing power, and be spent about twice over to increase GNP by a multiple of the tax cut. This line of reasoning is badly out of date, but for purposes of this discussion it will be adopted.

Opponents of Roth-Kemp then claim the proposed tax cut is too large and the resulting increase in spending would

greatly exceed our unused capacity, currently between $70 and $90 billion. But is the net result of Roth-Kemp really that large?

Chase Econometrics estimates that social security tax increases and the tax increase from inflation—as it pushes people into higher tax brackets—will amount to $350 billion over the next 5 years. Yet, the Roth-Kemp tax cut itself totals only $340 billion for the same 5 years. Who is fooling whom about great spending surges?

Given that social security and other inflation-related tax increases will amount to $23 billion in 1979, $42 billion in 1980, $74 billion in 1981, $94 billion in 1982, and $113 billion in 1983, the net result of Roth-Kemp is only $2 billion in 1979, $8 billion in 1980, and $5 billion in 1981, and a net tax increase of $7 billion in 1982, and a net increase of $18 billion in 1983.

So how can Roth-Kemp overwhelm our existing productive capacity and generate wild inflation, even given Professor Heller's demand-multiplier analysis? Clearly, if we ignore a $350 billion social security, inflation-related tax increase over the next several years without some offsetting tax relief, we will have a severe recession which will generate perhaps the largest deficits in the history of this country.

If the goal of Roth-Kemp is to generate economic expansion on the supply side of the economy, why is the proposal so stingy with cuts in the corporate income tax? Should not the corporate income tax cuts be at least equal in magnitude to the personal income tax cuts to accomplish your called-for rate of economic expansion?

It is a mistake to think of corporate taxes as taxes on capital and personal taxes as taxes on consumption. Both are taxes on production, with the former applied selectively to corporate income, the latter applied to all forms of productive income.

In the final analysis, all income flows through to individuals, which is why Roth-Kemp emphasizes cuts in personal income taxes. An across-the-board reduction in individual income tax rates treats all forms of primary income sources without bias. In other words, individuals receive taxable income from wages and salaries, interest, dividends, royalties and capital gains, and all of these must encounter the personal income tax schedules.

There is a second reason why personal income tax cuts are so important. Any tax plan that cuts business taxes but neglects personal income taxes will do nothing to raise the rate of return on work effort. Nor will it increase the after-tax rate of return on savings. And increased savings is an important byproduct of any tax cut plan.

Consider the administration's proposed tax plan, which would cut the corporate taxes while doing little to encourage increased individual work effort and savings. Businesses would be encouraged to expand. They would rush to the credit markets—today retained earnings and the investment tax credit meet only a fraction of business capital needs—and find Government trying to borrow back the tax cut it just granted. Interest rates would soar. The Federal Reserve would see this as crowding out, increase the money supply, and thus guarantee inflation.

The flaw, then, in a tax plan that fails to cut personal income taxes is that it provides no mechanism with which to expand savings. On the other hand, under Roth-Kemp, firms would reach the credit market, find a large increase in savings, providing funds for both themselves and Government, with no increase in interest rates, no crowding out, and no inflationary increase in the money supply.

The point is, we cannot modernize American industry simply by cutting taxes for business without cutting personal income taxes to encourage increased saving.

Another question we asked was: Professor Laffer now admits Roth-Kemp may cause "short-run" problems to the economy because of inadequate capacity on the supply side. Do you agree?

Laffer's statement has been taken far out of context by economic journalists. Supply-side economists may "admit" to the possibility of short-run supply problems with Roth-Kemp, but only because as econometricians they refrain from making absolute statements. This, unfortunately, has not been the case with opponents of Roth-Kemp. In other words, while it is difficult for supply-side economists to imagine short-run supply problems—especially given the nature of the extended phase-in period—when asked, they will admit there is always the possibility such problems could occur.

These so-called problems, though, are only those temporary difficulties often associated with real growth. In periods of real expansion, some fragment of the economy will always run out of capacity before the rest of the economy, causing a short-term shift in relative prices that pushes the economy to seek substitutes, that is, imports or substitute goods.

But, if the fragment of the economy that runs out of capacity first believes the increased incentives to produce will be permanent—not a temporary "shot in the arm"—it will add capacity, putting on extra shifts, adding plant and equipment, training new workers, and in the midterm, the relative prices will readjust.

In any event, are not temporary growing pains, if there be such, always preferable to shrinking pains?

Another question commonly asked is this: Many Roth-Kemp supporters are reluctant to accept the idea of a budget cut or spending limitation. Yet, at the same time, they claim that under Roth-Kemp, individuals now simultaneously living off Government welfare programs and working in the subterranean economy will suddenly be enticed to take jobs in the tax paying economy.

If lowered marginal tax rates have the attraction you suggest, there should be somewhat less demand for Government services in the future. So why not some kind of budget cut or limitation, particularly as a safeguard against inflation?

If, in economic expansion, demand for Government services declines, as expected with Roth-Kemp and Hansen-Steiger, a budget cut occurs naturally, whether or not it has been anticipated. And a formal budget limitation becomes superfluous.

But if, for unforeseen reasons, a contraction occurs in the future—a hypothetical tariff war in Europe, for example—it is my opinion the average American would not appreciate his Government's hands being tied by a spending limitation.

Thus, it at least appears the public would not support a formal spending limitation in the present—as a general rule. The public expects Government to be flexible in managing the public economy, in good times and bad, and legislated spending limits are the equivalent of price controls in the private sector, for which the general electorate also has little enthusiasm.

In any event, supply-side economists predict the Roth-Kemp tax cuts will increase incentives for output and employment, while reducing demand for Federal outlays for unemployment and social welfare spending. But as to a forced accompanying budget cut or spending limitation, as Irving Kristol put it in the *Wall Street Journal* of August 10, it is naive even to think that Congress can face down the spending lobbies until after it has cut taxes.

The Roth-Kemp bill has achieved the image of progressivity, yet its actual tax cuts would be aimed heaviest at high income tax payers. For example, under Roth-Kemp a family of four with an adjusted gross income of $8,000 would save only $108 in taxes. A family of four with an adjusted gross income of $40,000 would save $2,616. Is not Roth-Kemp (and Hansen-Steiger) just another tax relief program for the rich?

Of course, these figures would have to be modified to make the present Roth amendment figures of 7 percent the first year, 13 percent the second year, and 10 percent in the third year.

The question, which is frequently asked about Roth-Kemp, misdefines the notion of progressivity and taxes. Although the actual dollar tax cut for higher income families as a result of Roth-Kemp is greater than for lower income families, the proposed tax cut applies equal percentage tax decreases across the board. The percentage decreases are equal to avoid the disincentive effect to the economy of shifting the tax burden from one income group to another.

In any event, the object of Roth-Kemp is not to put money into people's pockets. It cannot do so in any case, the way the question has been put. After all, where do the $108 and $2,616 come from? From Federal borrowing or other tax increases.

The object of the Roth-Kemp and Hansen-Steiger proposals is to increase the efficiency of the entire economy, and thereby the level of wealth of the entire economy. In our particular economic climate today, it does no good to increase the after-tax rewards of lower income groups if this means the after-tax rewards of upper income groups must be decreased.

After all, it has traditionally been in the upper income levels where we find

the education and managerial ability necessary to the assembling of enterprises. If the rewards associated with this activity are confiscated, or reduced to a level not matching the effort and risk entailed in attaining these capabilities, where will new job opportunities come from for lower income individuals who want to move up the ladder?

There is another misunderstanding embodied in this question: A tax rate reduction applies to future productivity, not past performance. The individual in the $8,000 AGI class knows that if he or she works productively and sharpens skills required to move toward the $40,000 AGI class, the greater reward will match the effort. And the individual in the $40,000 AGI class knows a slackening of effort, or leisure, will result in a greater loss of reward than was the case previously.

The point is, Roth-Kemp is designed to give the worker greater incentive to increase his work effort. It does this by increasing the yield from his labor.

Another question commonly asked is: If the Kennedy tax cuts of the early 1960's led to increased productivity, why did not we see the same increase in productivity in the early 1970's when tax rates on earned income were cut from a maximum of 70 percent to 50 percent?

Could it be that increased productivity only results from a decrease of tax rates on unearned income? If so, why not simply reduce tax rates on unearned income, a la Hansen-Steiger, and forget Roth-Kemp?

In 1970, at the same time tax rates on "earned" income were falling from 70 percent to 50 percent in the highest marginal tax bracket, the tax rate on "unearned" income—capital gains—was doubled. Had the rate on "earned" income not been reduced, the economic duress of the last several years would have been intensified.

Almost all economists now agree the prohibitive tax rates on "unearned" income must be reduced, "unearned" income merely being a pejorative way of describing income from capital. But Hansen-Steiger takes us only partly back to where income from capital was being taxed in 1969. The addition of Roth-Kemp would reduce tax rates on both capital and labor across-the-board, offsetting the debilitating effects of several years of inflation on the progressive tax system. Both actions—Hansen-Steiger and Roth-Kemp—are necessary to achieve the greatest leap in productivity over the next several years, a process already underway in mere anticipation of some amelioration of tax rates this year.

Another question: Roth-Kemp aims its major tax cuts at the personal income tax. Yet, payroll taxes—Social Security, and so forth—have become far more burdensome to the average worker.

Mr. MUSKIE. Will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. MUSKIE. I would like to say to the Senator that I expect to raise a point of order to the Roth amendment under the Budget Act. I discussed it with the distinguished floor manager (Mr. LONG). I think we are in agreement that it might serve the interests of the Senate if we were to have that issue raised as relatively early as possible and decide it one way or another before the substantive debate on Roth-Kemp proceeds too long.

I wonder if it would inconvenience the Senator to yield for the purpose of raising that issue now, or whether he would prefer to continue, and, if he would prefer to continue, how much longer he plans to go, so we might notify other Senators of the approximate time when the point of order issue will be raised.

Mr. HATCH. I would prefer to continue because I have an analysis I would like to get into the RECORD.

I would not like it to be broken, plus the fact that I would like to get this over so I can meet another appointment.

But I will endeavor to go—I think I have been going about as fast as I can go—but I will endeavor to expedite my remarks.

Mr. MUSKIE. Does the Senator have any idea when that might be?

Mr. HATCH. I have a number of things, some of which I will try to put in the RECORD by unanimous consent, rather than read them all into the RECORD.

Mr. MUSKIE. I thank the Senator.

Mr. LONG. Will the Senator yield?

Mr. HATCH. I am delighted to.

Mr. LONG. I would like to suggest that the point of order that the Senator from Maine has in mind making raises an important issue and it is a matter of construction of the rules.

The Senator, of course, will support his argument and, while I am not for the amendment, I believe that the point of order is not well taken, although, of course, I will wait with interest for the Senator's explanation and his discussion.

I think we should agree that when the point of order is made, regardless of how the ruling would go on it, that both sides will have an ample opportunity to explain their views so that when the Senate votes, I assume there will be an appeal, in any event, and when the Senate votes on the matter, both sides will have an adequate opportunity.

Mr. MUSKIE. I think that is a very reasonable suggestion.

How much time—maybe we can agree on the amount of time to be equally divided when we get to the point of order—30 minutes?

Mr. LONG. I would think that this matter may take 30 minutes on each side. It is an important point. But perhaps we can do it in less than that.

Mr. HATCH. If I might interrupt, I did not realize the problem there is on this.

As I said, I am a very strong proponent of the Roth-Kemp bill. Why do I not try to reduce my time down to 5 or so more minutes, or at least try to reduce it down, and then get to the point of order, rather than go on for the approximately other half-hour I have here, let me finish this up and then we will get to that?

Mr. MUSKIE. All right, 5 minutes, and maybe, in the meantime, Senator LONG and I can agree on a time limitation on it.

Mr. HATCH. That will be fine.

The question: Roth-Kemp aims its major tax cuts at the personal income tax. Yet, payroll taxes—Social Security, et cetera—have become far more burdensome to the average worker.

If you really want to reduce labor costs—and thus slow inflation—raise employment, and provide incentives to invest, why not reduce the worker payroll tax and forget about the less burdensome personal income tax?

The question confuses the difference between the burden of taxation and the incidence of taxation. There is an important distinction, which can be explained with this brief scenario.

If Government spends $x$ amount of the economy's resources, it must raise $x$ amount of resources through taxation. It places certain tax rates on one portion of the economy, say income recipients of all kinds. This is the incidence of the taxation.

If some of those income recipients are discouraged by the high tax rates, they can choose leisure over income, or lower nontaxable income over higher taxable income. To the degree they do this, the Government falls short of the $x$ amount of resources it has decided to spend, and the burden of providing $x$ falls on the remaining taxpayers who do not have the option to choose leisure or nontaxable income.

Thus, it is possible that raising tax rates on incomes can, in fact, increase the burden of taxation on other elements of society; that is, people paying for public insurance programs—like social security.

Government, after all, must provide a amount of resources to recipients of social security. If it does not get this amount by contributions to social security, it must place the incidence of taxation on some other element of the economy. Where will this be, if other elements of the economy are already slipping the incidence of taxation via leisure and nontaxed income because of high marginal tax rates?

As to social security taxes, they have become more burdensome because earlier contributors to the system, now retired, were promised benefits that presumed a level of wealth in the economy that does not now exist. It does not exist, many supply-side economists now believe, because of the disincentive effects of high marginal tax rates. By lowering rates on incomes, the economy would draw capital and labor out of leisure and nontaxable income sources—bartering, loopholes—and both the incidence and burden of the now lower tax rates would fall, removing burdens from other elements of the economy. The now higher level of real national wealth can more easily provide the $x$ amount of resources promised social security recipients.

Finally, the last question I will consider is, you continually say the Kennedy tax cuts of the early 1960's led to increased productivity. Why not consider the inverse situation? Was there a marked slowdown in economic growth and productivity in 1913 when the personal income tax was first imposed? Was there a marked slowdown in 1968 with the imposition of the 10-percent surcharge on income which went to finance the Vietnam war?

It is often misleading to relate tax rate and productivity changes by exam-

ining Government statistics. Markets do not respond with surges, up or down, on the official dates of change in tax laws, or any other laws. When the market gets the first inkling of a change in the wedge between effort and reward, it begins the adjustment process, so by the time the change is officially made, it often has already been fully discounted by the market.

Drawing economic assumptions based on marked slowdowns or surges in Government statistics can be a deceiving process. For example, economist Walter Heller argues that if, as Roth-Kemp supporters claim, the Kennedy tax cuts unleashed incentives by triggering a great leap forward on the supply side of the economy, where is the sudden bulge in productivity and GNP potential in the economic statistics of the mid-1960's? Heller concludes there was no bulge.

The answer is that there was a bulge in capacity, which is evident from the simple fact that without a tax cut in 1964 the economy would have been in a recession shortly thereafter. In fact, much of the support for the Kennedy tax cut was generated by the expectation that a recession was imminent. Professor Heller can answer his own question by comparing capacity after the cut to what would have happened to the economy had there not been a cut.

Mr. President, I would like at this point to have printed in the RECORD an excellent Wall Street Journal article entitled "The Economic Case for Kemp-Roth," and I ask unanimous consent it be printed in the RECORD at this point.

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

[From The Wall Street Journal, Aug. 1, 1978]

THE ECONOMIC CASE FOR KEMP-ROTH

(By Paul Craig Roberts)

Walter Heller is known to the public as a liberal economist who was Chairman of the Council of Economic Advisers under a Democratic President, and Herbert Stein as a conservative economist who held the same position under Republican Presidents. Both agree that the Kemp-Roth tax rate reduction bill is economic nonsense. "It would soon generate soaring deficits and roaring inflation," says Mr. Heller. "I agree," says Mr. Stein.

Before the public is misled by their agreement into concluding that there is no economic case to be made for Kemp-Roth, I would like to show that there is.

Profs. Heller and Stein both think of tax cuts in Keynesian terms of the dollar amount put into the economy to fuel spending. They believe tax cuts work by raising the disposable income of consumers, who then spend more. The increased spending soaks up excess capacity and unemployed labor, thus moving the economy to higher levels of employment and GNP. The Kemp-Roth bill is, in their view, too large a tax cut. They believe it would fuel more new spending than there is excess capacity and produce an inflationary excess demand.

As Mr. Heller put it on this page July 12, the bill would "simply overwhelm our existing productive capacity with a tidal wave of increased demand." A smaller tax cut, he thinks, would be in order. In his July 18 article, Mr. Stein agreed with this economic analysis, but supported Kemp-Roth as a desperate means of forcing a reduction in federal spending.

A CURIOUS ANALYSIS

This economic analysis, first of all, is a curious one for economists who believe that tax cuts work by increasing demand. Without Kemp-Roth, taxes will increase due to automatic tax increases caused by inflation and higher Social Security taxes; one would expect Keynesians to be worrying about the need to offset the depressing effects of "fiscal drag."

In the context of ongoing tax increases, the Kemp-Roth reductions in the personal income tax rates do not amount to much in dollar terms. Net of the tax increases, Kemp-Roth is a $2 billion cut in 1979, a $15 billion cut in 1980, an $18 billion cut in 1981, a $7.5 billion cut in 1982 and a $1 billion cut in 1983—hardly enough to overwhelm the nation's productive capacity with a tidal wave of consumer spending. Keynesians ought to believe that the net additions to demand provided by Kemp-Roth are too small to have much impact on the economy, just as Mr. Heller says that the Mellon cuts of the 1920s were too small in dollar terms to have had any relation to the prosperity that followed.

The economic case for Kemp-Roth, though, does not rest on increasingly dubious Keynesian premises about government policy "injecting" spending to add to aggregate demand. Like the Mellon tax cuts, it is based on incentive effects, on the economics of supply. As the adage goes, it is hard to teach old dogs new tricks, and Keynesians, who have spent four decades thinking in terms of spending and demand, find it hard to understand arguments about incentive and supply.

The new supply economists think of tax rate changes as incentive changes, not as income changes. To understand the difference, consider the removal of a tariff that is high enough to prevent trade in a commodity. When the tariff is lifted, no revenues are lost, no budget deficits result and no money is put into anyone's hands. Yet clearly economic activity will expand, because the disincentive is removed. Nothing in Keynesian theory captures this effect.

Yet this is in fact how tax cuts work. A tax rate reduction does not in itself produce more real goods and services. There cannot be more income unless people produce more; the only way a tax cut can boost GNP is by providing an incentive for more production. If people respond to tax cuts by working less, as Mr. Heller suggests then GNP would fall and Keynesian fiscal policy wouldn't work either!

When tax rates are reduced, the after-tax rewards to saving, investing and working for taxable income rise. People switch into these activities out of leisure, consumption, tax shelters and working for nontaxable income. The incentive effects cause an increase in the market supply of goods and services—thus the name "supply side economics."

Consider first the choice between working for additional taxable income and enjoying additional leisure. The price to the person of additional leisure is the amount of income, after tax, that he gives up by not working. Obviously, the higher the tax rate he faces, the cheaper leisure is in terms of the income he sacrifices. In our nation with its substantial income cushions, work disincentives are not limited to the top tax brackets. Studies by Martin Feldstein of Harvard show that the lack of a significant gap between after-tax take-home pay and untaxed unemployment benefits has made leisure a free good for one million workers, thus shrinking GNP and the tax base by the value of their lost production.

Consider next the choice between working for taxable and nontaxable income. Take the case of a carpenter facing a 25 percent tax rate. For an additional day's earnings of $100 he gets to keep $75. Suppose that his house needs painting and a painter costs $80 a day. Since his after-tax earnings are only $75, he saves $5 by painting his own house and chooses not to earn the additional $100. Alternatively, the carpenter and painter may swap services, but either way the tax base is smaller by $180 and the government loses tax revenues.

Studies by Gary Becker of the University of Chicago have made it clear that capital and labor are employed by households to produce nontaxable income through nonmarket activities, such as a carpenter painting his own house. The amount of household-owned capital and labor supplied in the market is affected by tax rates. The higher they are, the more households allocate their resources to the production of nontaxable income.

Now consider the decision between using income for current consumption or saving and investing it for future income. The price to the person of enjoying additional current consumption is the amount of future income he forgoes. The higher the tax rate, the smaller the amount of aftertax future income he sacrifices by enjoying additional current consumption.

Take the case of a person facing the 70 percent tax rate on investment income. He can choose to invest $50,000 at a 10 percent rate of return, which would bring him $5,000 per year of additional income before taxes. Or he can choose to spend $50,000 on a Rolls-Royce. Since the aftertax value of $5,000 is only $1,500, he can enjoy a fine motor car by giving up only that amount. Britain's 98 percent tax rate on "unearned" (investment) income has reduced the cost of the Rolls-Royces in terms of forgone income to only $100 a year. The profusion of Rolls-Royces seen in England today is mistaken as a sign of prosperity.

Walter Heller tells us, though, that the decision to save does not depend on the relative prices of current consumption and future income; that "Denison's Law" shows that savings do not respond to higher after-tax rewards. But the most recent empirical studies of the responsiveness of savings are those of Michael Boskin of Stanford, who concludes that "private saving is indeed strongly affected by changes in the real aftertax rate of return." He specifically dismisses "Denison's Law" as a "conjecture based on evidence which is flimsy at best and dangerously misleading at worst." A current understanding of the Kemp-Roth bill's effect on savings is absolutely crucial to assessing an asserted inflationary effect.

To summarize the above points: With so many decisions affected by tax rates, it is obvious that the market supply of goods and services must respond to changes in tax rates. Our economy functions because people respond to changes in relative prices: the price of butter relative to that of margarine, beef relative to chicken, capital relative to labor and so on. A tax rate change is just another relative price change. It changes the prices of leisure and current consumption in terms of forgone current and future income. To claim that people don't respond to these price changes goes against the basic principles of economic science. Yet there is no recognition of such response in the brand of economics now used to brand Kemp-Roth as wildly inflationary.

Since Mr. Heller goes out of his way to criticize those of us who have done staff work on the Kemp-Roth bill, he should be especially interested in the results of the congressional staff debates on these points over the past year. The Congressional Budget Office, like the Treasury, once habitually offered simplistic revenue estimates that omitted the expanded tax base and revenue feedbacks. These static revenue estimates are now discredited. CBO Director Alic Rivlin

has been forced to admit that her models, based on familiar Keynesian principles, are "unable to provide estimates of the long-run impact of tax cuts."

(By the way, Prof. Heller's own staff work could use some polishing. The numbers he attributed to Norman Ture do not come from Mr. Ture.)

Mr. Heller and Mr. Stein believe the Kemp-Roth bill depends on stimulating GNP sufficiently that government revenues will not fall even in the first year, thus avoiding an inflationary deficit. In arguing that feedbacks are not large enough to recover all revenues, they are demolishing a straw man. This is not what the bill's proponents mean when they say it would pay for itself. Part of the projected deficit will indeed be eliminated by revenue from the larger GNP. The remaining deficit will not be inflationary because it will be self-financing.

Deficits are linked in the public mind with inflation or crowding out because the deficits of the past decade have originated from increased government spending and tax rebates—fiscal policies designed to increase demand, not incentives. These deficits add to the demand for funds in the financial markets, thus pushing up interest rates. The Federal Reserve then adds to the money supply, monetizing the deficit in an effort to avoid rising interest rates and crowding out, and this excessive money creation causes inflation.

While Keynesian eyes can see no difference between these deficits and deficits caused by cuting taxes, in terms of incentives this difference is decisive. Lower tax rates increase after-tax rates of return, which in turn expand private savings. When Mr. Boskin's measures of the responsiveness of savings are applied to the Kemp-Roth bill, they predict an increase in gross savings of $35 billion in the first year and a steady growth thereafter. Mr. Ture has even higher estimates of the savings effect, as does Chase Econometrics.

Savings, of course, represent the supply of funds in the financial markets. So deficits caused by tax rate cuts add to the supply of funds as well as the demand for funds. This allows the deficit to be financed without pressure on interest rates and money creation. There is no need to monetize the deficit and thus no inflationary effect. In addition, the larger GNP also means higher revenues for state and local governments and corporations, which reduce their own borrowings and ease pressure in the financial markets.

THE CHASE FORECAST

Chase Econometrics has considered all of these effects in studying the effect of the Kemp-Roth bill. Chase forecasts that the Federal Government would recover in revenue reflows 41 percent of the $25 billion tax cut in the first year. This rises to 72 percent in the seventh year. The remaining deficit is more than covered by the increase in personal savings, retained earnings, and state and local government surplus. Thus the deficit puts no pressure on credit markets. The tax cut generates enough new savings to finance the deficit plus an increase in private investment.

It is theoretically true, of course, that government spending could increase rapidly enough to soak up all additional savings and restore pressure to monetize the deficit. But if government spending in real terms could be held to current levels for about two years, the Kemp-Roth bill would get us out of the high deficit, high inflation, low productivity, low growth doldrums, and save transfer programs like Social Security.

As for Mr. Stein, many proponents of Kemp-Roth agree with him that government spending is already too high, but this is a separate issue. Legislatively, tax bills are separate from spending bills, and there is no way to tie them together. The only purpose that could be served by the bill's sponsors calling for accompanying spending cuts would be to threaten the vested interests of the congressional spending committees and their constituents, leaving the bill hostage to a bitter and quite unnecessary political fight.

As for Mr. Heller, he does better when he takes off the Keynesian blinders and relies on his own experience with the Kennedy tax cuts. In his article on Kemp-Roth he says, "To attribute to the 1962–64 tax cuts all the expansion and revenue increases in 1963–68 boggles the mind. It totally ignores the huge (over-) stimulus of the Vietnam expenditures" In other words, the tax cut did not pay for itself. But he saw these events differently in testifying before the Joint Economic Committee in February 1977.

ANTICIPATING THE LAFFER CURVE

In his testimony Prof. Heller anticipated the Laffer Curve, saying that the Kennedy cut "was the major factor that led to our running a $3 billion surplus by the middle of 1965 before escalation in Vietnam struck us. It was a $12 billion tax cut which would be about $33 or $34 billion in today's terms, and within one year the revenues into the Federal Treasury were already above what they had been before the tax cut." He concluded, "Did it pay for itself in increased revenues? I think the evidence is very strong that it did."

On this point Mr. Denison has something interesting to say. His estimate of the gap between actual and potential GNP for 1962 and 1963 is only $12 billion—the size of the Kennedy tax cut. Obviously, such a small gap left little room for an expansion based on increased demand and unused capacity. If Mr. Denison is correct, the substantial expansion that followed the tax cut had to be based on something else, a supply-side response to the higher after-tax rates of return.

Far from being wildly inflationary even with little unused capacity in 1962, the Kennedy tax cuts promoted healthy and noninflationary expansion. Once demand management is forgotten and incentive effects are understood, there is every reason to believe the Kemp-Roth tax cuts would do the same.

Mr. HATCH. Mr. President, I ask unanimous consent to have printed in the RECORD a public interest article by Dr. Paul Crater Roberts, entitled "The Breakdown of the Keynesian Model."

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

THE BREAKDOWN OF THE KEYNESIAN MODEL

(By Paul Craig Roberts)

There is much talk these days about "the crisis in Keynesian economics." That some such crisis exists is evident from the bewilderment and impotence our economic policy makers are displaying in their confrontation with economic reality. But what exactly is the nature of this crisis? What went wrong and what can put it right?

The answer, I would suggest, is almost embarrassingly simple. Today in the United States, public economic policy is formulated in bland disregard of the human incentives upon which the economy relies. Instead it is based on the Keynesian assumption that the gross national product (GNP) and employment are determined only by the level of aggregate demand or total spending in the economy. Unemployment and low rates of economic growth are seen as evidence of insufficient spending. The standard remedy is for government to increase total spending by incurring a deficit in its budget. GNP, it is believed, will then rise by some multiple of the increase in spending. Keynesian economics focuses on estimating the "spending gap" and the "multiplier" so that the necessary deficit can be calculated.

This view of economic policy is enshrined in the large-scale econometric forecasting models upon which both Congress and the Executive Branch rely for simulations of economic policy alternatives. It is a view that is extraordinary in its emphasis on spending. True, it is obvious that if people did not buy, no one would produce for market. It also seems obvious that the more people buy, the more will be produced and, therefore, that the use of government fiscal policy to increase total demand will increase total production or GNP. All this is so obvious to Keynesians that they believe any fiscal policy that produces an increase in government spending, even a spending increase matched by a tax increase, will produce an increase in GNP.

The concept of the "balanced-budget multiplier" illustrates the primacy that Keynesians give to spending as the determinant of production. According to this concept, government can increase total spending and, thereby, GNP by raising taxes and spending the revenues. The reasoning is as follows. People do not pay the higher taxes only by reducing their spending (consumption); they also reduce their savings. Therefore, when taxes are raised, the decrease in private spending is less than the increase in government spending. Conversely, a cut in tax rates, matched by a decrease in government spending, would result in a reduction in total spending (i.e., saving would increase), a fall in GNP, and a rise in unemployment.

For years after the 1964 Presidential election, college students were asked a standard question on economic exams: What would happen if Barry Goldwater's prescription for a tax cut, matched by a spending cut, were implemented? They missed the answer if they did not reply that there would be a reduction in aggregate demand and, therefore, a fall in GNP and employment. Alas, for too many policy makers that is still the answer.

Since the "balanced-budget multiplier" implies that the greater the increase in taxes and in government spending, the greater the increase in GNP, it is a wonder no one ever asked what happens to production as tax rates rise. This question confronts economic policy with the incentive effects it has disregarded. It should be obvious even to Keynesians that when marginal tax rates are high, people will prefer additional leisure to additional current income, and additional current consumption to additional future income. As work effort and investment decline, production will fall, regardless of how great an increase there might be in aggregate demand. Such a recognition of disincentives implies a recognition of incentives, and Keynesians are gradually having to rethink the answer to their standard question about Barry Goldwater. Once one recognizes that people produce and invest for income, and that income depends on tax rates, one has reached the realization that *fiscal policy causes changes not just in demand but also in supply.*

THE ECONOMICS OF SUPPLY

The economics of spending has thoroughly neglected the economics of supply. On the supply side there are two important relative prices governing production. One price determines the choice between additional current income and leisure; the other determines the choice between additional future income (investment) and current consumption. Both prices are affected by the marginal tax rates. The higher the tax rates on earnings, the lower the cost of leisure and current consumption, in terms of foregone after-tax income.

As an illustration, consider the decision to produce. There are two uses of time—work and leisure. Each use has a price relative to the other. The price of additional leisure is

the amount of income foregone by not working, and it is influenced by the tax rates. The higher the tax rates, the smaller the amount of after-tax income foregone by enjoying additional leisure. In other words, the higher the tax rates, the lower the relative price of leisure. When the marginal tax rate reaches 100 percent, the relative price of additional leisure becomes zero. At that point, additional leisure becomes a free good, because nothing has to be sacrificed in order to acquire it.

We often hear that a person works the first five months of the year for the government, and then starts working for himself. But that is not the way it goes. The first part of the year, he works for himself; he only begins working for the government when his income reaches taxable levels. The more he earns, the more he works for the government, until rising marginal rates discourage him from further work.

Take the case of a physician who encounters the 50-percent rate after six, eight, or 10 months of work. He is faced with working another six, four, or two months for only 50 percent of his earnings. Such a low after-tax return on their effeorts encourages doctors to share practices, to reduce their working hours, and to take longer vacations. The high tax rates thus shrink the tax base by discouraging them from earning additional amounts of taxable income. They also drive up the cost of medical care by reducing the supply of medical services. A tax-rate reduction would raise the relative price of leisure and result in more taxable income earned and also in a greater supply of medical services.

The effect of tax rates on the decision to earn aditional taxable income is not limited to physicians or to the top tax bracket; it operates across the spectrum of tax brackets. Studies by Martin Feldstein show that the tax rates on the average worker practically eliminate the gap between his after-tax take-home pay and the level of untaxed unemployment compensation he could be receiving if he did not work. In this case, a marginal tax rate of 30 percent (including state and Federal income taxes and Social Security taxes) reduces the relative price of leisure so much that, by making unemployment competitive with work, it has raised the measured rate of unemployment by 1.25 percent and shrunk GNP and the tax base by the lost production of one milion workers.

It is useful to give another example to illustrate that it is not just the top marginal rate that causes losses to GNP, employment, and tax revenues by discouraging people from earning additional taxable income. Blue-collar workers do not yet encounter the top marginal tax rate (although if inflation continues to push up money incomes, and the tax-rate structure remains unadjusted for inflation, it will not be many years before they do). Nevertheless, the marginal tax rates that many blue-collar workers already face are high enough to discourage them from earning additional taxable income. Take the case of a carpenter facing only a 25-percent marginal tax rate. For every additional $100 he earns before income tax, he gets to keep $75. Suppose that his house needs painting and that he can hire a painter for $80 a day and hire himself out for $100 a day. However, since his after-tax earnings are only $75, he saves $5 by painting his own house, so it pays him to choose not to earn the additional $100. In this case, the tax base shrinks by $180—of which $100 is the foregone earnings of the carpenter, and $80 is the lost earnings of the painter who is not hired. (Also, the productive efficiency associated with the division of labor vanishes.)

Suppose, instead, that the marginal tax rate on additional earnings by the carpenter were reduced to 15 percent. In this case, his after-tax earnings would be $85, and it would pay him to hire the painter. The reduction in the marginal tax rate would thus expand the tax base upon which revenues are collected by $180.

Studies by Gary Becker have made it clear that capital and labor are employed by households to produce utility through non-market activities (e.g., a carpenter painting his own house). Utility produced in this way is not purchased with income subject to taxation. Therefore, the amount of household-owned capital and labor supplied in the market will be influenced by marginal tax rates. The lower the after-tax income earned by supplying additional labor and capital in the market, the less the utility that the additional income can provide, and the more likely it is that households can increase their utility by allocating their productive resources to non-market activities. A clear implication of the new household economics is that the amount of labor and capital suppied in the market is influenced by the marginal tax rates.

Now consider how relative prices affect the choice concerning the use of income. There are two uses of income, consumption and saving (investment), and each has a price in terms of the other. The price of additional current consumption is the amount of future income foregone by enjoying additional current consumption. The higher the tax rates, the smaller the amount of after-tax future income foregone by enjoying additional current consumption. In other words, the higher tax rates, the lower the relative price of current consumption.

Take the case of an Englishman facing the 98-percent marginal tax rate on investment income. He has the choice of saving $50,000 at a 17-percent rate of return, which would bring him $8,500 per year before taxes, or purchasing a Rolls Royce. Since the after-tax value of that $8,500 additional income is only $170 per year, the price of additional consumption is very low: He can enjoy having a fine motor car by giving up only $170 per year of additional income. This is why so many Rolls Royces are seen in England today. They are mistaken for signs of prosperity, whereas in fact they are signs of high tax rates on investment income.

A tax-rate reduction would raise the price of current consumption relative to future income, and thus result in more savings, making possible a growth in real investment. A rate reduction not only increases disposable income and total spending, it also changes the composition of total spending toward more investment. Thus, labor productivity, employment, and real GNP are raised above the levels that would result from the same amount of total spending more heavily weighted toward current consumption.

TAX CUTS AND REBATES

The econometric models upon which the government relies for simulations of policy alternatives do not take into account these supply-side effects on GNP of these relative price changes. Consider the alternatives faced by the Keynesian policy maker who wants "to get the economy moving again." His goal is to increase aggregate demand or total spending. How can he do this? He has the choice between the balanced-budget multiplier (i.e., increasing both taxes and government spending) or a deficit. He will discard the balanced-budget multiplier, because it is relatively weak and deficits are more politically acceptable than legislating higher tax rates. Having settled on a deficit, he has to choose how to produce it. He can hold tax revenues constant and increase government spending, or he can hold government spending constant and cut tax revenues. In the latter case, he has a choice between rebates and permanent reductions in tax rates. Wanting the most stimulus for his deficit dollar, he will ask for econometric simulations of his three policy alternatives: a tax rebate, a tax rate reduction, or an increase in government spending programs.

The simulations, all based on Keynesian assumptions, will show that a revenue reduction of a given amount, whether in the form of a rebate of personal income taxes or a reduction in personal-income-tax rates, will raise disposable income—and thereby spending and GNP—by the same amount. The policy maker may prefer the rebate for reasons of "flexibility." The spending stimulus may not be required in the following year, and, if it is, he has the option of providing it either by another rebate or by an increase in government spending programs. But on the basis of the econometric simulation, he will be indifferent as to the choice between rebates or rate reductions. As for his third option, an increase in government spending programs, the simulation may report that, dollar for dollar, an increase in government purchases (as contrasted with transfers) will have a more powerful impact on GNP because the government spends all of the money, whereas if it is returned to consumers they will save part of it. Based on the econometric simulation of his alternatives, he will conclude that there is no compelling economic reason in favor of any of the three, and he will make his choice on a political basis.

But the econometric models have misled the policy maker. Unlike a reduction in personal-income-tax rates, a rebate affects no individual choice at the margin. It does not change the relative prices governing the choices between additional current income and leisure or between additional future income and current consumption. It does not raise the relative prices of leisure and current consumption. Therefore, a rebate directly stimulates neither work nor investment. For any given revenue reduction, a rebate cannot cause as great an increase in GNP as a rate reduction, because it does not affect the choices that would cause people to allocate more time and more income to increasing production for the market.

An increase in government spending fares no better by comparison, and may fare even worse. It too fails to raise the after-tax rewards for work and investment. Furthermore, it increases the percentage of total resources used in the government sector. If the government sector uses resources less efficiently than the private sector, as seems to be the case, the result is a decline in the efficiency with which resources are used—which means GNP would be less than it otherwise would be. Yet the econometric simulations of the policy maker's alternatives will pick up none of the incentive and disincentive effects of these relative price changes. Instead, they focus on the effects of these alternatives on disposable income and on spending.

There are a number of adverse consequences of this extraordinary preoccupation with spending. One is that *the models exaggerate the net tax-revenue losses that result from cutting tax rates.* The only "feedback effect" on the tax base and tax revenues that they provide for is the expansion of GNP in response to an increase in demand. They do not provide for the expansion in GNP that results from higher after-tax rewards for work and investment. The supply-side "feedback effects" are ignored. Similarly, revenue gains from tax-rate increases will be overestimated, because the disincentive effects are left out.

A second consequence follows from the popular misidentification of a tax rebate as a tax cut, and from a similar tendency on the part of most policy makers to see rebates and rate cuts as variations of the same policy instrument. If Milton Friedman is correct that personal consumption is a function of *permanent* income, a temporary rebate has little impact even on spending. Thus, on the

basis of experience with rebates, tax cuts *per se* might come to be seen as relatively ineffectual, leaving the field open to proponents of government spending programs.

A third consequence is that the true effects of large tax increases (such as the proposed energy taxes, or the $227-billion increase in the Social Security tax over the next decade) will not be accurately calculated. Policy makers see these tax increases as withdrawals from disposable income and spending, and their only concern is "to put money back" into spending so that aggregate demand does not fall. However, these tax increases change the relative prices and incentives of leisure and work, consumption and investment. They produce resource reallocations that have adverse implications for employment and the rate of economic growth. Yet the econometric models, as now constructed, flash no warning lights.

Consider what Arthur Laffer, in the Wall Street Journal, has called the "tax wedge." The Social Security tax increase provides a good example of this phenomenon. It is a tax on employment, and, as economists should know, a tax on employment will reduce employment. The employer's decision to hire is based on the gross cost to him of an employee. The employee's decision to work is based on his after-tax pay. We know that the higher the price, the less the quantity demanded, and the lower the price, the less the quantity supplied. The Social Security tax both raises the price to the demander and lowers it to the supplier. By increasing the Social Security tax, policy makers reduced both job opportunities and the inclination to work.[1] They raised the cost of labor relative to capital for the employer, and they narrowed the gap between unemployment compensation and after-tax take-home pay for a wider range of workers. Since the revenues available for paying Social Security benefits depend on both the tax rates and the number of people paying into the system, the increase in rates will be offset to some degree by a decrease in the number of people paying into the system. It is hard to see how the Social Security System can be saved by decreasing employment, or how increasing the demand for unemployment compensation is likely to free general revenues for Social Security benefits.

"CROWDING OUT" INVESTMENT

There are at least two other important points on which economic policy is misinformed by the neglect of incentives and of choices made at the margin. One is the impact on GNP of reductions in the corporate-income-tax rate, and the other is the controversy over whether government fiscal policy "crowds out" private investment.

Simulations run by the Congressional Budget Office and the House Budget Committee on two of the three large-scale commercial econometric models show declines in GNP as a result of reductions in corporate-tax rates. In one of the models, corporate investment did not depend on after-tax profits in a very strong way, but was very sensitive to changes in interest rates. Since interest rates rise as the Treasury increases its borrowing to finance the deficit resulting from the tax cut, investment falls, and the model predicted a decline in GNP as the result of a tax-rate reduction that increased the profitability of investment.[2]

The other model predicted that a corporate-tax-rate reduction would slightly raise real GNP after a lag of a couple of quarters, but it predicted a lower nominal GNP for two years. Nominal GNP declined because the corporate-tax-rate reduction reduced the user cost of capital, the price mark-up, and thereby the inflation rate, thus lowering the nominal price level.

To the extent that Keynesians think about the "crowding out" of private investment by fiscal policy, it is in terms of upward pressure on interest rates as a result of government borrowing to finance budget deficits. They do not realize that investment is crowded out by taxation, regardless of whether the budget is in balance. To understand how, consider the following example. Suppose that a 10-percent rate of return must be earned if an investment is to be undertaken. In the event that government imposes a 50-percent tax rate on investment income, investments earning 10 percent will no longer be undertaken. Only investments earning 20 percent before tax will return 10 percent after tax. Taxation crowds out investment by reducing the number of profitable investments. When tax rates are reduced, after-tax rates of return rise, and the number of profitable investments increases.

So "crowding out" cannot be correctly analyzed merely in terms of events in the financial markets: "Crowding out" occurs in terms of real output. It is the preempting of production capacity by government outlays, regardless of whether these outlays are financed by taxing, borrowing, or money creation.

RESPONDING TO INCENTIVES

A concern with the supply-side effects of fiscal policy is incompatible with the concept of economic policy that currently reigns in the Congress and in the Executive Branch. Members of the House Budget Committee asked Alice Rivlin, Director of the Congressional Budget Office, and Bert Lance, then Director of the Office of Management and Budget, about the neglect of the incentive effects of tax-rate changes on supply and also about the econometric predictions that GNP would fall in response to a reduction in corporate tax rates.

Dr. Rivlin said that she and her staff had been "particularly troubled" by model findings that GNP declines if corporate tax rates are reduced. However, she went on to say:

Studies have generally found that tax-rate changes are less important than changes in the cost of capital and changes in levels of national output in influencing the level of investment. It follows that an investment tax credit or liberalized depreciation will increase investment more than a corporate-tax-rate reduction of equivalent revenue loss. While we do not believe that corporate-tax-rate cuts reduce investment, it would not be surprising to find that tax cuts had only a minor expansionary effect.

The OMB staff reply to the question was ambiguous.

Both CBO and OMB realized that the question about incentive effects most fundamentally challenged their concept of economic policy. The comments of Rivlin, Lance, and the OMB staff all unequivocally acknowledged that the econometric models upon which they rely for guidance in the choice of economic policy alternatives do not include any relative price effects of changes in personal-income-tax rates. However, since they believe that the performance of the economy is a function of spending levels, not of production incentives, they expressed no concern over this neglect. They said that economic theory and empirical studies leave it unclear whether the neglected supply-side effects are important; regardless of how the issue is resolved, they questioned the practical importance of supply incentives for short-run policy analysis.

There are two parts to this argument. One is that it is unclear whether lowering personal-income-tax rates will increase or reduce work effort. The other is that it is unclear whether any incentive effects on work effort and investment would show up as quantitatively important in a short-run policy framework. The first proposition questions the existence of the incentive effects; the second questions whether they would be effective in time to deal with an immediate problem of economic stabilization.

It is easy to dispose of the latter point. The long-run consists of a series of short-runs. If policies that are effective over a longer period are neglected because they do not have an immediate impact, and if policies that are damaging over the longer period are adopted because they initially have beneficial results, then policy makers will inevitably come to experience, sometime in the future, a period when they will have no solution for the crisis they have provoked. In the United States, that future might be now.

As for the first point, Rivlin acknowledged that a personal-income-tax-rate reduction raises the relative price of leisure, and that work effort will increase as people substitute income for leisure. This is known in economics as the "substitution effect," and it works to increase supply. However, Rivlin also said:

"It is theoretically arguable that when a tax cut provides people with more after-tax income, many of them will reduce effort through what is called the income effect. For most people, leisure has some positive value, and it may even be a "luxury" good; these people could respond to a tax reduction by reducing their working hours, benefiting from more leisure time and still maintaining their after-tax income. For other people who like their work, there may be little or no labor supply response to the income or the substitution effect. In much of the United States economy, work weeks are fixed, leaving little possibility for individuals to make marginal adjustments in hours of work."

In other words, CBO believes that the "income effect" works to decrease supply.

Rivlin then went on to say that it was an empirical question whether the "income effect" offset the "substitution effect," referred to a narrow range of studies that left the question unresolved, and concluded: "In the range of policy options that we have been dealing with, I think the assumption that changes in marginal tax rates have no quantitatively significant effect on labor supply is quite plausible."

But the concept of a targeted or desired level of income unaffected by the cost of acquiring such income is foreign to the price-theoretical perspective of economic science. Rivlin's idea that people respond to a cut in income-tax rates by maintaining their existing income levels while enjoying more leisure implies that, if their tax rates went up, they would work harder in order to maintain their desired income level. Lester Thurow has actually employed this reasoning to argue for a wealth tax. According to Thurow, a wealth tax is a costless way to raise revenues because the "income effect" runs counter to and dominates the "substitution effect." He assumes that people have a targeted level of wealth, irrespective of the cost of acquiring it. Therefore, he says, a tax on wealth will

[1] Theoretically, the effect on work effort depends on the present value of the Social Security benefits and taxes. If the increased tax means increased future benefits, the employee's work decision will take into account his increased future income, as well as his reduced current income. However, the recent changes in the Social Security law raised taxes and reduced benefits as a proportion of pay before retirement. As the Wall Street Journal put it, "the extra money will go to pay people now or soon to be on the retirement rolls, not to finance your own high living in the 21st century" (February 6, 1978).

[2] According to staff in the Office of Management and Budget, there have recently been changes in the model, but one can still get the perverse result because a reduction in the tax rate directly and substantially reduces multi-unit housing starts.

cause people to work harder in order to maintain, after tax, their desired wealth level.

Note the perverse ways in which people respond to incentives and disincentives according to the Rivlin-Thurow line of argument: When tax rates go down and the relative price of leisure rises, people demand more leisure; when tax rates go up and the relative price of leisure falls, people demand less leisure. In economics, any time the "income effect" works counter to the "substitution effect," we have the relatively rare case of what is called an "inferior good" (i.e., people purchase less of it as their income rises). Since income is command over all goods, Rivlin's argument implies that all goods are inferior goods: A tax cut will cause people to purchase only more leisure, not more income (i.e., goods). What kind of people are these? Well, the only kind of people who fit this kind of economic analysis are people who respond to a monetary incentive in perverse ways.

Perhaps Rivlin merely meant to say that lower tax rates would allow people to have a little more income for a little less work. Even so, as long as she maintains that the "income effect" works counter to the "substitution effect," her argument carries the implication that goods in general are inferior.

A PERVERSE LOGIC

Whatever the weight one assigns this point, there is a more fundamental defect in her argument. Notice the stunning inconsistency: People respond to a tax-rate reduction "by reducing their working hours . . . and still maintaining their after-tax income." But it is impossible for people *in the aggregate* to reduce their work effort and maintain the same level of *aggregate* real income! If people respond to tax cuts by working less, real GNP would fall, and it would be impossible to increase real disposable income, spending, and demand in the aggregate. Rivlin's argument is directed against the effectiveness of incentives in raising aggregate output, but if she were correct, it would mean that Keynesian fiscal policy also is ineffective!

The fatal error in the Rivlin-Thurow argument can be put this way: It derives from trying to aggregate a series of partial equilibrium analyses (individual responses to a change in relative prices) and, in the aggregate, ignoring the *general* equilibrium effects.

There are various ways a non-economist can grasp this point. Assume that the government cuts taxes and maintains a balanced budget by reducing spending. In this case, the higher income accorded the taxpayers whose rates are reduced must be matched by a negative impact on the incomes of recipients of government spending. Some or all of these may be the same people. Assume, for example, that both the tax burden and government spending are evenly distributed. In this case the "income effect" (the substitution of leisure for work) "nets out" for each individual. Since the aggregate income effect is zero, it cannot offset the "substitution effect" (the substitution of work for leisure).

If taxes are cut and government spending is unchanged (resulting in a budget deficit), the nominal disposable income of taxpayers as a group will rise relative to the nominal disposable income of the recipients of government spending as a group. The former will be able to bid real resources away from the latter. The real income gains of the former will be matched by the real income losses of the latter. Since the bidding will raise prices, the real income loss might be suffered by individuals who hold money. Regardless of who loses and who gains, the individual income effects "net out," leaving only the "substitution effects," which unambiguously increase work effort.

There can be no aggregate "income effect" unless the impact of incentives is to raise real aggregate income. Economic theory makes it perfectly clear that a tax-rate reduction will increase work effort and total output.

In the final analysis, Rivlin's argument is not that the supply-side incentive effects are unimportant, but the equally false argument that their impact is perverse—that is, only a tax-rate *increase* can produce a rise in real national income! She may not actually believe any such thing, of course—but that is where her reasoning leads her.

FROM ECONOMICS TO POLITICS

An economist might see the flaw in the Rivlin-Thurow argument, but it is not obvious to politicians. Take something simple, like Rivlin's assertion that a fixed work-week precludes adjustments of the labor supply to tax-rate changes. To an economist her assertion is obviously false, but to the politician it sounds reasonable enough. He will not realize that the "adjustments" will be reflected in absenteeism rates, turnover rates, the average duration of unemployment, labor negotiations for shorter work-weeks and more paid vacation rather than higher wages, and in the quality and intensity of work. Nor will he think of the entrepreneur who, because of high tax rates, loses his incentive to innovate—to make the economy itself (all of us) more productive.

Besides, one has to have an idealistic view of government to believe that politicians even want to know. The Keynesian concept of the economy is that of an unstable private sector that must be stabilized by fiscal and monetary policies of the government. This view has served as a ramp for the expansion of the interests of government. It has also served the interests of economists by transforming them from ivory-tower denizens to public-spirited social activists, a transformation which has much increased their power and enlivened their life styles. Unemployment can always be said to be too high. And the rate of economic growth can always be found to be below "potential." This means that there is always a "scientific" economic reason for expanding government spending programs that enlarge the constituencies of the Congress and of the Federal bureaucracy. From the standpoint of the private interests of policy makers, Keynesian economic policy will always be judged a success.

To write about all of the problems of econometrics an economic policy would require a book, not an article, but one other important problem must be mentioned in closing. Professor Robert Lucas has demonstrated that the standard econometric models assume that the structure of the economy remains invariant under wide variations in policy paths. What this means is that the models assume that people do not learn. But people do learn, and their expectations change as they experience various policies: They may not repeat the same behavior in response to the same policy at different times. Therefore, the policy simulation may always misinform the policy makers. This is not an optimistic note on which to end an article about public policy in a country that believes we need a great deal of it. But our faith in public policy has exceeded our knowledge, and we will find out that, in this area, there is no such thing as free faith.

Mr. HATCH. Mr. President, I ask unanimous consent that effective remarks of Mr. ROTH in the CONGRESSIONAL RECORD of Thursday, August 17, 1978, be printed in the RECORD.

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

THE ECONOMIC CASE FOR ROTH-KEMP

Mr. ROTH. Mr. President, in his recent appearance before the Senate Committee, Charles Schultze, the chairman of the Council of Economic Advisors, made a traditional appearance, reciting a traditional litany of our problems, and a traditional list of solutions. He admitted that the administration has no better recommendation to make to the Congress than to fight inflation by slowing economic growth and permitting increases in taxes. This is the traditional prescription of those economists who, for the past 10 years, have brought us the high inflation and high unemployment we are now experiencing. We cannot afford to take their advice any longer.

Mr. Schultze starts out with the good news first. He says that per capita disposable income, after adjusting for inflation, has risen, and that business profits have increased. Income is up—if you compare today's income with the income people were receiving at the low point of the last recession. However, more recent history shows that real spendable earnings, adjusted for taxes and inflation, have fallen seven-tenths of a percent from a year ago. And real economic profits, fully adjusted for inflation, are lower today than they were in 1967. Even worse, more and more economic forecasters are predicting a further slowdown in the months ahead. Some even forecast a full-blown recession for 1979.

The recent drop in earnings, and the continued dismal performance of profits, are due to the inflation and the higher taxes which the inflation produces. The higher taxes cut disposable income directly by reducing take-home pay. Indirectly, higher taxes reduce the growth of the economy, restrain hiring, and retard the growth of wages.

Apparently, however, Mr. Schultze is not concerned with the slowdown in economic growth. He states on several occasions that economic growth must moderate in order to avoid overstimulating the economy. I do not share Mr. Schultze's complacency about our slow rate of economic growth. If Mr. Schultze is correct, that slow growth retards inflation, we should certainly be seeing a drop-off in the rate of inflation right now. Obviously, inflation is getting worse. In fact, since 1969 we have had higher inflation every time production has slowed down, and lower inflation every time production has speeded up. This is just the opposite of what Mr. Schultze's theories predict should be happening.

It is time for this country to develop a new economic theory which will enable us to fight inflation and unemployment at the same time. It should be obvious by now that we cannot fight inflation by reducing production and creating shortages. We need a theory which will enable us to increase production and employment without having to call upon the Federal Reserve to run the printing presses to flood the country with easy money and additional inflation.

The historical record shows that inflation worsens when production falls. Inflation does not stimulate output and employment. Recession does not control prices. The old theory is dead.

There is such a theory, one which analyzes tax cuts in terms of incentives to produce. Higher production creates jobs and lowers inflation at the same time. We need to examine tax proposals in these terms.

Mr. Schultze analyzes a tax cut only in terms of its size, the number of dollars it dumps into the economy. This is supposed to stimulate demand and purchasing power and be spent about twice over to increase GNP by a multiple—two—of the tax cut. Hence, the term "multiplier." This whole line of reasoning is badly out of date, as will be shown later. But for the moment, let us work in terms of the theory Mr. Schultze is using.

Mr. Schultze overstates the size of Roth-Kemp—see appendix. He then claims that Roth-Kemp is too large, that the increased spending it would generate would greatly exceed our unused capacity, currently be-

tween $70 and $90 billion. But, in addition to overstating its size, Mr. Schultze has also forgotten to adjust Roth-Kemp for the offsetting increases in taxes which will be produced by pending social security tax hikes and inflation. These amount to $23 billion in 1979, $42 billion in 1980, $74 billion in 1981, $94 billion in 1982, and $113 billion in 1983. He neglects these tax increases in analyzing Roth-Kemp, but he remembers them when justifying the President's tax cut proposal. Mr. Schultze should subtract these numbers from the Roth-Kemp figures. It is the net tax cut which must be used in a multiplier analysis.

Net of these other tax increases, the tax cuts in Roth-Kemp are only $2 billion in 1979, $8 billion in 1980, and $5 billion in 1981, and a tax increase of $7 billion in 1982, and a tax increase of $18 billion in 1983, as social security and inflation-induced tax increases continue. If Mr. Schultze multiplied these numbers by 2, he would still have no cause to worry about capacity ceilings. On the contrary, he would have to advocate further tax cuts in 1982 and 1983. Clearly, Roth-Kemp is needed just to prevent tax increases over the next 3 years. See appendix.

Mr. Schultze goes astray primarily because he looks at the tax cut out of context, and judges it by size alone. However, the day is past when tax cuts should be thought of only in terms of their size.

Many tax cuts work because of their shape, not their size. Consider an example drawn from the economics of international trade. Suppose a prohibitive tariff, one so high that it chokes off all imports, is placed on French wine. Since no French wine is imported after the tariff, no revenue is raised. Now, suppose the tariff is removed. No revenue is lost, but importation of French wine resumes. Behold. A tax cut of zero dollars results in an infinite percent jump in imports, some positive number of bottles imported divided by zero bottles in the year of the tariff.

Is the example too extreme? Then, consider the recent studies which show a small tax cut on capital gains to be so stimulative of asset trading and GNP that the Federal deficit is reduced. Compare this to the general consensus that tax rebates, even fairly substantial ones, have so little impact on GNP as to be massive revenue losers. Obviously, the type of tax cut matters a great deal.

Mr. Schultze is not alone in his attitude. On July 14, Emil Sunley, of the Treasury, attacked Roth-Kemp and tried to tell the Senate Finance Committee that all tax cuts were pretty much alike in their effect on GNP and in the revenue feedback they would produce. He used this as an excuse for the deplorable Treasury habit of looking only at the initial cost of tax cuts, and of not bothering to analyze the net effect of various tax proposals after all their differential economic repercussions. Here is what several people who were present at that hearing had to say to Mr. Sunley:

Michael Evans, president of Chase Econometric Associates:

"As far as the Treasury goes, I have heard that argument. It is a common argument, one they always trot out. It doesn't improve with age."

Norman Ture, president of Norman Ture Associates:

"The criticism, for the most part, derives from antique, obsolete notions about how fiscal changes affect the economy. They are the same Keynesian notions which disregard the effects of tax changes on the conditions of supply of factors of production, which look only to the effects on disposable incomes and on aggregate demand, and which in practice have proved to be so consistently, harmfully wrong."

Senator RUSSELL LONG:

You are reluctant to change your practices down at Treasury to include more feedback into your estimates, and it seems to me that you ought to reconsider that position both when you are bringing a proposal up here and when you are looking at one.

Let us take an extreme case where we have a tax that is counterproductive. I don't know at what point a tax becomes counterproductive, but surely if the tax reaches 100 percent of a person's income, you would have to agree that is not going to make the government any money. The people are not going to work if they can't keep some of their money, and the result is the government would lose money. So, if you are going to get anything at all in terms of an accurate estimate of the result of tax change, you have to look at the dynamics.

Now, the same thing is true of a duck shooter. Any good duck shooter knows if the duck flies across in front of the blind and he shoots across the blind he is not going to hit the duck. The duck keeps right on flying. So that you would think that we would all learn, in a moving economy where everything is in motion, you would have to take the dynamics of these things into account.

Roth-Kemp is not designed to work by injecting spending power into the economy. It is designed to work by increasing incentives for the supply of goods and services and to encourage the saving needed to supply investment funds. It does this by reducing marginal tax rates.

The incentive to an activity is the after-tax payment received for it. That payment rises when the tax rate falls.

The "price" of an hour of leisure is the after-tax wage given up by not working. The "price" of a dollar of current spending is the lost dollar plus after-tax interest which could have been spent next year. Lowering tax rates makes leisure and spending more expensive in terms of lost income. As people respond to this "price" change, they shift into work effort and saving. These are both growth-oriented activities. They increase investment, hiring, capacity, and production. They lower interest rates and prices.

The tax rate in question is the rate on the last few dollars of wages, interest, and dividends, because these marginal rates are what will be paid if work effort, saving, and investing are increased. Thus, cuts in tax rates in every bracket encourage more work, saving, and investing, as opposed to leisure and consumption. Tax rate reduction increases the available supply of the labor and capital inputs needed for production of goods for current consumption and production of capital goods to expand future economic capacity. Tax rate reduction changes behavior, just as any other price changes do.

As Norman Ture has explained:

It is in the supply side context, I believe, that one should evaluate the estimates of the Roth-Kemp tax reduction.

The proposed tax reductions would materially reduce the cost of market-directed effort relative to leisure. Certainly the labor force data of the last few years argue strongly for the plausibility of the employment increases we have projected.

Similarly, Roth-Kemp would dramatically reduce the cost of saving and investing relative to the cost of consumption. To assert less is, in effect, to argue that people's saving and investing behavior is irrational, that people are indifferent to the after-tax return they may obtain in deciding how much of their income to save and how much to consume.

The estimated increases in the supplies of labor and capital services argue forcefully against the criticism that Roth-Kemp would accentuate inflation. The contention that enactment of these tax reductions would sharply boost inflation derives from the mistaken Keynesian views which ignore conditions of supply and look only at alleged effects of tax changes on demand, principally consumption spending.

Mr. Wendell Gunn, vice president, Chase Manhattan Bank, stated:

I must emphasize the distinction between cuts in marginal tax rates and the quite different notion of tax rebates. All of the benefits of the former accrue because of the effect on the expected profitability of production and investment. These benefits do not result in the case of a tax rebate, simply because it is related only to previous production, which obviously cannot be altered in response.

The primary rationale of the Kemp-Roth proposal appears to be based on the conceptual framework just discussed. By cutting marginal tax rates on individuals across the board and on businesses, it would provide for noninflationary private sector economic expansion. It would signal abandonment by liberals and conservatives alike of the idea that inflation must be fought with unemployment and vice versa. It would release the enormous pool of energy and individual initiative that has characterized our great country since its inception. New employment would result and those Americans who, for obvious reasons, always seem to bear a disproportionate share of unemployment, would be among the greatest beneficiaries. And, believe it or not, it contains the only hope of ever achieving the elusive balance in the federal budget.

Mr. True:

I read Professor Heller's piece in the Wall Street Journal . . . He looks only at one kind of effect . . . an effect on disposable income of the taxpayer, and he thinks that all the consequent effects on the economy derive only from that. It seems to me . . . that captures very, very little of the effect of taxes on the economy.

The real effect of a tax change is that it changes the cost any one of us confronts in doing this versus that. To assume, as Professor Heller explicity says, that we are unresponsive to these changes in cost is to assume that, as he does, we are all irrational, that the economy in fact operates by gosh and by golly and it is a sort of wonder that it doesn't turn into a black hole and that we don't implode into it.

Well, the economy doesn't operate by gosh and by golly, it operates in a very analyzable way, a very systematic way. You can in effect examine why the economy is going to do what it is going to do if you take account of what happens to relative prices. And tax changes are in fact primarily to be interpreted as changes in the relative prices and costs confronting taxpayers.

Roth-Kemp is not inflationary precisely because it does affect relative prices. It affects behavior, increases growth, and encourages saving.

In order to judge a tax cut's impact on growth and inflation, we have to know what the cut will do to GNP and saving. To finance itself without causing inflation, a tax cut can do four things:

First, it can increase GNP, which is the tax base, and recover revenues to offset part or all of the initial reduction.

Second, if it reduces marginal tax rates it can cause existing savings and investment funds to switch out of tax shelters and nontaxable uses into taxable uses, raising the tax base and revenue. (This also makes saving and investment more efficient, raising GNP by shifting saving and investment from low-yield, but sheltered projects into straightforward, high-yield activities.)

Third, if it reduces marginal tax rates, the tax cut makes saving more rewarding after taxes, and raises the total amount of saving being done. Chase Econometrics forecasts a

sharp rise in saving if tax rates are reduced. Some of this saving will go to buy the bonds the Treasury will sell to cover any deficit remaining from the tax cut. Any excess will be used to increase net investment and growth.

Fourth, by fostering growth and employment, the right kind of tax cut reduces unemployment and welfare spending.

As long as revenues rise to offset the tax cut, or as long as savings rise by enough to cover any added debt, the Federal Reserve does not have to buy even one additional Treasury bill, and does not have to add one cent to the money supply.

On the first point, Chase predicts revenue reflows to all governments of 40 percent of the tax cut in the first year, rising to 65 percent of the tax cut by 1987. This is twice the level Mr. Schultze would admit to.

On the second point, lowering tax rates is essential if we are to get people out of tax shelters and back into the real investment in basic American industry we need so badly. Furthermore, shifts out of tax shelters are extremely profitable for the Federal Government. After the Kennedy tax cuts, upper bracket taxpayers shifted out of tax shelters in such large numbers that they paid more taxes even at the lower tax rates. Michael Evans, in a recent Wall Street Journal article, stated:

The top rate was reduced from 91 percent in 1963 to 77 percent in 1964 and 70 percent in 1965 and later years. The figures for actual income tax paid for the period 1961–1966 for taxpayers with incomes of $100,000 or more are taken from Statistics of Income and are reproduced in the accompanying table.

The results are so clear-cut that it is surprising that these figure have not previously been introduced as evidence in favor of Kemp-Roth. After virtually no growth in income taxes at these levels for three years, actual taxes paid rose dramatically beginning in 1964 even though income was taxed at significantly lower rates. In the case of individuals earnings over $1 million per year, taxes collected actually doubled in the two-year span during which the tax rates were being lowered!

These results, which represent a remarkable rebuttal of these who argue that upper-income tax cuts are a "raid on the Treasury," indicate that a further reduction from 70 percent to 50 percent would not only spur economic growth and increase aggregate supply, but would actually assure the Treasury of greater tax revenues. The argument for upper-income tax cuts is almost as watertight as the argument for lower capital gains taxes.

TABLE 1.—INCOME TAXES PAID BY UPPER INCOME BRACKETS

| | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 |
|---|---|---|---|---|---|---|
| Maximum tax rate (percent) | 91 | 91 | 91 | 77 | 70 | 70 |
| Level of adjusted gross income: | | | | | | |
| $100,000 to $500,000 | 1,970 | 1,740 | 1,830 | 2,220 | 2,752 | 3,176 |
| $500,000 to $1,000,000 | 297 | 243 | 243 | 306 | 408 | 457 |
| Over $1,000,000 | 342 | 311 | 326 | 427 | 603 | 590 |

Note: All tax figures are in millions of dollars.

Mr. ROTH. But, there is a more serious matter here than collecting more Federal revenue. Marginal tax rates have risen substantially for every level of real income since they were last reduced in 1964. Prices have doubled since then. People earning $20,000 in 1964 were earning the equivalent of $40,000 in today's dollars. These people were just entering tax brackets that made tax shelters seem attractive, brackets which encourage leisure and discourage saving. People filing 2 percent of all tax returns, doing perhaps 10 to 15 percent of the Nation's saving, were affected.

Today, $20,000 in taxable income still diverts people into tax shelters and leisure, and away from saving. But five times the number of people are earning that much today, people who were earning $10,000 in 1964. They were not using tax shelters then. They are now. People filing 10 percent of all tax returns, doing perhaps 30 to 50 percent of the country's saving, are affected.

By 1985, if we do not reduce the marginal tax rates, 25 percent of all tax returns, covering 60 percent of the country's taxable income and 80 percent or more of the country's savings will be in the upper brackets.

To who and at what cost will the American steel industry sell bonds to modernize its plant and equipment if 88 percent of U.S. saving is attracted to tax shelters? Where and at what interest rates will savings and loan companies get deposits with which to make mortgages? How can we maintain our competitive position in world trade if we increasingly siphon off a dwindling supply of saving into inefficient boondoggles instead of into the upgrading of American factories and jobs?

Only the Roth-Kemp bill reduces marginal tax rules, the rates which affect behavior. Only Roth-Kemp addresses this basic question of savings, economic growth, and the protection of American jobs.

As for point three, both Mr. Ture and Mr. Evans agree that saving will increase sharply under Roth-Kemp.

Mr. Ture:

. . . The increase in private saving out of the very substantial increase in real income would be great enough to finance, in real terms, both the additional deficits and very large increases in investment.

Mr. Evans:

In the middle sixties, following the tax cuts, savings as a proportion of GNP rose sharply, and productivity gains . . . were well above average. . . . It is a fact that anybody could verify. (See Table 2.)

In fact, Chase Econometrics estimates that savings will rise enough from the tax rate reductions found in the Kemp-Roth bill to cover any added deficit and to still leave enough saving left over to increase net investment subtantially, delivering an enormous boost to real growth and productivity.

As for point four, the impact on unemployment compensation and working people, Evans and Ture forecast an increase of 2–4 million jobs from Kemp-Roth, and higher wages. And Mr. Ture stated:

Just as one would expect, labor would be by far the principal beneficiary of Roth-Kemp; about two-thirds of the increase in aggregate real income would be in the form of the increase in total labor compensation.

Thus, Kemp-Roth is not inflationary. It is self-financing four ways. Mr. Schultze doubts this primarily because, in his frame of reference, he has no way to distinguish between a tax cut which alters incentives, reduces the use of tax shelters, and stimulates savings and investment, and one which simply cuts Federal revenue and forces the Federal Reserve to create money to buy Treasury debt.

What has happened to Mr. Schultze is very simple. He is a macroeconomist used to looking at tax cuts according to their size. Roth-Kemp is a very small net tax cut which operates by restructuring tax rates and affecting incentives. Thus, its effects fall within the study of individual behavior—microeconomics. Mr. Schultze is out of his element here.

Mr. Schultze has totally neglected the fact that saving will be encouraged by lower tax rates. He has given no thought to the efficiency gains (and tax revenues) that will result as people shift from tax shelters into ordinary investment. He ignores production gains from a greater acceptance of overtime, or the more intense work effort and seeking after promotions brought on by lower rates. He neglects the benefits from increases in research and development as profitability is restored. These microeconomic effects come from lowering the tax barriers between effort and reward. These barriers, which Kennedy reduced, have been gradually resurrected by 15 years of inflation. They are powerful. They are not in the Keynesian short-run world view.

In the Kennedy years, the labor supply rose sharply, productivity rose sharply, savings surged, and capacity increased much faster than in the previous decade. Mr. Schultze says capacity and productivity will not rise fast enough for Roth-Kemp to repay Washington in three years in terms of higher Federal revenue. Maybe not. But, any delay in repayment will be thoroughly covered by higher saving, not by inflationary money creation. And the tax cut will repay the country as a whole in terms of full employment, higher real income, higher State and local tax receipts, fewer lives wasted on welfare, and a rekindling of the work ethic and entrepreneurial incentives. People will be working for themselves and their families once again, and upward mobility will again be part of American life.

Mr. President, I ask that a table, the appendix and two articles from the Wall Street Journal be printed in the RECORD.

The material follows:

TABLE 2.—INCREASE IN SAVINGS AND PRODUCTIVITY FROM KENNEDY TAX CUTS

[Dollar amounts in billions]

| Year | Total individual savings [1] | Increase over preceding year: Savings: Dollars | Savings: Percent | Productivity [2] (percent) |
|---|---|---|---|---|
| 1960 | $34.900 | −$2.472 | −6.61 | 1.6 |
| 1961 | 34.693 | −.207 | −.59 | 3.3 |
| 1962 | 40.243 | +5.550 | +16.00 | 4.6 |
| 1963 | 45.232 | +4.989 | +12.40 | 4.0 |
| 1964 | 54.901 | +9.669 | +21.38 | 4.1 |
| 1965 | 62.028 | +7.127 | +12.98 | 3.7 |
| 1966 | 72.003 | +9.975 | +16.08 | 3.2 |
| 1967 | 72.726 | +.723 | +1.00 | 2.3 |
| 1968 | 78.028 | +5.302 | +7.29 | 3.3 |
| 1969 | 69.563 | −8.465 | −10.85 | .3 |

[1] Increase in financial assets, plus net increase in tangible assets, less debt.

[2] Output per hour of all persons.

Sources: Savings: Board of Governors, The Federal Reserve. Productivity: Department of Labor, Bureau of Labor Statistics.

APPENDIX

In his appearance before the Senate Budget Committee, Charles Schultze presented a simplistic, back-of-the-envelope analysis of something he labeled the Roth-Kemp bill, but which was really a straw man set up to be an easy target for a cheap shot.

Here is how the straw man was set up. The first step was to make Roth-Kemp seem very large. Mr. Schultze conveniently set aside the social security tax rate increases of the next few years, and the higher tax rates which will result from inflation's pushing people into higher tax brackets. These two types of tax increases will bloat federal revenues above the levels of the 1977 Tax Act by about $25 billion in 1979, $40 billion in 1980, $65 billion in 1981, $90 billion in 1982, and $110 billion in 1983. (For every 10 percent rise in prices, the higher tax rates caused by inflation raise tax revenues by 16 percent. The above figures only include this extra 6 percent windfall in excess of the revenues the government needs to keep up with inflation.)

Setting these tax increases aside accomplished two things. It inflated the gross size of the Roth-Kemp cut, before subtractions, and then omitted the subtractions altogether, never putting Roth-Kemp on a net basis.

THE GROSS CUT

Since these tax increases may cause a recession, and will surely at least slow economic growth, removing them from consideration lets Mr. Schultze forecast a strong economy, an expanded GNP, and expanded revenues. The Roth-Kemp tax cut, which is one-third of income tax receipts, looks larger the larger one assumes revenues will be. In fact, many economic forecasters are considerably less sanguine about the economic outlook than Mr. Schultze, and would not put the Roth-Kemp bill anywhere near such a gross size as Mr. Schultze uses.

Thus, Mr. Schultze calls Roth-Kemp a $30 billion tax cut in 1979, and a $10 billion cut in 1981. In fact, it is near a $25 billion cut in 1979, a $50 billion cut in 1980, a $79 billion cut in 1981, an $87 billion cut in 1982, and a $95 billion cut in 1983.

THE NET CUT

Demand analysis operates on net injections of money into the spending stream.

Mr. Schultze should have subtracted the pending tax increases from gross Roth-Kemp figures, and compared the net Roth-Kemp numbers to the slack in the economy. Alternatively, he could have assumed the pending tax increases will widen the slack considerably, and compared somewhat lower gross Roth-Kemp numbers to the larger post-tax-increase slack.

What Mr. Schultze has done is to compare the gross Roth-Kemp numbers to the current slack. No wonder he sees the economy crashing through some sort of capacity ceiling, and generating inflation!

Net of pending tax increases, the Roth-Kemp personal tax cuts are about $2 billion in 1979, $8 billion in 1980, $5 billion in 1981, a $7 billion tax increase in 1982, and an $18 billion tax increase in 1983, assuming 6 percent inflation. In fact, inflation and its resulting tax increases will probably be larger than assumed by Chase, and the net size of Roth-Kemp smaller than shown here.

We can compare these net numbers, even multiplied by two, to our current $70–$90 billion per year economic slack, and see that Roth-Kemp does not crash through some supposed capacity ceiling. It does not lead to wild inflation. In fact, we would need to index the income tax by 1981, or have further tax cuts, to keep Roth-Kemp and full employment from being repealed by inflation by 1985!

OTHER FLAWS IN SCHULTZE ANALYSIS

Even allowing Mr. Schultze to use the gross figures instead of net for Roth-Kemp, his analysis goes astray.

For a tax cut to receive the full multiplier, it must not be offset by other factors. As we have seen, if other taxes rise, the net effect is reduced. But this is true even if other taxes do not rise!

Every tax cut must be financed, unless spending is cut. Suppose spending is not cut. Suppose the Treasury finances the tax cut by borrowing. Then the purchasing power injected by the tax cut is borrowed back by the Treasury, and the multiplier process collapses. The tax cut is ineffective, be it Roth-Kemp, Carter, or Ways and Means!

Thus, Mr. Schultze must be assuming that the tax cut is funded by some means other than borrowing from the public. There is only one other way out for him. He must expect the Federal Reserve to buy the Treasury bonds with new money. In the final analysis, Mr. Schultze's tax cut scenario works only if the Federal Reserve finances it almost in its entirety. Tax cuts are not fiscal policy anymore. They are monetary policy! Mr. Schultze is implicitly assuming a totally accommodative monetary policy. If the Federal Reserve chose not to be totally accommodating, it could make any tax cut noninflationary. The amount of inflation would then be a function of the response of the Federal Reserve, not a function of the size of the tax cut. Thus, Mr. Schultze's basic premise falls apart.

ROTH-KEMP TAX CUT VERSUS SOCIAL SECURITY AND INFLATION TAX INCREASES

[Chase econometrics forecast; billions of dollars changes from 1977 tax code levels]

| Year | 1979 | 1980 | 1981 | 1982 | 1983 |
|---|---|---|---|---|---|
| Roth-Kemp tax cut: | | | | | |
| Total cut (before reflow from higher GNP) | 25 | 50 | 79 | 87 | 95 |
| Personal cut (before reflow) | 21 | 45 | 73 | 80 | 88 |
| Social security increase | 12 | 18 | 36 | 40 | 42 |
| Inflation tax increases: | | | | | |
| Personal | 9 | 19 | 30 | 42 | 55 |
| Corporate | 2 | 5 | 8 | 12 | 16 |
| Sum of increases | 23 | 42 | 74 | 94 | 113 |
| Net tax cut, increases less Roth-Kemp | −2 | −8 | −5 | [1] +7 | [1] +18 |

[1] + Indicates tax increase.

[From the Wall Street Journal, Aug. 7, 1978]

TAXES, INFLATION AND THE RICH

(By Michael K. Evans)

Increasing numbers of economists have rerently suggested that massive tax cuts would cure the ailments of the U.S. economy by increasing productivity, raising incentives and hence expanding aggregate supply. The idea of supply-side incentives has been embodied in proposals like the Steiger amendment to cut capital gains taxes and the Kemp-Roth bill for an across-the-board tax cut.

These bills, and the new supply-side thinking, raise issues that sound startling in the context of contemporary economic thought: Is it possible to cut taxes without spurring inflation? And is it possible to cut taxes, or at least certain taxes, without even reducing total revenues received by the federal Treasury?

The historical record clearly indicates that the rate of inflation is inversely proportional to the gap between actual and maximum potential GNP. So measures that raise potential GNP would reduce inflation at the same time they increase economic growth. Measures that succeeded in expanding the gap by raising potential would clearly offer greater benefits to society than the traditional remedies of fiscal and monetary restraint, which expand the gap by reducing aggregate demand.

HOW A TAX CUT REDUCES INFLATION

In order for a tax cut to reduce inflation, it must increase maximum potential GNP faster than actual GNP. This is accomplished only by raising the investment ratio or by increasing incentives to work because a larger proportion of income will remain after taxes. Not all tax cuts accomplish this. A tax reduction of $50 per person, for example, would have no measurable effect on productivity or incentives, so it would not raise potential GNP. However, it would increase actual GNP, hence reducing the gap and raising the rate of inflation.

Thus the other extreme, a reduction in corporate income taxes or capital gains taxes would initially affect investment, thereby leading to the desired effect on productivity and total supply. While actual GNP would obviously rise because of higher capital spending, the gap would increase, thereby reducing the rate of inflation. A number of studies by Chase Econometrics and others have already shown the salutory impacts of business tax cuts.

The question of personal income tax cuts, which has become particularly relevant in view of the increased interest in the Kemp-Roth bill, is a much more difficult one to answer. While it may be theoretically appealing to argue that a reduction in personal income taxes encourages an individual to work harder and thus increase both his pretax and aftertax income, little evidence has been assembled either to support or disprove this hypothesis.

One of the major problems is measuring the amount and intensity of work offered by an individual taxpayer. However, a reasonable proxy variable is the amount of income taxes paid by this individual. Thus we can examine what happened to federal personal income classification in the years following major tax cuts. These occurred in the mid-1920s, under Treasury Secretary Andrew W. Mellon, and in 1964–1965. It is interesting to examine both of these periods in some detail.

Before the U.S. entered World War I, the maximum tax rate on personal income was 15%, but this rate rose dramatically to a peak of 73% in 1918 and succeeding years. It was then cut to 55% in 1922 and 25% in 1926. It is instructive to learn what happened to taxes paid by millionaires—that group which has been singled out by President Carter and Treasury Secretary Blumenthal as unworthy of further tax relief. To adjust for the differentials caused by inflation, we consider those taxpayers with incomes over $300,000 in 1922 and in 1927, although even this adjustment is an understatement of the true effects of rising prices. In 1922, this group paid taxes of $77 million, while in 1927, the year after the second reduction in rates, its members paid a total of $230 million. Not only did the economy benefit significantly, but the millionaires themselves paid three times as much in taxes with lower rates.

It could be argued that the Mellon tax cut results, while instructive, are not relevant today since the institutional structure and income distribution of the U.S. economy are far different now than they were in the 1920's. However, we need not be restricted to a reading of "ancient history" in our determination of how a reduction in top bracket rates might affect overall revenues. Fortunately we can rely on the figures before and after the Kennedy-Johnson tax cuts of 1964.

As most readers will recall, the top rate was reduced from 91% in 1963 to 77% in 1964 and 70% in 1965 and later years. The figures for actual income tax paid for the period 1961–1966 for taxpayers with incomes of $100,000 or more are taken from "Statistics of Income" and are reproduced in the accompanying table.

The results are so clear-cut that it is surprising that these figures have not previously been introduced as evidence in favor of Kemp-Roth. After virtually no growth in income taxes for incomes over $100,000 for three years, actual taxes paid rose dramatically beginning in 1964 even though income was taxed at significantly lower rates. In the case of individuals earning over $1 million per year, taxes collected actually in the two-year span during which the tax rates were being lowered. For income classes under $100,000, taxes either fell or rose less than the average growth in total personal income.

These results, which represent a remarkable rebuttal of those who argue that upper-income tax cuts are a "raid on the Treasury," indicate that a further reduction from 70 percent to 50 percent would not only spur economic growth and increase aggregate supply, but would actually assure the Treasury of greater tax revenues. The argument for upper income tax cuts is almost as watertight as the argument for lower capital gains taxes.

The more extreme proponents of Kemp-Roth have sometimes seemed to suggest that this phenomenon occurs at all income levels. It does not, as can be seen by a perusal of the complete "Statistics of Income" figures, and by the fact that aggregate personal income tax collections did decline from $51.5 billion in 1963 to $48.6 billion in 1964. This should

come as no great surprise: The effects on individual incentives and supply labor are highest—at the upper income levels rather than for the typical wage earner.

FLEXIBILITY FOR UPPER INCOME GROUP

Furthermore, just as has been shown in recent work on capital gains taxes, upper-income individuals have far greater flexibility in arranging the income for their assets in the form of tax-free or tax-sheltered income when tax rates are at punitively high levels. The risks of unreported income become relatively much smaller when tax rates are near 100 percent, and the lure of diverting earnings to foreign countries becomes much greater.

Thus if the Treasury wants to collect more revenues, it will lower the highest marginal tax brackets. Only if it wants less revenue and poorer economic growth so badly that it is willing to penalize all those "millionaires" will it push for higher upper-income tax rates.

INCOME TAXES PAID BY UPPER INCOME BRACKETS

| | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 |
|---|---|---|---|---|---|---|
| Maximum tax rate (percent) | 91 | 91 | 91 | 70 | 70 | 70 |
| Level of adjusted gross income: | | | | | | |
| $100,000 to $500,000 | 1,970 | 1,740 | 1,890 | 2,220 | 2,752 | 3,176 |
| $500,000 to $1,000,000 | 297 | 243 | 243 | 306 | 408 | 457 |
| Over $1,000,000 | 342 | 311 | 326 | 427 | 603 | 590 |

Note: All tax figures are in millions of dollars.

[From the Wall Street Journal, Aug. 2, 1978]

THE ECONOMIC CASE FOR KEMP-ROTH

(By Paul Craig Roberts)

Walter Heller is known to the public as a liberal economist who was Chairman of the Council of Economic Advisers under a Democratic President, and Herbert Stein as a conservative economist who held the same position under Republican Presidents. Both agree that the Kemp-Roth tax rate reduction bill is economic nonsense. "It would soon generate soaring deficits and roaring inflation," says Mr. Heller. "I agree," says Mr. Stein.

Before the public is misled by their agreement into concluding that there is no economic case to be made for Kemp-Roth, I would like to show that there is.

Profs. Heller and Stein both think of tax cuts in Keynesian terms of the dollar amount put into the economy to fuel spending. They believe tax cuts work by raising the disposable income of consumers, who then spend more. The increased spending soaks up excess capacity and unemployed labor, thus moving the economy to higher levels of employment and GNP. The Kemp-Roth bill is, in their view, too large a tax cut. They believe it would fuel more new spending than there is excess capacity and produce an inflationary excess demand.

As Mr. Heller put it on this page July 12, the bill would "simply overwhelm our existing productive capacity with a tidal wave of increased demand." A smaller tax cut, he thinks, would be in order. In his July 18 article, Mr. Stein agreed with this economic analysis, but supported Kemp-Roth as a desperate means of forcing a reduction in federal spending.

A CURIOUS ANALYSIS

This economic analysis, first of all, is a curious one for economists who believe that tax cut work by increasing demand. Without Kemp-Roth, taxes will increase due to automatic tax increases caused by inflation and higher Social Security taxes; one would expect Keynesians to be worrying about the need to offset the depressing effects of "fiscal drag."

In the context of ongoing tax increases, the Kemp-Roth reductions in the personal income tax rates do not amount to much in dollar terms. Net of the tax increases, Kemp-Roth is a $2 billion cut in 1979, a $15 billion cut in 1980, an $18 billion cut in 1981, a $7.5 billion cut in 1982 and a $1 billion cut in 1983—hardly enough to overwhelm the nation's productive capacity with a tidal wave of consumer spending. Keynesians ought to believe that the net additions to demand provided by Kemp-Roth are too small to have much impact on the economy, just as Mr. Heller says that the Mellon cuts of the 1920s were too small in dollar terms to have had any relation to the prosperity that followed.

The economic case for Kemp-Roth though, does not rest in increasingly dubious Keynesian premises about government policy "injecting" spending to add to aggregate demand. Like the Mellon tax cuts, it is based on incentive effects, on the economics of supply. As the adage goes, it is hard to teach old dogs new tricks, and Keynesians, who have spent four decades thinking in terms of spending and demand, find it hard to understand arguments about incentive and supply.

The new supply economists think of tax rate changes as incentive changes, not as income changes. To understand the difference, consider the removal of a tariff that is high enough to prevent trade in a commodity. When the tariff is lifted, no revenues are lost, no budget deficits result and no money is put into anyone's hands. Yet clearly economic activity will expand, because the disincentive is removed. Nothing in Keynesian theory captures this effect.

Yet this is in fact how tax cuts work. A tax rate reduction does not in itself produce more real goods and services. There cannot be more income unless people produce more; the only way a tax cut can boost GNP is by providing an incentive for more production. If people respond to tax cuts by working less, as Mr. Heller suggests, then GNP would fall and Keynesian fiscal policy wouldn't work either!

When tax rates are reduced, the after-tax rewards to saving, investing and working for taxable income rise. People switch into these activities out of leisure, consumption, tax shelters and working for nontaxable income. The incentive effects cause an increase in the market supply of goods and services—thus the name "supply side economics."

Consider first the choice between working for additional taxable income and enjoying additional leisure. The price to the person of additional leisure is the amount of income, after tax, that he gives up by not working. Obviously, the higher the tax rate he faces, the cheaper leisure is in terms of the income he sacrifices. In our nation with its substantial income cushions, work disincentives are not limited to the top tax brackets. Studies by Martin Fieldstein of Harvard show that the lack of a significant gap between after-tax take-home pay and untaxed unemployment benefits has made leisure a free good for one million workers, thus shrinking GNP and the tax base by the value of their lost production.

Consider next the choice between working for taxable and nontaxable income. Take the case of a carpenter facing a 25% tax-rate. For an additional day's earnings of $100 he gets to keep $75. Suppose that his house needs painting and a painter costs $80 a day. Since his after-tax earnings are only $75, he saves $5 by painting his own house and chooses not to earn the additional $100. Alternatively, the carpenter and painter may swap services, but either way the tax base is smaller by $180, and the government loses tax revenues.

Studies by Gary Becker of the University of Chicago have made it clear that capital and labor are employed by households to produce nontaxable income through nonmarket activities, such as a carpenter painting his own house. The amount of household-owned capital and labor supplied in the market is affected by tax rates. The higher they are, the more households allocate their resources to the production of nontaxable income.

Now consider the decision between using income for current consumption or saving and investing it for future income. The price to the person of enjoying additional current consumption is the amount of future income he forgoes. The higher the tax rate, the smaller the amount of after tax future income he sacrifices by enjoying additional current consumption.

Take the case of a person facing the 70% tax rate on investment income. He can choose to invest $50,000 at a 10 percent rate of return, which would bring him $5,000 per year of additional income before taxes. Or he can choose to spend $50,000 on a Rolls-Royce. Since the after-tax value of $5,000 is only $1,500, he can enjoy a fine motor car by giving up only that amount. Britain's 98% tax rate on "unearned" (investment) income has reduced the cost of the Rolls-Royce in terms of forgone income to only $100 a year. The profusion of Rolls-Royces seen in England today is mistaken as a sign of prosperity.

Walter Heller tells us, though, that the decision to save does not depend on the relative prices of current consumption and future income; that "Denison's Law" shows that savings do not respond to higher after-tax rewards. But the most recent empirical studies of the responsiveness of savings are those of Michael Boskin of Stanford, who concludes that "private saving is indeed strongly affected by changes in the real after-tax rate of return." He specifically dismisses "Denison's Law" as a "conjecture based on evidence which is flimsy at best and dangerously misleading at worst." A current understanding of the Kemp-Roth bill's effect on savings is absolutely crucial to assessing an asserted inflationary effect.

To summarize the above points: With so many decisions affected by tax rates, it is obvious that the market supply of goods and services must respond to changes in tax rates. Our economy functions because people respond to changes in relative prices: the price of butter relative to that of margarine, beef relative to chicken, capital relative to labor and so on. A tax rate change is just another relative price change. It changes the prices of leisure and current consumption in terms of forgone current and future income. To claim that people don't respond to these price changes goes against the basic principles of economic science. Yet there is no recognition of such response in the brand of economics now used to brand Kemp-Roth as wildly inflationary.

Since Mr. Heller goes out of his way to criticize those of us who have done staff work on the Kemp-Roth bill, he should be especially interested in the results of the congressional staff debates on these points over the past year. The Congressional Budget Office, like the Treasury, once habitually offered simplistic revenue estimates that omitted the expanded tax base and revenue feedbacks. These static revenue estimates are now discredited. CBO Director Alice Rivlin has been forced to admit that her models, based on familiar Keynesian principles, are "unable to provide estimates of the long-run impact tax cuts."

(By the way, Prof. Heller's own staff work could use some polishing. The numbers he attributed to Norman Ture do not come from Mr. Ture.)

Mr. Heller and Mr. Stein believe the Kemp-Roth bill depends on stimulating GNP suf-

ficiently that government revenues will not fall even in the first year, thus avoiding an inflationary deficit. In arguing that feedbacks are not large enough to recover all revenues, they are demolishing a straw man. This is not what the bill's proponents mean when they say it would pay for itself. Part of the projected deficit will indeed be eliminated by revenue from the larger GNP. The remaining deficit will not be inflationary because it will be self-financing.

Deficits are linked in the public mind with inflation or crowding out because the deficits of the past decade have originated from increased government spending and tax rebates—fiscal policies designed to increase demand, not incentives. These deficits add to the demand for funds in the financial markets, thus pushing up interest rates. The Federal Reserve then adds to the money supply, monetizing the deficit in an effort to avoid rising interest rates and crowding out, and this excessive money creation causes inflation.

While Keynesian eyes can see no difference between these deficits and deficits caused by cutting taxes, in terms of incentives this difference is decisive. Lower tax rates increase after-tax rates of return, which in turn expand private savings. When Mr. Boskin's measures of the responsiveness of savings are applied to the Kemp-Roth bill, they predict an increase in gross savings of $35 billion in the first year and a steady growth thereafter. Mr. Ture has even higher estimates of the savings effect, as does Chase Econometrics.

Savings, of course, represent the supply of funds in the financial markets. So deficits caused by tax rate cuts add to the supply of funds as well as the demand for funds. This allows the deficit to be financed without pressure on interest rates and money creation. There is no need to monetize the deficit and thus no inflationary effect. In addition, the larger GNP also means higher revenues for State and local governments and corporations, which reduce their own borrowings and ease pressure in the financial markets.

THE CHASE FORECAST

Chase Econometrics has considered all of these effects in studying the effect of the Kemp-Roth bill. Chase forecasts that the federal government would recover in revenue reflows 41 percent of the $25 billion tax cut in the first year. This rises to 72 percent in the seventh year. The remaining deficit is more than covered by the increase in personal savings, retained earnings, and state and local government surplus. Thus the deficit puts no pressure on credit markets. The tax cut generates enough new savings to finance the deficit plus an increase in private investment.

It is theoretically true, of course, that government spending could increase rapidly enough to soak up all additional savings and restore pressure to monetize the deficit. But if government spending in real terms could be held to current levels for about two years, the Kemp-Roth bill would get us out of the high deficit, high inflation, low productivity, low growth doldrums, and save transfer programs like Social Security.

As for Mr. Stein, many proponents of Kemp-Roth agree with him that government spending is already too high, but this is a separate issue. Legislatively, tax bills are separate from spending bills, and there is no way to tie them together. The only purpose that could be served by the bill's sponsors calling for accompanying spending cuts would be to threaten the vested interests of the congressional spending committees and their constituents, leaving the bill hostage to a bitter and quite unnecessary political fight.

As for Mr. Heller, he does better when he takes off the Keynesian blinders and relies on his own experience with the Kennedy tax cuts. In his article on Kemp-Roth he says, "To attribute to the 1962-64 tax cuts all the expansion and revenue increases in 1963-68 boggles the mind. It totally ignores the huge (over) stimulus of the Vietnam expenditures." In other words, the tax cut did not pay for itself. But he saw these events differently in testifying before the Joint Economic Committee in February 1977.

ANTICIPATING THE LAFFER CURVE

In his testimony Prof. Heller anticipated the Laffer Curve, saying that the Kennedy cut "was the major factor that led to our running a $3 billion surplus by the middle of 1965 before escalation in Vietnam struck us. It was a $12 billion tax cut which would be about $33 or $34 billion in today's terms, and within one year the revenues into the Federal Treasury were already above what they had been before the tax cut." He concluded, "Did it pay for itself in increased revenues? I think the evidence is very strong that it did."

On this point, Mr. Denison has something interesting to say. His estimate of the gap between actual and potential GNP for 1962 and 1963 is only $12 billion—the size of the Kennedy tax cut. Obviously, such a small gap left little room for an expansion based on increased demand and unused capacity. If Mr. Denison is correct, the substantial expansion that followed the tax cut and to be based on something else, a supply-side response to the higher after-tax rates of return.

Far from being wildly inflationary even with little unusued capacity in 1962, the Kennedy tax cuts promoted healthy and noninflationary expansion. Once demand management is forgotten and incentive effects are understood, there is every reason to believe the Kemp-Roth tax cuts would do the same.

Mr. HATCH. Mr. President, the Senate must not miss this opportunity to reduce the tax burden on work, employment, saving, and investment. The American people expect—and deserve—tax relief, and now that good sense has prevailed and the rebate has been abandoned, we have the opportunity to do what should have been done from the beginning—cut the tax rates permanently for all Americans.

The temporary rebate was not designed to get Government out of the taxpayers' pockets or off their backs. It was merely a temporary license for some Americans to pick the pockets of other Americans. It would not have built the economy, but, instead, it would have built the political handout constituencies. The rebate was favored by its advocates, because they claimed it would hold on to the tax base and allow increasing Government spending programs in the following years.

However, the rebate would not have held on to the tax base. It would have held it down. Because of congressional action, the claims on the tax base are already growing faster than the tax base. Hard political choices will soon have to be made unless politicians take action to increase the tax base. The only way this can be done is by cutting the tax rates across the board.

The most successful tax cut in the post war years was the Kennedy tax cut. It got the economy moving again, but the inflation of the past decade has canceled out Kennedy's reforms by driving all taxpayers, both individuals and businesses, into higher tax brackets. To revitalize the economy, we must reinstitute the Kennedy tax rate reductions.

It is necessary to put our economic problems into perspective. Unemployment, inflation, the deficit, the frightening problems of the social security system all come under the general problem of economic growth.

Growth—we have not had enough of it. We have not had enough growth of real production to create the jobs we need to reduce our unemployment rate. We have not had enough growth of real production to raise the American standard of living at the rate it is rising in other industrial nations. We have not had enough growth of real production to enlarge the tax base enough to eliminate the deficits in the Federal budget, and to fight inflation. We have not had enough growth in real production to enlarge the tax base enough to avoid the awesome prospect of having to triple the social security tax rate over the working life of those now entering the labor force.

If the Senate will not take effective measures to increase the growth rate, it will have to do without adequate defense, all its health care proposals, or currently promised social security benefits, because the tax base to fund these three largest budget items will not exist.

Why have we not had enough growth? The purely technical answer is that we have not had enough savings. The basic economic equation is that total national savings must be identically equal to the sum of investment and the Federal deficit. We can do two things with income—we can save it or we can consume it. The amount that is consumed is not available for investment in new factories, mines, farms, or housing. The amount that is consumed is not available for financing the Federal deficit. Only savings can be used for investment and for bailing out the Federal Government when it overspends. And given the Government's propensity to overspend, there is not really that much left for investment. If we want more economic growth, we need more investment, and that means that we need lower tax rates.

The United States has had the lowest savings rate in the Western World in the postwar period. And just look at the results: In 1950 the United States had roughly twice the per capita income of Sweden or Switzerland. By 1974, these countries surpassed the United States in per capita income, and they were quickly followed by Belgium and Denmark. Now, West Germany, Canada, France, and Japan are not very far behind.

This spectacular growth of our trading partners has stemmed from their deliberate attempts to increase their rates of saving and investment. I ask unanimous consent that two tables be printed at this point in the RECORD.

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

II.—COMPARATIVE REAL GROSS DOMESTIC PRODUCT REAL GDP PER CAPITA, AND REAL GDP PER EMPLOYED CIVILIAN, 6 COUNTRIES, 1950-75[1]—OUTPUT BASED ON INTERNATIONAL PRICE WEIGHTS

[United States=100]

| Year | Gross domestic product per capita | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Sweden | Switzerland | Canada | Japan | France | Germany | Italy | United Kingdom |
| 1950 | 59.0 | 62.7 | 76.0 | 17.8 | 49.4 | 39.3 | 26.0 | 57.2 |
| 1955 | | | 76.1 | 22.7 | 61.6 | 52.2 | 29.9 | 58.4 |
| 1960 | 77.0 | 84.4 | 78.8 | 31.6 | 60.9 | 65.5 | 36.6 | 62.4 |
| 1965 | 96.2 | 98.0 | 81.2 | 41.6 | 64.8 | 67.8 | 39.1 | 60.8 |
| 1967 | | | 81.3 | 47.3 | 66.4 | 64.3 | 41.0 | 59.1 |
| 1970 | 112.2 | 111.5 | 85.7 | 61.5 | 75.0 | 74.7 | 45.8 | 60.3 |
| 1971 | | | 88.0 | 64.0 | 77.0 | 75.3 | 45.4 | 60.8 |
| 1972 | | | 87.8 | 65.6 | 76.8 | 73.7 | 44.3 | 59.5 |
| 1973 | | | 88.7 | 68.1 | 77.0 | 73.8 | 46.7 | 59.0 |
| 1974 | 123.4 | 122.2 | 92.1 | 68.4 | 81.4 | 76.0 | 47.0 | 61.1 |
| 1975 | 123.5 | 114.3 | 93.5 | 71.0 | 81.6 | 75.8 | 45.8 | 61.9 |

WAGE INCREASES, INVESTMENT, AND SAVING

| | 1965-75 percent change in real wages and fringe benefits[1] | Investment as percent of GNP averages, 1960-73 | | Household savings ratios, 1976 estimated (percent) |
|---|---|---|---|---|
| | | Total | Total minus home building | |
| United States | 15.7 | 17.5 | 13.6 | 6-8 |
| Canada | 48.5 | 21.8 | 17.4 | 10-12 |
| Japan | 137.9 | 35.0 | 29.0 | 24-26 |
| Belgium | 103.8 | NA | NA | NA |
| France | 77.4 | 24.5 | 18.2 | 16-18 |
| Germany | 78.1 | 25.8 | 20.0 | 14-16 |
| Italy | 116.4 | 20.5 | 14.4 | 11-24 |
| Sweden | 68.8 | NA | NA | NA |
| Un ted Kingdom | 53.9 | 18.5 | 15.2 | 12-14 |
| Switzerland | 55.1 | NA | NA | NA |

[1] Includes pension programs and other fringe benefits. NA—Not available. Source: Bureau of Labor Statistics.

Mr. President, the first table shows the comparative real gross domestic products per capita in several major Western countries, and their rapid rate of gain on the United States. The second chart shows the relationship between investment as a percent of GNP, and the percent change in real wages and fringe benefits in the major Western nations. The United States came in dead last in the share of investment in GNP. Not surprisingly we also came in dead last in real wage and fringe benefit increases for 1965 to 1975. While U.S. wages and fringe benefits rose less than 16 percent over this period, those in Canada rose 48 percent, those of Britain, Switzerland, Sweden, Germany, and France rose between 50 percent and 80 percent, and those of Belgium, Italy and Japan rose more than 100 percent in the same time period.

Clearly, if we want more jobs and higher wages, we have got to increase the rate of savings and investment.

Why is the rate of saving so low in this country? The rate of saving is low primarily because it does not pay people to set money aside the way it used to. Over the past 25 years, Government spending has gone from roughly 21 percent of GNP to more than 35 percent of GNP, at the Federal, State, and local levels. Over that same period of time, Federal income taxes on typical American workers and social security taxes have increased dramatically. State and local taxes have risen even faster.

Typical industrial workers who, only 4 or 5 years ago, faced Federal income marginal tax brackets of 17 or 19 percent, now face brackets of 22 percent, and these marginal rates rise every year with inflation. It is the marginal rates which determine how much of any overtime pay, or added interest from added savings that these people get to keep. Similarly, higher-income people, with the country's highest propensity to save and invest, have found their marginal rates climbing ever higher. It is reaching the point that more and more people are discouraged by very low after-tax yields on money that they have saved.

Remember the good old days when thrift used to be a virtue? Over the last 20 years, the Government has made a mockery of thrift. Not only has it been the country's leading example of profligate spending and waste, but it has drastically penalized those who have chosen to save, rather than spend. In 1960, someone could have put money aside in a savings account at 4 percent interest and would have lost one point to inflation, and one point to taxes, for a real increase each year of 2 percent on his money. That same person today would probably have his money in a 7-percent account, losing five points to inflation, three points to taxes, and ending with a real loss of 1 percent on every dollar he put in the bank. This is how the Federal Government rewards those who save.

Another way in which the Federal Government has managed to discourage savings is through its mishandling of the Social Security System. This system is regarded as a pension plan by its participants, but it is really a system of transferring funds from current workers to current retirees. In a private pension plan, or in retirement programs of countries like Sweden, each group of workers sets aside money during its own working lifetime for its own retirement. These savings are invested to expand real output in the economy, so that the workers can live on the accumulated principal and interest, which is their share of that expansion, after they retire. In the United States, workers and employers pay a social security tax which is not saved and is not invested. It is transferred immediately to retirees for immediate consumption.

Many economists have pointed out that insofar as Americans feel they can rely on social security payments for retirement income, they feel they can afford to save less during their working years. This has reduced the savings rate of such families by as much as 40 to 50 percent.

Unlike Sweden, the United States does not make up for this lower savings rate with Government saving. We do not run surpluses to build up the Social Security Trust Fund, nor do we avoid Government deficits which require the Government to borrow what would otherwise be private investment capital. This means that the Government takes much of what little savings is left, and diverts it from productive, private, growth-oriented uses.

Our low savings is one of the reasons for the low rates of investment, growth, and real wage increases in the United States. This in turn means a slow rate of growth of the social security tax base, which necessitates higher tax rates. These higher tax rates further discourage hiring and work effort, compounding the problem.

Obviously, we have to encourage an increase in the rate of savings. We also have to encourage the utilization of that savings in productive private investment.

The creeping tax rates that we have experienced over the last 20 years have gradually reduced the rate of return, after taxes, that the typical investor can expect. There are millions of potential investors who look at the after-tax return on investments, and who decide to spend out of their capital for a trip to Bermuda, instead of reinvesting. Consequently, we devote fewer resources to new housing, new mines, and new factories. We hold down the growth in the stock of capital and, as a consequence, we hold down the growth in wages. Wages are determined by the capital-labor ratio, the amount of tools and equipment that a worker has to work with. Countries with a high stock of tools and equipment per worker have high wages. Countries with a growing stock of tools and equipment per worker have growing wages. If we want more jobs and higher wages, tax rates must come down to increase the after-tax reward to those who provide the tools and equipment which we need.

The marginal tax rate on equity capital in this country is nearly 80 percent, counting property taxes, corporate in-

come taxes—both State and Federal—payroll taxes, excise taxes, and taxes on dividends distributed. No wonder firms have been having a harder and harder time expanding. Investment used to be a virtue. There used to be a time when people looked with favor on those who brought a new factory into town, or who expanded existing local industries. Now these people are punished through punitive tax laws, which say "Eat, drink and be merry, because if you don't squander it the Government will."

I would like to point out that the same disincentive effects produced by marginal tax rates on savings and investment also discourage the supply of labor. People considering overtime these days find themselves with a far lower aftertax reward for that extra effort than in years past. Remember when leisure used to be frowned upon, and labor was considered a virtue? Not any more. The Government has stated, in no uncertain terms, that anyone who tried to work harder will be punished for it. I ask unanimous consent to have printed in the RECORD at this point a Wall Street Journal editorial entitled "Tax the Rich."

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

TAX THE RICH!

In what has become an annual event, the Treasury Department last week reported that 230 of the nation's wealthiest individuals paid no federal income taxes in 1975. Of the 34,121 persons who reported adjusted gross incomes of $200,000 or more, 230 paid no tax. In 1974, the number was 244. In 1973, 154.

Since early 1969, when lame-duck Treasury Secretary Joseph Barr initiated this festivity by announcing that 200 rich Americans had escaped taxes by crawling through loopholes, the government has been trying to do something about it. Loopholes have been closed left and right. A minimum tax has been legislated, then increased. IRS, treating the annual figure as a source of embarrassment, bends every effort to reduce it. But more rich people are paying no taxes than in 1969, and the economy is in much worse shape now than it was then.

It stands to reason, and we thoroughly believe, that the U.S. economy would benefit enormously if the rich paid more taxes. We have been arguing this, at least implicitly, for years. What we have not been able to get the politicians to understand, though, is that you can't get rich people to pay more in tax revenues by raising their tax rates. If you raise the rates, it becomes even more profitable for them to hire lawyers and accountants to find them loopholes, and the cost of this misdirected effort is a dead loss to the economy. Or they stop working entirely and dissipate their capital drinking champagne and sailing yachts, which is also a dead loss to the economy. Either way, they contribute less in tax revenues, and the burden of supporting government expenditures falls on the middle class and poor.

Consider what would happen to a "good" rich person who refuses to use loopholes and prefers hard work to sailing yachts. He decides to invest $1 million of his capital in a widget factory in New York City, which will employ hundreds. He will run it himself, arranging the financing, assembling the personnel, finding the markets, and so forth. Give him a year to get off the ground, but say he is lucky enough in the second year to make a 10 percent profit on his invested capital. This is after his workers have paid federal, state and local income taxes and the widget company has paid property taxes, license fees, etc.

Of the $100,000 profit, the city clears away roughly $5,700, leaving $94,300. The state clears away about 10 percent of that, leaving $84,870. The IRS, levying at progressive rates, snatches $38,000, leaving $46,870. Our good rich person then pays this to himself as a dividend.

Being rich, our man is of course in the highest personal income-tax brackets, and after paying 4.3 percent to the city ($2,015) has $44,855 left. The state clips him for 15 percent of that ($6,728) and leaves him $38,127. Uncle Sam "nicks" him for 70 percent of that, which is $26,689, leaving him with $11,438.

Thus, on the investment of $1 million in capital and two years hard work in assembling an enterprise that is risky to begin with, this lucky fellow who turned a profit of $100,000 has $11,438 to spend. He has given up two years on his yacht to gain $5,719 in annual income. If he had invested in tax-free municipals, he would have gained roughly $60,000 in annual income and could have remained on his yacht instead of fighting New York City traffic, City Hall, and the widgetmakers union.

Ralph Nader's loophole closers calculate that if you closed the loopholes the "bad" rich people would be forced to pay taxes. This assumes the bad rich will be forced to risk $1,000,000 and two years' hard work for $5,719 in after-tax income. Even Fritz Mondale, we will guess, would feel uncomfortable with this assumption.

Why not tax the rich by lowering the rates they face? They will thus be enticed back from their yachts and once again assemble widget plants in New York City, with tax revenues flowing to Washington, Albany and City Hall not only from them, but also from all those who would then be usefully employed in widgetmaking. By all means, tax the rich! But do it right, and in this fashion lift the burdens of taxation from those who aren't rich.

Mr. President, this editorial shows how a combination of personal and corporate income taxes, Federal, State, and local, can reduce the rate of return on capital and labor to less than one-half percent, leaving millions of people to give up on the difficult job of managing their own business, and causing them instead to dump their holdings into municipal bonds and sit back doing nothing. This results in a drastic reduction of the tax base, and a drastic reduction in real output which we desperately need to feed, house, and clothe our population.

Some politicians will not agree to across-the-board tax rate reductions, because they believe the so-called rich will pay less taxes as a result, and they are not willing to treat the rich equally as other taxpayers. These politicians simply do not understand how taxation works, and they are senselessly introducing class warfare into the United States. I am inserting a table in the RECORD at this point. It is from the Internal Revenue Service statistics of income. It shows that as the top tax rate fell, the number of tax returns in the top bracket grew and the percent of total tax collected from the top bracket also grew. The IRS figures show that lower tax rates result in the rich paying more taxes and a greater percent of total taxes.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing special income tax returns with adjusted gross incomes above $100,000.

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

NCOME TAX RETURNS WITH ADJUSTED GROSS INCOMES ABOVE $100,000

| Year | Number of returns filed | Percent of total tax collected | Top tax rate (percent) |
|---|---|---|---|
| 1950 | 24,523 | 5.4 | 91 |
| 1961 | 29,730 | 6.2 | 91 |
| 1962 | 27,174 | 5.1 | 91 |
| 1963 | 29,498 | 5.1 | 91 |
| 1964 | 36,501 | 6.3 | 77 |
| 1965 | 46,013 | 7.6 | 70 |
| 1966 | 53,166 | 7.5 | 70 |
| 1967 | 67,021 | 8.5 | 70 |
| 1968 | 82,223 | 9.2 | 75.25 |
| 1969 | 82,111 | 8.2 | 77 |
| 1970 | 77,690 | 6.8 | 71.75 |
| 1971 | 91,020 | 7.9 | 70 |
| 1972 | 114,636 | 8.6 | 70 |

Source: IRS Statistics of Income.

Mr. President, the answer to this apparent puzzle is clear. Allowing the rich to keep more of what they earn encourages them to take their money out of tax-free, bonds, loopholes, and tax shelters and invest it where they can earn a higher rate of return. Thus, the tax base and thereby the tax revenues to the Government both grow. In short, the rich pay more total taxes.

Between 1960 and 1972, only once, as the tax rates came down from 91 to 70 percent, did the number of returns filed go lower instead of higher and did the percent of tax collected go lower instead of higher; but even then, it was much higher than when the 91 percent top tax rate was in effect.

All of our social, political, and economic problems reduce to one basic problem: that is how to encourage savings, investment, and work effort to produce greater economic growth than we have had over the past few years. Fortunately, there is one set of policies which can produce this result. That policy is tax rate reduction, as advocated by my friend, Senator ROTH.

Tax cuts work on the supply side, by rewarding those who produce additional savings, investment, and labor.

A lower tax rate on a person's top, marginal bracket makes added hours of work more worthwhile than before in terms of take-home pay. The supply of work effort rises.

Likewise, the lower marginal tax rate makes the return on additional savings rise. People who were formerly choosing more consumption and more leisure are induced to choose instead more investment and more work.

The same situation holds true for investment. Those who have expanded their businesses as much as they care to at the current high tax rates will make the added effort to earn additional income if marginal tax rates are reduced.

Throughout this discussion, I have been stressing marginal tax rates, the rates people pay on their last few dollars of earnings. When economists keep throwing the term "marginal" around, they are not just doing it for their health. They stress marginal tax rates instead

of average tax rates, because it is marginal rates that can change behavior.

Let me illustrate the importance of marginal tax rates, using corporate taxes as an example. Assume two identical countries in which all corporations currently earn $1 million in profit, and there are no corporate taxes.

Country "A" decides to raise revenue by imposing an unchanging annual license fee of $500,000 on every corporation. In effect, it starts out taking 50 percent of profits.

Country "B" imposes a 25-percent corporate income tax, and starts taking 25 percent of profits.

Which country will grow faster? Is it "A" with high Government revenue, or "B" with less?

"A" will grow faster. If a firm in "A" invests a certain amount of money to double its output and profit, it pays no tax on its second $1 million. Before the investment, its average payment to the Government was 50 percent of profits. But its marginal tax rate is zero. It keeps all of the second $1 million.

If a firm in "B" invests the same amount of money to double its output and profit, it pays $250,000 of the second $1 million to the Government, as well as the first. Its return is $750,000, only three-fourths of the return to investment in "A." Its average tax rate is only 25 percent. But its marginal tax rate is also 25 percent, and that is what does the damage.

A tax cut that affects rates on the first few dollars of income may lower average tax rates. But if the tax cut does not affect the last few dollars of income, it does nothing to add to incentives to work, save, and invest to earn additional income.

What all this means is very simple. We have to reduce marginal tax rates in order to increase the country's growth rate. This will very quickly expand the tax base, allowing us to raise more revenue, at lower tax rates, from a rapidly growing economy. This will help to close the deficit, thus eliminating inflation and increasing investment, further the revenue it needs for such urgent matters as defense, health care, and the rescue of the Social Security System.

Now let me stress one important point here. All tax rates must come down. Roughly 25 percent of all families with roughly 50 percent of all income hence, more than 50 percent of all potential saving and investment—are in the higher tax brackets. If these rates are not reduced along with all others—if the tax cut does not affect the last few dollars of everyone's income—we will be throwing away over half of the potential savings, potential growth, and potential job formation and real wage increase that a tax rate reduction can provide.

We need to repeat the Kennedy tax cut. It was permanent, something people could count on for the future. It reduced personal income tax rates in every bracket to encourage everyone, including those with the biggest share of total income, to save more and to take the risks of investment, because of the higher after-tax rate of return. And the corporate tax rate reduction and investment tax credit increased the after-tax rate of return to business investment.

The Kennedy tax rate reduction produced an investment boom—exactly what is missing in the present recovery. Demand or spending, which Congress is always worrying about, took care of itself as employment and paychecks rose.

We have an easy choice to make here today. If we do not make it, we will have hard political choices to make in the future. Congress cannot continue to create growing claims on the national income while simultaneously holding down the growth in income by inflationary policies and high tax rates. It is time to remove the tax barrier to full employment and unleash the country's saving potential and work effort in order to provide a real increase in everyone's standard of living instead of just transferring money from one group to another. Work, employment, savings, and investment should be seen by the Congress as valued things to be rewarded instead of punished. I hope we will put our political prejudicies aside and unite in taking a step that will allow all Americans to pull together once again in creating a higher standard of living for all.

Mr. President, I support this amendment to neutralize the harmful effect that inflation has on the tax burden of all Americans. The Joint Committee on Taxation has found that every time inflation drives up the price level by 1 percentage point, the personal income tax burden on the taxpayer rises by 1.65 percent. So the taxpayer is hit both ways. As the result of inflation, he gets higher prices and higher taxes.

It is true that inflation causes the costs of Government programs to rise too, and that the Government needs more money to cover these higher costs. But the way it is working now is that the Government benefits from the inflation. Its tax revenues do not just go up by 1 percentage point when inflation rises by one point. Instead, the tax revenues go up by 1.65 times the inflation. This means if prices rise by 10 percent, tax revenues rise by 16½ percent. So the Government always comes out ahead.

This indexing amendment will not stop the Government's tax revenues from rising with inflation. It just stops them from rising faster than inflation.

As long as the Government benefits from inflation, the big spenders have a stake in inflation. Without this amendment, inflation allows big spenders to raise additional tax revenues without having to legislate the increase in taxes. This Congress cannot get inflation under control as long as it has a stake in inflation. This amendment will end the stake that the big spenders have in inflation, and thereby return the American people to a stable price level.

This important amendment will make a second contribution to economic stability, because it will stop taxes from going up during recession. Recently we have had our worst inflation during periods of recession, and that means a triple-whammy for the taxapayer. At the same time that his cost of living and tax burden rises, his economic opportunities decline.

Mr. President, once again the Congress has passed up the opportunity to do something positive for the millions of productive people who provide the economic power of this Nation. Once again we have given precedent to building our spending constituencies. Once again we have made it clear that the people who work and produce exist, in our eyes, only to fund our spending programs. Once again the vested interests, the recipients of handouts, have triumphed over the working American. Once again the Congress chose to spend at the expense of the economic health of the Nation.

Five times this year the Congress has voted down permanent reductions in the personal income tax rates. Each time those of us who pushed for a tax reduction were told that there was no room in the budget. There was not any room in the budget for the spending programs either. But that did not keep us from spending. Any time that there is no room in the budget for spending, we find room in the deficit. This time there is a $60 billion deficit to accommodate the spending programs that could not find room in the budget.

This Congress has never explained why there can be spending programs, but not tax cuts, when there is no room in the budget. However, this Congress has made it clear that it prefers spending money to cutting taxes.

I do not share this preference, and neither do the American people.

Mr. President, in the debate on the tax bill many Senators said that the deficit did not leave any room for a tax cut for the productive working Americans. But as soon as we finished the tax bill, we took up the Economic Stimulus Appropriations Act, and all of a sudden there was plenty of room in the deficit for a $20 billion spending program. There was not enough room in the deficit to protect the taxpayers from a higher income tax burden just because of inflation—even though their real income has not increased—but there was room to double the CETA program from $4 billion to $8 billion.

In this budget resolution I notice that there is $63.2 billion worth of room in the deficit to help accommodate outlays of $458.8 billion; $458.8 billion in outlays and just a hair under a half trillion dollars in budget authority.

Do we know how large this sum is? I want to put it in perspective. This budget of the U.S. Government is larger than the value of the national income of France. It is six times the size of the GNP of Sweden and 50 percent of the total production of the Soviet Union. In the United States, Government takes from Americans in taxes a sum greater than the combined value of every marketable good and service that the total population of France can produce in 1 year. Does anyone really believe that the American people receive services in return from the Government that are equal in value to the total production of the French nation? No one believes this. Yet it does not stop us from continually expanding the size of Government. This is what shows whose interests are repre-

sented in Washington. And they are not the interests of the taxpayers.

Taxpayers are Americans too. I do not understand why the Congress thinks that taxpayers do not deserve the income that they earn, but that the people we give it to, after we take it from the taxpayers, do deserve this income. If we turn government in this country into a mechanism for exploiting the productive for the sake of the unproductive, government will lose the support of the productive, and in the process a strong nation will be turned into a weak nation.

So far this year the Congress has voted down permanent reductions in the personal income tax rates five times. We had a chance to show that we think taxpayers are Americans too. We could have accommodated Senator ROTH's proposal to reduce permanently every taxpayer's burden simply by dropping the outlay ceiling by $12 billion and the revenue floor by $12 billion. This would have required only a 2½-percent reduction in Government spending. There is certainly more than 2½-percent waste in this swollen budget. I do not see why we cannot cut a little out of waste in order to show some consideration for the American taxpayer. This Congress has got money and concern for everybody at home and abroad—except for the American taxpayer. He is who we exploit in order to run our show—the biggest giveaway on Earth.

Mr. President, I yield the floor.

Mr. ROTH. Mr. President, it is my understanding that a point of order is to be raised by members of the Budget Committee. It is also my understanding that a unanimous-consent request is going to be made by either the Senator from Louisiana or the Senator from Maine.

While we are waiting for the senior Senator from Maine to return, I point out that, in my judgment, this point of order raises a very fundamental issue for the Senate and Congress.

The issue which will be before the Senate is whether or not the Senate has a right to vote on the merits of a multiyear tax cut. I believe that the most effective tax reduction we can adopt would be a phased-in reduction of tax rates over a number of years. The tax cut would insure predictability, provide for orderly planning, and impose needed discipline on the Federal budget. But the issue which the Senate will be facing is not the merits or demerits of a particular multiyear tax cut. The issue is whether the Senate has a right to vote on the merits of a multiyear tax cut.

I think we have to admit that there is an inconsistency in the budget law itself, but we have to construe it in such a way that it makes good sense for the orderly conduct of business by the Senate.

It seems to me that the legislative history of the Budget Act is very clear that there are valid reasons why Congress could make revenue changes for future years.

For example, the Senate Rules Committee report on the Budget Act, on pages 44 and 45, states:

> Again, the need for legislation well in advance of the year in which it takes effect underlies this exception. Changes in the general tax rates, for example, are often graduated over a period of years in order to give predictability and allow for planning by those affected. (S. Rept. 93-688, pp. 44-45)

It makes no sense to say that the Senate can pass legislation which would phase in a tax cut for the coming year, not for the second succeeding year, but again could for the third, fourth, and fifth years. I do not believe any author of budget legislation would have argued or so argued at that time.

Mr. President, I see that the senior Senator from Maine is in the Chamber, as well as the senior Senator from Louisiana. I think they want to propound a unanimous-consent request, so I yield the floor to the Senator from Louisiana.

Mr. LONG. Mr. President, I ask unanimous consent that once it has been determined that a quorum is present, the point of order may be made with regard to the pending amendment; that 1 hour be allowed for debate, to be divided equally between the manager of the bill and the chairman of the Budget Committee, Mr. MUSKIE, on an appeal, as suming that, in either event, there will be an appeal to the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. MUSKIE. Mr. President, reserving the right to object, is the Senator's thought that the point of order be made first and ruled upon, to be followed by debate, or that the debate precede the making of the point of order?

The PRESIDING OFFICER. The debate would come on the appeal, which means that the point of order would have been ruled on by the Chair, so the debate would be on the appeal from the ruling of the Chair.

Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—and I will not object—I understand that the 1 hour would be on the appeal.

The PRESIDING OFFICER. That is correct.

Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. I have no objection.

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

Mr. MUSKIE. Mr. President, I shall make the point of order. First I shall make a brief description.

Mr. LONG. Mr. President, if the Senator will yield, I believe it will be well to have as many Senators as possible in the Chamber.

Mr. MUSKIE. Yes.

Mr. LONG. Mr. President, I ask unanimous consent that I might suggest the absence of a quorum without it being charged against either side.

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

QUORUM CALL

Mr. LONG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 16 Leg.]

| | | |
|---|---|---|
| Bellmon | Dole | |
| Byrd, Harry F., Jr. | Gravel | Muskie |
| Byrd, Robert C. | Hansen | Roth |
| Danforth | Hatch | Stone |
| | Long | |

The PRESIDING OFFICER. A quorum is not present.

Mr. ROBERT C. BYRD. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays.

Mr. LONG. Yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia (Mr. ROBERT C. BYRD) to instruct the Sergeant at Arms to request the attendance of absent Senators. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Missouri (Mr. EAGLETON) is absent on official business.

Mr. STEVENS. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. LAXALT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

Mr. WEICKER. Regular order, Mr. President.

The PRESIDING OFFICER (Mr. BAYH). Is there any Member present who desires to vote?

Mr. BIDEN. Mr. President, am I recorded?

The PRESIDING OFFICER. The Senator is recorded.

Mr. MAGNUSON. Mr. President, am I recorded?

Mr. HANSEN. Mr. President, am I recorded?

The PRESIDING OFFICER. The Senator from Washington is recorded.

Mr. BARTLETT. Mr. President, am I recorded?

The PRESIDING OFFICER. The Senator from Oklahoma is recorded.

Mr. HANSEN. I am recorded, am I not?

The PRESIDING OFFICER. The Senator from Wyoming is recorded.

All Members present have voted.

The result was announced—yeas 84, nays 3, as follows:

[Rollcall Vote No. 447 Leg.]

YEAS—84

| | | |
|---|---|---|
| Allen | Griffin | Moynihan |
| Anderson | Hansen | Muskie |
| Baker | Hart | Nelson |
| Bartlett | Hatch | Nunn |
| Bayh | Hatfield, Mark O. | Packwood |
| Bellmon | Hathaway | Pearson |
| Bentsen | Hayakawa | Pell |
| Biden | Heinz | Percy |
| Bumpers | Helms | Proxmire |
| Burdick | Hodges | Ribicoff |
| Byrd, Harry F., Jr. | Hollings | Riegle |
| Byrd, Robert C. | Inouye | Roth |
| Cannon | Jackson | Sarbanes |
| Case | Javits | Sasser |
| Chafee | Johnston | Schmitt |
| Chiles | Kennedy | Schweiker |
| Clark | Leahy | Scott |
| Cranston | Long | Sparkman |
| Culver | Lugar | Stafford |
| Curtis | Magnuson | Stennis |
| Danforth | Mathias | Stevens |
| Dole | Matsunaga | Stevenson |
| Durkin | McClure | Stone |
| Eastland | McGovern | Talmadge |
| Ford | McIntyre | Thurmond |
| Garn | Melcher | Wallop |
| Glenn | Metzenbaum | Young |
| Gravel | Morgan | Zorinsky |

NAYS—3

| | | |
|---|---|---|
| DeConcini | Goldwater | Weicker |

NOT VOTING—13

| | | |
|---|---|---|
| Abourezk | Haskell | Laxalt |
| Brooke | Hatfield, Paul G. | Randolph |
| Church | Huddleston | Tower |
| Domenici | Humphrey | Williams |
| Eagleton | | |

So the motion was agreed to.

THE PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. LONG. Mr. President, I hope very much Senators will stay around for the next half hour or so and hear the debate, because there is a very important point to be decided by the Senate, and Senators should not vote on this in the dark. So I hope very much they will hear the point of order, hear the ruling, hear the appeal, and hear the arguments, because it is very important to every Senator, and I would hope very much Senators would stay on the floor and hear the debate for the next half hour or so. We have 1 hour for debate.

Mr. NELSON. Mr. President, will the Senator from Maine yield for a unanimous-consent request?

Mr. MUSKIE. I yield.

ADDITIONAL COSPONSORS

Mr. NELSON. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors to current Nelson amendment to H.R. 13511 to provide for accelerated depreciation for small business: the Senator from Rhode Island (Mr. CHAFEE), the Senator from Idaho (Mr. CHURCH), the Senator from Michigan (Mr. RIEGLE), the Senator from Rhode Island (Mr. PELL), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Hawaii (Mr. MATSUNAGA).

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

Mr. MUSKIE. Mr. President, I make the point of order, pursuant to section 303(a) of the Congressional Budget Act, that the amendment offered by the Senator from Delaware (Mr. ROTH) involves a decrease in revenues for fiscal year 1980 before the first concurrent resolution on the budget for that year has been agreed to, and is not within the exception provided by section 303(b)(2) of the Budget Act, and has not received a waiver pursuant to section 303(c) of that act.

The PRESIDING OFFICER (Mr. BAYH). The Chair, in responding to the point of order of the Senator from Maine, is glad to respond, after being advised by the Parliamentarian upon just having occupied the chair. The Chair has been advised that the following is the correct interpretation of the point of order raised by the Senator from Maine:

The point of order having been made under section 303(a) of the Budget Act that the pending amendment provides for a decrease in revenues to become effective during a fiscal year before the first concurrent resolution on the budget for such year has been agreed to and is not excepted by section 303(b), which provides that: "Subsection (a) does not apply to any bill or resolution * * * (2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies," and that no waiver has been provided under section 303(c), the Chair sustains the point of order for the reasons that—

First. The legislative history of section 303, which must be looked at because the section itself is not absolutely clear, states:

> Legislation that provides budget authority or changes in revenues to be initially available in fiscal years which are *two or more ahead* (emphasis supplied) may be taken up before action on the first concurrent resolution for that year.

Second. And the uniform practice of the Senate, based upon the interpretation of the Budget Committee, and acquiesced in by the other standing committees, including the Finance Committee has required waivers of section 303 (a) each time a bill has been reported which first took effect the following fiscal year.

That is the interpretation that has been made for the Chair relative to the point of order made by the Senator from Maine.

Mr. LONG. Mr. President, I appeal the ruling of the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is certainly within his rights to appeal the ruling of the Chair.

Mr. LONG. Let me make this clear to the Senate: I do not challenge the Parliamentarian's right to so rule. But when I first discussed the matter with the Parliamentarian, I showed him the law, explained to him the problem, and the Parliamentarian advised me that I was right.

Subsequently the Budget Committee talked with him, and they persuaded him that the Senator from Maine (Mr. MUSKIE) was right.

You can read the law for yourselves, and make your own decision. The Parliamentarian was kind enough to provide me with his opinion in advance, and advised me how he would suggest the Chair rule.

There is no dispute that we can cut taxes for 1981. We are now in fiscal 1979, though we are in calendar year 1978. We can cut taxes in 1981 without needing a budget waiver. 1981; that is a long time from now.

We are not arguing about that. I agree that we can cut taxes in 1981. That does not have anything to do with what we can do in 1980. But the Parliamentarian is relying upon something that says that we can vote to cut taxes in 1981 to say we cannot cut taxes in 1980.

What the Parliamentarian has relied upon is absolutely and totally irrelevant. I am not supporting Mr. ROTH's amendment on the merits, but I am supporting his right to offer an amendment to cut taxes not only in 1981 but in 1980.

Let me read from the same report by the Rules Committee as is quoted by the Parliamentarian. Let me read what they said on the point that is relevant, the right to have a tax cut in the year following the budget year. Here we are in 1978; we are talking about the right to offer an amendment proposing a tax cut is to go into effect in January 1980, 16 months away. The right to do that is clearly provided for in the law. Let us see what the committee report said about it.

I am reading from page 44 of the Senate Report 93-638, the Rules Committee report language dealing with this section. The exception applies to:

> Bills or resolutions which increase or decrease revenues effective in a fiscal year following the budget year.

Here we are in calendar year 1978. We are in fiscal year 1979. We are talking about a cut to go into effect in both calendar year and fiscal year 1980, the following year.

Let me read it again.

The exception deals with:

> Bills or resolutions which increase or decrease revenues effective in a fiscal year following the budget year. Again, the need for legislation well in advance of the year in which it takes effect under this exception. Changes in the general tax rates, for example, are often graduated over a period of years in order to give predictability and allow for planning by those affected.

That is what is relevant in the committee report, and it expressly gives the Senator from Delaware the right to offer his amendment.

I am not for the Senator's amendment. I will speak against it. I will vote against it. I will urge the Senate to reject it. But not only the Senator from Delaware, but anybody in this body has a right to offer an amendment providing a tax cut or a tax increase in the year following the year to which the budget resolution applies. Otherwise, Senators would not be able to offer a tax cut affecting their people after the end of the budget year without the consent of the Budget Committee, unless it went into effect way up in 1981. That is a long time before it could take effect.

Let us read the language of the bill itself. I ask Senators to read it.

First, let us take the general rule:

> SEC. 303. (a) IN GENERAL.—It shall not be in order . . . to consider any bill . . . (or amendment thereto) which provides—
>
> * * * * *
>
> (2) an increase or decrease in revenues to become effective during a fiscal year . . . until

the first concurrent resolution on the budget for such year has been agreed to. . . .

Under that general rule the Senator from Delaware would be barred from offering his amendment. But then we get to the exceptions. Now let us read the exceptions:

(b) EXCEPTIONS.—Subsection (a) does not apply to any bill or resolution—

* * * * *

(2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.

We are not under the first concurrent resolution now; we are under the second concurrent budget resolution for fiscal year 1979. The Senator is offering an amendment which is within the budget for fiscal year 1979. It provides for a further tax cut in fiscal year 1980, and a further tax cut in fiscal year 1981.

The language in the committee report that says that an amendment can have a further tax cut in 1981 is being relied upon to say it cannot have a tax cut in fiscal year 1980, which the report language does not say at all.

There is express language that says a Senator can offer an amendment with a tax cut in 1980. Read the law.

What was the whole intent of the budget process? It was to say that when the Budget Committee meets in January and they go to work on the budget resolution, you cannot cut the revenue that is available to them for that fiscal year and you cannot increase the spending, because that would mess up the budget process. The Budget Committee would not know how much revenue they had coming in. They have to know how much revenue they can rely upon so that they can make the budget and try to cut the cloth to fit the pattern. That was the purpose of the limitation. It made sense. Nobody on the Finance Committee objected to that part of it. We said:

If we want to cut taxes beyond what the Budget Committee is recommending, we will do it in future years.

If we vote the tax cut proposed by the Roth amendment for 1980, that will not interfere with the Budget Committee. It simply means that when we come back in in the following year they would have to take into account the fact that there would be a tax cut to take effect in January of the following year.

Mr. President, it was the intent of the Senate, and it was the intent of the House, that we comply with the budget resolution within the year that the budget applied to. It was not intended to apply to future years.

It makes no sense to sav that no Senator can offer a tax amendment without the consent of the Budget Committee if the amendment's effect takes place in the year after the year in which the budget resolution applies. The Budget Committee has not yet acted on the resolution for that year, they have not proposed a spending limitation, they have not proposed what the income will be—so to limit the right of Senators to offer tax amendments in this way makes no sense. The Budget Act was never intended to be interpreted that way.

The last amendment was the Haskell amendment. I voted against it. I did not ask the Senate to agree to it. I did not ask the Senator to offer it. That amendment provided for a further corporate tax cut in 1980. The Senate just got through acquiescing in an amendment that does what I am urging Mr. ROTH be allowed to do, that is, to provide a tax cut within the budget this year, and the following year a further tax cut.

Nobody knows yet what the budget will be the following year. The whole idea is that the Budget Committee will cut the cloth to fit the pattern. Nobody will know until a budget resolution for a given year is developed what the pattern is going to be for that year, and in the meantime we have the right to act on amendments affecting that year just as the Roth amendment proposes. I am not for the amendment on its merits, but it says that you will cut taxes for the budget year and for the following year, and it was clearly intended under the budget process that a Senator should have the right to offer an amendment that does so.

Mr. CURTIS. Will the distinguished chairman yield for a question?

Mr. LONG. I yield.

Mr. CURTIS. Is it true that the prohibition against cutting the revenue within a year is for the purpose of having a fixed figure upon which those who make the budget can rely?

Mr. LONG. That is the idea.

Mr. CURTIS. To cut taxes for a subsequent year, in this case 1980, does not interfere with the budget procedure, does it?

Mr. LONG. For better or for worse, it does not. It may be that neither the Budget Committee nor the Senate might want to cut taxes in the following year, but a Senator has the right to offer an amendment that does so, and he does not need the approval of the Budget Committee, or a waiver.

Mr. CURTIS. The Senator's argument is very sound, it is logical. The purpose of this rule is to facilitate budgetmaking and not have the amount of revenue fluctuating while they are in the process for that year. It was never intended as giving the Budget Committee a veto over what was done in future years.

Mr. BUMPERS. Will the Senator yield for a question?

Mr. LONG. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. LONG. I will be happy to yield later. I should like to reserve some time right now, if I may. I shall yield after the other side has had a chance to reply.

I yield the floor.

Mr. BUMPERS. Will the Senator yield? My question is really directed to the Senator from Maine. Will he yield for a question?

Mr. MUSKIE. Yes; I yield.

Mr. BUMPERS. As I understand it, this bill came out of the Finance Committee. It is about a $23 billion tax cut in its present form as reported. It is my understanding that the Budget Committee had allowed for somewhere around $18.5 to $19 billion in the second concurrent budget resolution. In that resolution. Is that correct?

Mr. MUSKIE. On a fiscal year basis. On a calendar year basis, it was $21 billion.

Mr. BUMPERS. In either case, whether it is fiscal year or calendar year basis, my question is, why is this bill not subject to a point of order, since it exceeds the second concurrent budget resolution?

Mr. MUSKIE. The tax reduction on a calendar year basis is $21 billion, but taking into account the previously enacted tax cuts, the totals amount to about $36 billion on a calendar year basis.

Mr. BUMPERS. Thirty-six billion dollars?

Mr. MUSKIE. That is right.

The bill as it came out of the committee was within the constraints of the second concurrent budget resolution.

Mr. BUMPERS. If the committee bill has roughly $23 billion in cuts, how much of that is in new tax cuts and how much of it is continuing the temporary tax cuts? Can the Senator answer that?

Mr. MUSKIE. I should really like to address this issue——

Mr. BUMPERS. I do not want to pursue that. I can ask this question any time. I yield.

Mr. MUSKIE. Mr. President, may I say, first of all, that this was not an easy question for the Parliamentarian to resolve. He put it very well when he said to me:

Senator, when you put me between Muskie and Long, you put me between a rock and a hard place.

This language is not easy to interpret. But you have to look at it in terms of the consequences of the optional interpretations which were considered.

Senator LONG argues that because the Budget Act does not permit us to challenge tax cuts which take effect in 1981 or 1982 or 1983 or 1984 or 1985 or any year thereafter—and that is a fact—as a result, we ought not to have any control over 1980 and 1979. That is the effect of his interpretation. As I shall try to point out, that means that the budget process would have no control over revenues.

He concedes that, with respect to a year for which we are writing a budget resolution, we ought to have control over revenues. Yet if we were to adopt his interpretation with respect to section 303 as it applies to 1980, then that section, if applied a year ago to 1979, would have permitted the Committee on Finance to enact any tax cut it pleased, whatever its impact on fiscal 1979 revenues.

What he is saying is that until January 1, the Committee on Finance can recommend any tax bill it pleases; once January 1 comes around, then we have to worry about the first concurrent resolution for the next fiscal year, but we do not worry before January 1.

Mr. President, it is a ridiculous theory. The purpose of section 303 is very simply stated in terms of the Roth bill: The Roth bill would cause a reduction of revenues by 7 percent in 1979, another 13 percent in 1980, and a further 10 percent in 1981. The calendar year 1980 in-

crement of this 3-year tax reduction will occur during fiscal year 1980, the year during which Senator LONG now wants an absolutely free hand from the budget process. That portion of the 3-year reduction will amount to $36 billion of additional revenue reductions in that fiscal year alone.

The distinguished chairman of the Committee on Finance would like to suggest that this should be of no concern to the budget process, none whatsoever, because the budget process does not apply to 1980. If the budget process does not apply to 1980 now and the Roth amendment should pass and that $36 billion of additional revenue reductions take effect, have we not already done for next year's budget resolution what Senator LONG says we could not do earlier this year with respect to this year's concurrent resolution? We will have reduced revenues by $36 billion before any budget has been presented by the Budget Committee to the Congress for its consideration. We will have decided a year in advance to reduce revenues by $36 billion.

I do not know how much good it does for us to debate legal technicalities on the floor of the Senate with Senators who have not had a chance to study the technicalities of the Budget Act. But we have to understand what the language of section 303 means. The best authority on that is the legislative history of the act, which, with all respect to the distinguished chairman of the Finance Committee, he misinterpreted. Page 894 of the legislative history of the Budget Act refers to bills or resolutions which increase or decrease revenues in a fiscal year following the budget year—that is the language the Senator read. What he did not tell us is that the words "budget year" referred to mean the budget year for which no first concurrent resolution has been adopted. That is budget year 1980. At this point in time, that is 1980, because 1979 has been acted upon. So those words "budget year" in that legislative history mean 1980. That sentence means 1981 is open, as the Senator and I agree, but not 1980—because the words "budget year" throughout this legislative history mean budget year for which the first concurrent resolutions described in section 301(a) are applicable.

What I am saying is that if the Senator's interpretation prevails, not only do we wipe out the budget process with respect to 1980 revenues, but we endanger the process for revenues altogether, because I see no point in trying to protect the budget from January 1 to May 15 if, prior to that time, Congress is free to enact any tax cuts for any fiscal year that it chooses. We must protect the next fiscal year from year to year. The fact that we do not have protection for all outyears is bad enough. Incidentally, the bill that Congressman ULLMAN introduced initially prohibited tax increases in all outyears for which no first concurrent resolution has been adopted. The Finance Committee and the Ways and Means Committee, to protect their turf, got that section amended so that we have protection, if we have it, only for the current fiscal year and the next one.

I do not think it is an argument against having protection for those 2 years that there is not protection in subsequent years. But if you wipe away the protection of the next fiscal year by Senator LONG's interpretation of this language, for all practical purposes, you have eliminated the discipline of the budget process from the revenue side of the budget. May I say that the Parliamentarian's opinion referred to the practice of the Senate in this respect.

I ask unanimous consent that I may have printed in the RECORD the five instances demonstrating the truth of the Parliamentarian's statement in that respect, the practice of the Senate with respect to sections 303(a) and 303(b)(2), including the practice of the Committee on Finance.

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

MEMORANDUM

To Senator Muskie.
From John McEvoy.
Date September 26, 1978.
Subject operation of section 303.

SUMMARY

Section 303(a) of the Budget Act bars consideration of spending debt or revenue legislation which would become effective for a fiscal year until the first concurrent resolution on the budget has been agreed to.

Section 303(b)(2) contains a limited exception to this general rule. The exemption allows consideration of legislation increasing or decreasing revenues which first become effective in the fiscal year following "the fiscal year to which the concurrent resolution applies."

Section 303(a) provides a bar against consideration of revenue and appropriations bills for any fiscal year for which no concurrent budget resolution has been agreed to. For example, it would not have been in order on May 14, 1978 for the Senate to consider a tax bill which first became effective in fiscal year 1979, since no first concurrent resolution on the budget for fiscal year 1979 was adopted by Congress until May 16.

Section 303(b)(2) provides a limited exception to the bar of Section 303(a) in the case of revenue legislation which first becomes effective in years after the year foreclosed by Section 303(a). Thus a bill would have been in order on May 14, 1978, which first became effective in 1980 or some later year.

After Congress agreed to a budget resolution on May 16, 1978 tax legislation which first became effective in fiscal year 1979 was in order, because a first concurrent budget resolution for that year had been adopted. Tax legislation first effective in 1980 was barred by Section 303(a). Consideration of tax legislation which first became effective in 1981 was possible pursuant to Section 303(b)(2).

The language of Section 303, its legislative history, and Senate practice compel these conclusions and support no other. If, after Congress had adopted the First Concurrent Resolution on the Budget on May 16, 1978, when FY 1979 became open for consideration of revenue changes, fiscal year 1980 was open as well, then the Section 303(b) exception must be said to render Section 303(a) inoperative. No such result can be justified.

PROVISIONS OF THE STATUTE

Section 303(a) of the Budget Act provides in pertinent part as follows:

First concurrent resolution on the budget must be adopted before legislation providing new budget authority, new spending authority, or changes in revenue or public debt limit is considered.

Sec. 303. (a) In General—It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides— . . .

(2) an increase or decrease in revenues to become effective during a fiscal year; . . . until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

Section 303(b)(2) of the Budget Act contains the following exception to the general rule set forth in Section 303(a):

(b) Exceptions—Subsection (a) does not apply to any bill or resolution— . . .

(2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.

A common sense interpretation of Section 303 makes its meaning clear. Reading these two related provisions together compels the conclusion that, prior to agreement on a first concurrent resolution for a fiscal year, tax changes to become effective in that year cannot be considered. But tax changes "which first become effective in a fiscal year following the fiscal year to which the resolution applies can be considered. For example, Section 303(a)(2) barred consideration of tax changes for fiscal year 1979 on May 14, 1978, prior to the first budget resolution for fiscal year 1979 on May 16, 1978. Pursuant to Section 303(b), however, tax changes for fiscal year 1980—"the fiscal year following the fiscal year to which the concurrent resolution applies"—would have been in order on May 14.

After the first resolution for FY '79 had been agreed to on May 16, consideration of FY 1979 tax changes were in order. But Section 303(a) barred revenue changes "which first became effective" in fiscal 1980, the next year for which no first concurrent resolution had been agreed to.

Section 303(b)(2), which applied to fiscal year 1980 and years thereafter prior to May 16, applied thereafter to FY 1981 and the years thereafter.

There is no room in the language of the statute for a contrary interpretation. If Section 303(b)(2) applied to FY 1980 before May 16 and afterward as well, when would it become applicable to 1981? If Section 303(b)(2) applied to both FY 1979 and 1980 after May 16, 1978, by what token did it preclude consideration of FY 1979 tax changes before that date?

LEGISLATIVE HISTORY

The legislative history of the Budget Act confirms this common sense interpretation of the statute.

An exception, contained in Subsection 303(2)(1) of the Budget Act, for certain appropriations bills was contained in substantially similar form in all versions of the Budget Act reported in either House. The exception for revenue bills was added by the Senate Rules Committee during its consideration of the bill and was never considered by the House, except as part of the Conference report. It is to the report of the Senate Rules Committee, the conference report, and the debates on the legislation contained in those reports to which one must look for the correct interpretation of Section 303(b)(2).

Here is how the Rules Committee report described the exception, now contained in Section 303(b), to Section 303 for revenue bills. The exception was created to provide that "legislation that provides budget authority or changes in revenues to be initially available in fiscal years which are two or more years ahead may be taken up before action on the first concurrent resolution for that year."

The conference version of the Budget Act incorporates this Rules Committee revenue exception verbatim. The Statement of Managers accompanying the conference report on the Budget Act does not shed additional

light on the statement of the purpose of Section 303(b) set forth in the Rules Committee report. Referring to the Section 303 (b) exception, the Statement of Managers says: "The conference substitute permits the consideration of advance appropriations and advance revenue changes prior to the adoption of the first budget resolution for the fiscal year to which they apply." The exception was not elaborated in the debate of the conference report in either House.

The statement of purpose contained in the Rules Committee report—that the exception applied to fiscal years "which are two or more ahead"—remains the clearest statement as to the meaning of the exception.

In actual practice, applying the "two years ahead" measure of the Section 303(4)(2) exception reaches the same result as the common sense interpretation apparent on the face of the statute. In FY 1978 the exception applied to FY 1980 and beyond. In FY 1979, it applied to 1981 and beyond.

PRACTICE OF THE SENATE

The Chair has never been called upon to rule on the question of the meaning of Section 303(b)(2). The Senate has, however, followed a practice since the effective date of Section 303 which is totally consistent with the interpretation of that Section and the exception contained in Section 303(b)(2) as set forth in this memorandum. All committees of the Senate, including the Committees on Finance and Appropriations, have followed this practice.

The Finance Committee has, for example, sought waivers of the application of Section 303(a) each time it has reported a tax bill which first took effect the following fiscal year.

On March 28, 1977, during fiscal year 1977 but before the first budget resolution for 1978 was adopted, the Finance Committee reported S. Res. 126, seeking a waiver of the bar of Section 303(a) against consideration of H.R. 3477, because that bill contained revenue reductions (extension of $12.5 billion in temporary income tax reductions) which first became effective in fiscal year 1978.

On November 1, 1977, during fiscal year 1978, but before the first budget resolution for fiscal year 1979 had been adopted, the Finance Committee reported S. Res. 313, seeking a waiver of the bar of Section 303 to the consideration of the Social Security Finance Amendments which provided substantial tax increases which first will become effective during fiscal year 1979.

And on August 7, 1978, during fiscal year 1978, but after the first budget resolution for 1979 had been adopted, the Committee on Finance reported S. 524, seeking a waiver of the bar of Section 303(a) to the consideration of H.R. 3946, which provided certain tax credits and entitlements effective in FY 1979 but which increased in 1980, giving rise to the need for the waiver.

On September 16, 1977, during fiscal year 1977, the Committee on Banking and Currency reported S. 250, seeking a waiver of the bar of Section 303 to the consideration of S. 2055, a bill governing the Federal Reserve, which would have the effect of reducing revenue collection by the Treasury commencing in FY 1978. S. 2055 contained a provision which made it effective a year after its enactment. That enactment was expected to occur in October, 1977 during FY 1978. Since the bill would be enacted in FY 1978 before a first concurrent resolution for FY 1979 was adopted, and would cause revenue losses in FY 1979, a waiver of Section 303 was required for its consideration in the Senate.

On February 25, 1976, the Committee on Appropriations reported S. Res. 392, a multiyear appropriation which provided budget authority which became available in 1976 and additional budget authority which became available in 1977. The waiver was sought for that portion of the bill which made budget authority available in 1977 since no first concurrent resolution for that year had been adopted.

No case exists, which is known to the Budget Committee since the effective date of Section 303, in which this Senate practice has not been followed.

Mr. MUSKIE. That record speaks for itself. This is the first time the Parliamentarian has been asked to make a ruling on this point. He has been asked to make a lot of difficult rulings under the Budget Act, as any new piece of legislation of that complexity would require, and, from his personal standpoint, I am sorry about that.

But, nevertheless, this is an important issue. If we want to protect the budget process on the revenue side, the Parliamentarian's ruling must be sustained.

It would be preferable to have protection in all future years but we do not have it. I concede that.

But when we are considering a possible revenue reduction in 1980 of about $36 billion, barely a month before we begin consideration of the next concurrent budget resolution for that year, we ought to insist upon regular procedure.

A resolution waiving section 303 of the Budget Act for the Packwood, Roth, and similar amendments has been introduced, and it is on the agenda of the Budget Committee for its meeting tomorrow morning. This waiver procedure is not a veto, as Senator CURTIS suggests.

All it does is require the Budget Committee, within 10 days to give the Senate the benefit of its assessment of the legislation.

The Senate can agree with the Budget Committee or disagree with it. The Budget Committee cannot veto.

So the Roth amendment, presumably, will be back on the floor for consideration with or without the favorable assessment of the Budget Committee. The Packwood amendment, likewise.

The Packwood amendment has had good sledding in the Budget Committee, as a matter of fact, if I recall accurately.

So I think we ought not put aside relatively gentle discipline in order to establish an interpretation of this provision which, in effect, would put revenues outside our reach.

Several Senators addressed the Chair.

Mr. MUSKIE. The distinguished Senator from Oklahoma wanted some time.

Mr. BELLMON. Mr. President, I thank the chairman for yielding.

Mr. President, I am not a lawyer and I do not propose to get into the legal aspect of the Budget Act. My purpose here is to remind the Senate that Congress has adopted an orderly budget process and is learning to live with the disciplines we set for ourselves when that process was enacted into law.

One piece of evidence that the process is working is the fact that we had a significant reduction in the fiscal year 1979 deficit, which we have been able to accomplish over the last 8 months.

I think the Members will remember that when the President sent his budget, he anticipated a deficit for fiscal year 1979 of a little over $60 billion.

During the year, and partially due to the spending shortfalls and reestimates, I want to make certain we all understand that this is not all due to cuts in spending, but we now have cut that anticipated deficit down to $38.8 billion. This is a reduction of $21 billion.

I feel we should not take action here that is going to undercut the budget discipline, just as we begin to see some beneficial effects of this process.

Now, what the chairman has requested here seems to me to be fair. A point of order would appear to lie against several amendments, and one of them is an amendment of my own.

But there is a relatively quick and orderly way this problem can be resolved, and a remedy for this is provided in the Budget Act.

I have already filed at the desk a waiver request for these amendments, for the tuition tax credit, for the Roth-Kemp amendment, and for my own amendment, and as the chairman said, the Budget Committee scheduled a meeting for 10 o'clock tomorrow morning.

By early afternoon, after the amendments have been revised in an orderly way, I am sure the problems will be resolved in a way agreeable to the distinguished chairman of the Finance Committee.

I feel confident the waiver will be granted, and that will eliminate the point of order.

On tuition tax credits, a majority of committee members have already voted in favor of the issue—the vote was 9 to 4 in favor when the issue came before the committee as part of the budget resolution last May, and I believe we can count on at least 12 of the 16 members as favoring the waiver tomorrow.

Regarding the Roth-Kemp tax cut, at least half of the members have been supporters and while there has not been a specific vote inside the committee, I feel reasonably certain that a clear majority will vote for the waiver. As to my own amendment, I am willing to take my chances.

Mr. President, the waiver process does not make the Budget Committee the traffic cop of the Senate's business. Even if we were to report unfavorably on the waiver tomorrow, the Senate does not have to accept that verdict. The Senate has the option to approve or not approve the resolution regardless of the Budget Committee. The purpose of the action requested today is not intended to thwart the will of the Senate or even upset the timing of floor debate.

All the waiver step amounts to is to make certain that carefully and thoughtfully considered procedures to avoid hasty ill-conceived action are followed.

The Budget Act established the budget process in order to put an end to the business we have seen on the Senate floor in the past years where someone brings up an amendment quickly either to spend money or cut revenues and no orderly way has been found to take a careful look at what the long-term results will be.

I am convinced that the procedures which have been set in the act should be followed and not scrapped this early

in the efforts to make the process work, and I trust my colleagues will agree.

Several Senators addressed the Chair.

Mr. LONG. Let me just explain the situation in a word. We are presently bound by the second concurrent budget resolution for fiscal year 1979. I referred to the year following the budget year as fiscal year 1980. The Senator says that 1980 is the budget year I am talking about, and that 1980 is the budget year this committee report makes reference to when it talks about bills or resolutions which increase or decrease revenues effective in a fiscal year following the budget year.

Now, Mr. President, we cannot be bound by two budget resolutions at the same time. We can be bound by one. We are bound at present by the budget resolution for fiscal year 1979.

When we come back in January, Mr. President, I am not arguing that we can act on tax amendments effective in fiscal year 1980. I am arguing that we are bound on our appropriation bills and our tax bills for 1979 under the budget resolution agreed to, and that we are not bound for fiscal year 1980 under a budget resolution that does not yet exist.

I am talking about the right of every Senator to offer a tax amendment, whether the Budget Committee waives it or not, which becomes effective in a future budget year.

I yield to the Senator such time as he wants.

Mr. DANFORTH. I thank the chairman of the Finance Committee.

I just have three very quick points to make.

The first is that my reading of the committee report of the Rules Committee accompanying the Budget Act of 1974 indicates that outyear tax reductions were certainly contemplated by the Rules Committee at that time.

Commenting on section 303(b) of the Budget Act, the committee said that section 303(a) does not apply to bills or resolutions in the following four categories, and then in No. 4 it said that bills or resolutions shall increase or decrease revenue effective in the fiscal year following the budget year.

Again, the need for legislation well in advance of the year in which it takes effect underlies the exception. Changes in the general tax rates, for example, are often graduated over a period of years in order to give predictability and allow for planning by those affected.

The second point that I would like to make is that——

Mr. MUSKIE. Will the Senator yield?

Mr. DANFORTH. I will yield the floor in about 2 minutes.

The second point I would like to make is that in the way the Senate has handled that provision—although, so far as I know, no point of order has been raised—but in the Tax Reduction Act of 1975 there was at least one provision providing for outyear tax reductions, including the year immediately following the year in which it was enacted.

Mr. MUSKIE. Mr. President, will the Senator yield on that point?

Mr. DANFORTH. I will yield the floor in about 2 minutes.

In the Tax Reform Act of 1976 there were at least four different provisions in which the tax rates were cut for a period of years, including the next succeeding year.

Finally, it seems to me, as a practical matter, that it is something of a necessity. The reason for that is the effect that inflation has of putting people into constantly higher tax brackets. Unless there is a rapid adjustment, as a practical matter, for what inflation does, putting people into higher marginal tax brackets and them taxing them, while they have had no real increase in income, the effect of that is that we are financing the deficit of any unlegislated tax increase caused simply by virtue of what inflation is doing.

Therefore, unless we can provide for some out year protection from increased taxes, we have the anomalous situation of the taxpayer, the following year, paying a higher tax rate which has not ever been legislated, and the Treasury reaping the windfall.

I yield the floor.

Mr. MUSKIE. There is nothing which this Senator has said that conceivably could be interpreted as stating that it is impossible for us to consider tax cuts for out years.

All the Budget Act requires is that the Budget Committee consider a waiver resolution and make a recommendation to the Senate regarding such cuts. For those who want to waive the Budget Act and have good reasons for doing so, presumably the Budget Committee is amenable to persuasion, as is the Finance Committee.

All I am arguing for is that our fiscal policy be made in the rational way the budget process is supposed to work.

Let us look at Senate Resolution 313, which was reported from the Finance Committee a year ago by Senator LONG. What was its purpose? To waive section 303(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 5322, a bill providing additional financing for the Social Security System.

What was the reason given for reporting the waiver resolution? I will read the second page:

> That waiver of such section 303(a) is necessary in order to enable the Senate promptly to consider changes in social security financing which are provided for in H.R. 5322, as reported by the Committee on Finance, which are urgently needed in order to assure that the program is adequately funded and which first became effective in fiscal year 1979.

That waiver resolution, I say to my good friend from Missouri, which was reported by Senator LONG, was approved by the Senate Budget Committee so that we could take that future year action which the Senator from Missouri argues my interpretation of the Budget Act prevents.

There is an explicit example of the error of the argument by the Senator from Missouri and of the fact that the chairman of the Finance Committee, himself, is as capable as he accuses the Parliamentarian of being, of changing his mind about the interpretation of section 303. This legislation and this waiver resolution for it, he reported out a year ago.

Now he changes his mind and wants to escape the discipline of the Budget Act and urges a different interpretation of section 303.

This is one of the five incidents the Parliamentarian relied upon to make his ruling. So if the Parliamentarian is now to be criticized by the chairman of the Finance Committee, the chairman of the Finance Committee, himself, gave the Parliamentarian one of the precedents upon which the Parliamentarian relied.

Mr. LONG. Mr. President, we requested that waiver, because in that social security bill there were entitlement provisions which were prohibited by section 303(a)(4) of the Budget Act. We requested the waiver for an entirely different reason. There were other provisions in the bill that clearly would have required a waiver.

Furthermore, Mr. President, let me make this point: The Senate has not voted on this issue. The Senate just got through approving the Haskell amendment, which violates the very position the Senator takes with respect to the Roth amendment. The point has never been ruled on and decided by the Senate.

If someone is told by some on the Budget Committee, "You need a waiver," ordinarily they ask for a waiver.

I had never read this provision nor studied the express language before this matter came up. I was always under the impression that we were binding ourselves for the budget year for which we were approving a budget resolution.

I was on the original committee that started work on establishing the congressional budget process. It was composed of members of the Finance Committee and the Ways and Means Committee, among others, in the beginning. That was the first group to look at it. The whole idea was that we would bind ourselves for the budget year that the budget resolution would apply to.

Mind you, as to this particular language I am pointing out to the Senate, I dare say that most Members of the Senate have never studied it—never looked at the exact words or looked at the exact words in the committee report, in order to construe it.

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

Mr. LONG. I yield.

Mr. MOYNIHAN. Mr. President, I should like to make a few points.

The first is a general point which perhaps is so obvious that it escapes us. The language of the Rules Committee report referred to the "budget year." The "budget year" happens to be one of the oldest institutions of Anglo-Saxon Government. It is the 12-month period immediately ahead for which the Congress—or the Parliament—is legislating. No more than 12 months, so that the King will not have more than 12 months' worth of money.

It seems to me inconceivable that a careful Congress would have provided for 2 budget years without saying "2 budget years," but instead saying "the budget year."

The distinguished chairman of the

Budget Committee, who knows I respect him, a moment ago said:

Maybe we should consider outyear coverage as well.

What can "outyear" means but the year after the budget year? Do we have an intermediate year? Does some unnamed year follow the budget year, and then outyears begin after that?

Surely not. Surely, this refers to the budget year.

The Parliamentarian's ruling is baffling to me. I understand that the Senator from Maine might think we are being imprudent, but that does not affect the nature of the statute.

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

The PRESIDING OFFICER. The Senator from Maine has 12 minutes remaining.

Mr. MUSKIE. I will not use the 12 minutes, but I say to the Senator from New York that I presume that "budget year" means the same thing for section 303(b)(2) as it does for section 302(a). If it does, then my interpretation is correct. If it means something different from what it has meant for the ages in one part of the statute and not the other, I have no answer to that historical judgment. My historical judgment is not as keen as that of the Senator from New York.

With respect to last year's social security bill waiver resolution, I say to the chairman of the Finance Committee that there is nothing in the language giving the reason for submitting the resolution which refers to entitlements in any way. The language is:

To consider changes in Social Security financing which are provided for in H.R. 5322 and which are urgently needed in order to assure that the program is adequately funded.

Mr. President, I understand that we do not all read all the legal and technical language we write around here. I must say that I have never undertaken to read the tax bills that the chairman of the Finance Committee reports out of committee every year or so, only to find myself confounded by changes in the law which I did not dream I was voting for or against.

However, I do not think that a Senator's awareness or unawareness has the effect of changing what the law says or does.

I repeat: The only point that needs to be made about this is that if the argument of the Senator from Louisiana prevails, not only will you wipe out budget discipline for 1980, but also, you will wipe it out for all the years in the future. I cannot imagine that the 7½-month hole in the calendar year will be overlooked as a wide-open opportunity by any Senator, including those who are ingenious in the writing of tax laws, to write any tax bill they like—tax cuts to the roof. Because that is what the Senator is arguing we ought to have, a big 7½-month open door from May 15 to January 1. That is his interpretation of the Budget Act. Incidentally, the date January 1 does not appear anywhere in the Budget Act. But he says that is where the Budget Committee begins to have a responsibility with respect to revenues. From January 1 to May 15 is the only time we have any business to consider tax legislation for the coming fiscal year. The Budget Act does not refer to January 1. If we follow his interpretation, there is a 7-month open door, from May through December, when legislation, irrespective of its impact on the budget process and future budgets, can be enacted into law. And I cannot imagine that that door will be left closed very long.

Mr. LONG. Mr. President, the Senator talks about the Finance Committee having the right to write anything it wants to. The Senator it not objecting to a Finance Committee amendment. He is objecting to an amendment being offered on the floor by a Senator. This is not a Finance Committee amendment.

Mr. MUSKIE. I did not mention the Finance Committee. I said any Senator.

Mr. LONG. I believe he referred to the Finance Committee. The Senator is not making a point of order about a Finance Committee amendment. He is making a point of order about a floor amendment. We are talking about the right of any Member of this body to offer a tax amendment effective in 1980.

Now, most Senators are lawyers, but some Senators are not lawyers, so let me just appeal to their commonsense.

The Senator is making this argument. Here we are in calendar year 1978. This is October 1978, and he is arguing that here in October 1978 we are now in budget year 1980. That is his argument.

Mr. MUSKIE. I did not make any such argument.

Mr. LONG. That is what he is saying. He is referring——

Mr. MUSKIE. The Senator knows that was not my argument.

Mr. LONG. That is exactly what he is contending.

Let me read from the same section he is quoting. He refers to:

Bills or resolutions which increase or decrease revenues effective in a fiscal year following the budget year.

What is the budget year? He contends that we have the right to offer an amendment effective in the year following the budget year. What is the bduget year to which this refers? We are in budget year 1979. We are in calendar year 1978.

The Senator from Maine was contending that we are in budget year 1980. He just got through saying we are not in budget year 1980. I wish he would make up his mind. He seems to be contending that we are now in budget year 1980, though it is only 1978.

People know that you can be in 1978 and be in budget year 1979, but I challenge anyone, including the Senator from Maine, to stand up here and say that we in 1978 are now in budget year 1980. I challenge him to say it, but that is his argument.

Mr. MUSKIE. Mr. President, I do not know where the Senator from Louisiana is.

Mr. LONG. I wish the Senator would make his remarks on his own time, not my time.

Mr. MUSKIE. It is on my time. I do not know where Senator LONG is. But I am not in budget year 1980.

Mr. LONG. I know I am in 1978, not in 1980.

Mr. MUSKIE. I am not in budget year 1980. But I am saying that this budget process applies to 1980. That I have said and I will continue to say as long as this apparently fruitless argument continues.

Mr. LONG. That is just exactly the point, Mr. President.

Mr. MUSKIE. And it applies, may I say, not only to bills reported from the Finance Committee, but under the express language of the Budget Act.

Mr. LONG. On the Senator's time.

Mr. MUSKIE. The Senator suggests that I am picking on Mr. ROTH or Mr. PACKWOOD outside the Budget Act. To the contrary, they have as much right as the Finance Committee to have their amendments considered under the procedures of the Budget Act, and I will defend those.

Mr. LONG. Mr. President, I am not contending for the right of Mr. ROTH to cut taxes beyond the budget resolution, not only for fiscal year 1979 but for the whole calendar year 1979. As far as I am concerned, I would be willing to go along with the Senator from Maine for both the budget year and calendar year 1979. I am just talking about the year after that. He is contending that the budget year, which in my judgment is 1979—that is the following calendar year, but we are in that budget year right now—he is contending we are now in budget year 1980, and I contend we are not. It is just about that simple.

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

Mr. LONG. I yield first to the Senator from Kansas and then I will yield to the Senator from Delaware.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. DOLE. I will be brief.

Mr. LONG. I will yield 1 minute to the Senator from Kansas.

Mr. DOLE. Mr. President, I say I find myself caught between two outstanding chairmen, my chairman of the Budget Committee and my chairman on the Finance Committee, and some of my friends are on one side and some of my friends are on the other, and the old story is I am for my friends.

I only suggest it does not make any sense to this Senator to say we are cutting taxes in 1979, 1981, and 1982 and 1983, but we cannot offer a bill that might reduce taxes in 1980.

I have the same difficulty.

I know it is very confusing to read section 303 as everyone read it on the floor. It seems very clear. The exception seems very clear. The waiver sort of confounds the problem.

I just say as a matter of good planning trying to get ahold of the problems we have in the tax and economic area we should be able to offer tax reductions or if need be even tax increases in out years.

I suggest that in a rather close call we should sustain the chairman of the Finance Committee.

Mr. LONG. I yield to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I want to add one point to the statement of Senator DOLE.

It does seem to me that as a matter of commonsense the exception to the language that Senator MUSKIE read is very clear, that it applies to all succeeding years. I think on this point it is important to again read what the Senate Rules Committee report said. I quote again:

> The need for legislation well in advance of the year in which it takes effect underlies this exception. Changes in the general tax rates, for example, are often graduated over a period of years in order to give predictability and allow for language for those affected.

Under this language from the Rules Committee report it is contradictory to say we can have a tax cut which can apply to 1979, that cannot apply to 1980, but can apply to 1981 and 1982.

Just to show how ridiculous that reasoning would be, we could avoid this whole problem by changing the effective date of the second phase of our tax cut to September 30, 1979, and then the Budget Committee would not be able to make any point of order. So I just conclude by saying that commonsense dictates that the Senate has the right to propose multiyear tax cuts.

Mr. MUSKIE. I never heard a more ridiculous argument, may I say to my good friend from Delaware. He is arguing that because we do not have discipline with respect to all future years we should not have any with respect to any. That does not sound like the conservative Senator from Delaware to me, except that he has an amendment he wishes to push and does not want to have any procedural roadlocks.

But, Mr. President, being chairman of this Budget Committee is often a very frustrating experience, because I find as we seek to enforce its discipline it often seems to be regarded as a personal exercise on my part.

I assure Senators I am interpreting this act as I see it. I have done my best to be sensitive to the prerogatives of my fellow Senators and other committees. Unavoidably there are lines that create potential confrontation and friction, and I have tried to minimize those.

But in this case this is not just my interpretation. My interpretation has been the practice of the Senate during all the years of the budget process. My interpretation is the ruling of the Parliamentarian. You have heard it read. It was a thoughtful one. He was subjected to pressure from two committee chairmen, and he did not reach his conclusion lightly. When we got it it was written. It was out of thoughtful consideration after hearing the arguments on both sides.

It comes down to this, gentlemen: Whether or not you fully understand the technicalities of the argument or of the legislative language, it comes down to this; if we accept Senator LONG's interpretation of 303(b), the effect is to wipe out 303(a) and to make it practically meaningless with respect to budgetary discipline over revenues. That is a fact. That is the way I will interpret it as chairman of the Budget Committee if the Senate sustains Senator LONG, because the issue has been made too plain for me to interpret it otherwise.

Mr. President, if my colleague from Oklahoma wishes time I yield to him whatever time he likes.

Mr. BELLMON. Mr. Presidnt, I think most Members of the Senate will agree we have made real progress in the years since the Budget Act was passed in trying to restrain the outyear spending. We can all remember the time when we used to be here considering appropriation bills, and some Member would stand up and want to add $200 million for child nutrition or veterans or some other worthy cause, and we would all agree without thinking of the impact. Now we have a process which makes us think through this spending, and we are restraining ourselves.

But the other problem that gets us into deficits and helps build up the huge debt is the way we have added uncontrolled spending programs.

The way I interpret the budget, it was intended that we have the same restraint on the revenue side that all of us expected to have on the expenditure side. I believe the issue before us is whether or not we want to remove from the Budget Act this restraint on the spending side, and it is for that reason that I support the position taken by the chairman of the Budget Committee.

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

Mr. MUSKIE. I yield back all of my time.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered, and the clerk will call the roll.

Mr. LONG. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. LONG. If one wishes to sustain the appeal he would vote "no," is that correct?

The PRESIDING OFFICER. If one wishes to sustain the appeal of the ruling of the Chair he would vote "no."

Mr. LONG. Yes.

The PRESIDING OFFICER. If one wishes to sustain the ruling of the Chair he would vote "yea."

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS), are necessarily absent.

I further announce that the Senator from Missouri (Mr. EAGLETON) is absent on official business.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay."

Mr. BAKER. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. LAXALT), the Senator from Alaska (Mr. STEVENS) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. STEVENS) would vote "nay."

Mr. GOLDWATER. Regular order, Mr. President.

The PRESIDING OFFICER. The regular order is the completion of the tally.

Have all Senators in the Chamber recorded their votes?

The yeas and nays resulted—yeas 38, nays 48, as follows:

[Rollcall Vote No. 448 Leg.]

YEAS—38

| | | |
|---|---|---|
| Abourezk | Durkin | McIntyre |
| Anderson | Glenn | Melcher |
| Baker | Hart | Metzenbaum |
| Bayh | Hatfield, Mark O. | Nelson |
| Bellmon | Hathaway | Nunn |
| Bumpers | Hollings | Pell |
| Burdick | Javits | Proxmire |
| Byrd, Robert C. | Kennedy | Riegle |
| Case | Leahy | Sarbanes |
| Chiles | Mathias | Sasser |
| Clark | McClure | Stafford |
| Cranston | McGovern | Stevenson |
| Culver | | Weicker |

NAYS—48

| | | |
|---|---|---|
| Allen | Griffin | Muskie |
| Bartlett | Hansen | Packwood |
| Bentsen | Hatch | Pearson |
| Biden | Hatfield, Paul G. | Percy |
| Brooke | Hayakawa | Ribicoff |
| Byrd, Harry F., Jr. | Heinz | Roth |
| Cannon | Helms | Schmitt |
| Chafee | Hodges | Schweiker |
| Curtis | Jackson | Scott |
| Danforth | Johnston | Stennis |
| DeConcini | Long | Stone |
| Dole | Lugar | Talmadge |
| Ford | Magnuson | Thurmond |
| Garn | Matsunaga | Wallop |
| Goldwater | Morgan | Young |
| Gravel | Moynihan | Zorinsky |

NOT VOTING—14

| | | |
|---|---|---|
| Church | Huddleston | Sparkman |
| Domenici | Humphrey | Stevens |
| Eagleton | Inouye | Tower |
| Eastland | Laxalt | Williams |
| Haskell | Randolph | |

The PRESIDING OFFICER. On this vote, the yeas are 38 and the nays are 48. The ruling of the Chair is not—is not—sustained.

Mr. LONG. Mr. President, I move to reconsider the vote by which the ruling of the Chair was not sustained.

Mr. MOYNIHAN. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion to table the motion to reconsider. The yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order, in order for the clerk to record the votes.

The Senate will be in order.

The clerk may proceed.

The second assistant legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Colorado (Mr. HASKELL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Missouri (Mr. EAGLETON) is absent on official business.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "yea."

Mr. BAKER. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. LAXALT), the Senator from Virginia (Mr. SCOTT), the Senator from Alaska (Mr. STEVENS) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. STEVENS) would vote "yea."

The PRESIDING OFFICER (Mr. DECONCINI). Have all Senators in the Chamber voted?

The result was announced—yeas 46, nays 40, as follows:

[Rollcall Vote No. 449 Leg.]

YEAS—46

| | | |
|---|---|---|
| Allen | Garn | Matsunaga |
| Baker | Goldwater | Moynihan |
| Bartlett | Gravel | Packwood |
| Bentsen | Griffin | Pearson |
| Brooke | Hansen | Percy |
| Bumpers | Hatch | Ribicoff |
| Byrd, Harry F., Jr. | Hatfield, Paul G. | Roth |
| Cannon | Hayakawa | Schmitt |
| Chafee | Heinz | Schweiker |
| Curtis | Helms | Stennis |
| Danforth | Hodges | Stone |
| DeConcini | Jackson | Talmadge |
| Dole | Johnston | Thurmond |
| Eastland | Long | Wallop |
| Ford | Magnuson | Young |
| | | Zorinsky |

NAYS—40

| | | |
|---|---|---|
| Abourezk | Hart | Metzenbaum |
| Anderson | Hatfield, Mark O. | Morgan |
| Bayh | Hathaway | Muskie |
| Bellmon | Hollings | Nelson |
| Biden | Javits | Nunn |
| Burdick | Kennedy | Pell |
| Byrd, Robert C. | Leahy | Proxmire |
| Case | Lugar | Riegle |
| Chiles | Mathias | Sarbanes |
| Clark | McClure | Sasser |
| Cranston | McGovern | Stafford |
| Culver | McIntyre | Stevenson |
| Durkin | Melcher | Weicker |
| Glenn | | |

NOT VOTING—14

| | | |
|---|---|---|
| Church | Humphrey | Sparkman |
| Domenici | Inouye | Stevens |
| Eagleton | Laxalt | Tower |
| Haskell | Randolph | Williams |
| Huddleston | Scott | |

So the motion to lay on the table the motion to reconsider was agreed to.

Mr. MUSKIE. Mr. President, I said in the closing moments of debate on this issue that I would accept the Senate's will as a direct interpretation of the Budget Act. The budget process, as I interperted it before this action, whenever any amendment offered had the effect of breaching the revenue floor or breaching any requirement of the Budget Act, I felt I had a responsibility to warn the Senate and to insist upon the procedures of the act. You have now said to me, "Mr. Chairman, that is none of your business. We write revenue legislation on the floor." That, as I understand it, are my new orders, and I shall follow them.

Mr. LONG. Mr. President, on the previous issue was the Haskell amendment, which, from my point of view, was not a good amendment. It took us by surprise in some respects. We voted on the matter in the committee and it lost there. I was confident that our side would win. I agreed to a time limitation and we voted and my side lost. I felt very dismayed about it. I felt I was so completely right, I did not see how I could lose on that vote. But the Senate heard the other side and some people did not hear either side; they came in and learned as best they could and they voted.

The Senator from Maine has many times taken the Senator from Louisiana to task because in the out years, in the years past the year of the budget resolution, we have proposed that there be a further tax cut. The Senator has contended on occasion that the cut was too much, it was not responsible. He made good arguments.

Mr. President, on the merits of this issue, I am 100 percent on the side of the Senator from Maine; I do not think we can afford the Roth amendment.

I want the Senator from Maine to do the same thing to the Senator from Delaware that he has done to the Senator from Louisiana when I have brought in an amendment for a tax cut in a future year, even though it did not run counter to the budget resolution. I hope he will speak out strongly and say, "The Budget Committee has considered this matter and we find we cannot stand the revenue loss involved in the Roth amendment."

We on the Finance Committee voted down the Roth amendment. It was not easy. The votes were close. On one occasion, when we voted on one version of it, there was a tie vote. But we voted against the Roth amendment on the Democratic side of the aisle almost unanimously, even though those on the other side were equally strong; in fact, they were unanimously for it.

Mr. President, I respect the arguments made by the Senator. What I think is the shortfall in the case made by the Senator from Delaware is that he proposes a very big tax cut and I know he would like to see us make a big cut in spending to match that.

But, Mr. President, in my judgment, it would not be responsible for us to make a very big cut in taxes, and I believe this amendment over a period of years reduces revenues by hundreds of billions of dollars.

We are not arguing about whether it would be nice to have such a big tax cut. We just have a difference of opinion of whether we can afford it.

It was my privilege to serve under the chairmanship of the late Harry Byrd on the Finance Committee, and he was a man against high taxes and against high spending. But Harry Byrd would not vote for a big tax cut unless we were going to cut spending at the same time.

Mr. President, I do not know whether we can responsibly cut spending by any hundreds of billions of dollars. I know that there are those who think we can. But it seems to me that if we want to do that, we ought to have something that designates where we are going to cut spending and then ties the spending cut to the tax cut. Otherwise, Mr. President, it would seem to me we would be in a position of having an enormous deficit and, as easy as it is to cut taxes, it is very difficult to raise taxes to try to cover that kind of deficit.

I have a letter here from the Secretary of the Treasury in which he points out that he thinks it is irresponsible for us to cut taxes in future years as much as the Finance Committee has voted to cut them. He is very emphatic about that.

Of course, Mr. President, he has a point, and I would expect that in conference we will be able to compromise with the Secretary of the Treasury and the President about the cost of the bill. Otherwise the bill will be vetoed.

I do not think, Mr. President, that we can make the tremendous tax cut that is included in this Roth amendment, because to do so would really mean that we either have to slash spending tremendously in areas no one has designated, or else we are going to have enormous deficits, which would be very inflationary.

I would hope every Senator would read the letter before him from the Treasury. It is signed by Robert Carswell saying we just cannot afford this tremendous revenue loss and that, in his judgment, it would depart from the discipline that is required to be fiscally responsible and to keep this Government solvent.

The Government needs revenues. It needs to be able to plan on them.

I would think, Mr. President, that if this amendment prevailed, it would not result in our cutting taxes, it would result in our having no tax cut at all. I would certainly assume that those who voted for it would insist we come back from conference with substantially what this would amount to. If we did so, the President would veto the bill. He threatens to veto the bill the way it is now.

Let me just illustrate the amounts we are talking about, Mr. President.

The President of the United States has some doubt about the bill we have before us now. In the fiscal year 1980, the Finance Committee bill would cut individual taxes by $15 billion. The Roth amendment would cut taxes by $45 billion, or $30 billion more than the bill which the Secretary of the Treasury, Mr. Blumenthal, finds very serious objection to, because of the size of the tax cut for that fiscal year.

The following fiscal year, 1981, the Finance Committee would cut taxes by $17 billion. The Secretary of the Treasury tells us that is too much. In that same fiscal year, the Roth amendment would cut taxes by $94 billion.

The following fiscal year, 1982, the Finance Committee cut would be $21 billion. The Roth amendment would be $126 billion in that fiscal year.

The following fiscal year, 1983, the Finance Committee cut would be $24 billion. Again, the Secretary of the Treasury

and the President are concerned about that and say that we cannot afford even that big a tax cut, yet the Roth amendment would cut taxes in that fiscal year by $151 billion.

Mr. President, I hope we can cut taxes that much. I really do hope what the Senator would like to achieve can be accomplished. But if it is to be done, Mr. President, I hope we would cut taxes now as we are proposing to do in the bill, and save the remainder for a future time.

What is the difference between the Roth amendment and the committee bill? The committee bill is more heavily aimed at the low-income taxpayers while Mr. ROTH proposes an across-the-board cut. I think that to put more benefits to the low end of the scale is better.

Mr. MAGNUSON. Will the Senator yield?

Mr. LONG. Yes.

Mr. MAGNUSON. I do not like to enter into this debate, but the Senator is talking about expenditures, too, and I just saw a national poll that most people are more concerned about cutting expenditures than they are cutting taxes.

I guess I happen to be a little bit in charge of the expenditure department, and the same people that talk about the Kemp-Roth amendment, and I have been to many meetings, are all for it, but they also want to balance a budget.

Now, the only way we can balance a budget is to have the revenues equal the expenditures.

The Appropriations Committee of the U.S. Senate have only once in 17 years gone over a budget—only once—and that was made in the early days of the HEW where we went over about 2 percent.

This year, when we are under, if we can get the HEW and the Defense bill done before we leave here, we are going to be, I think, a rough estimate, about $10 to $11 billion under the budget, and under the congressional budget.

So we are doing our job on expenditures.

We started out, as the Senator from Louisiana knows, with a budget that was about $60 billion—was it not—out of balance. That is what they thought. But they found that the revenues this year were coming in a little better, the economy was not as bad as a lot of people think, and that was cut down to about $40 billion—was it not?

And we are going to cut it least $10 billion, now we are down to $30 billion.

Now, if it was not for a tax cut that you fellows have concocted, we would have the budget in balance, and I could go to every chamber of commerce meeting in my State, and they would say, "Hooray, the budget is in balance."

That is a cure, or a panacea.

So I just want to stand up on behalf of we people who are in charge of expenditures, and we have been doing a pretty good job down there, and we have taken it selectively. We have to do that. We cannot pick a figure just out of the air and say that we will cut it this way, and the Senate has sustained us in the so-called across-the-board cuts.

So we are cooperating, I hope, with the Finance Committee. But if you let taxes alone this year and did not do anything, just let it alone, we would almost have a balanced budget.

But I am sort of a big dreamer. I cannot expect that, because the Finance Committee has just got to fool with taxes every year. I do not care whether it is good or bad, they just have to go through all this, and they end up like scrambling eggs, putting a little in over here, a little less here, and it all ends up the same. The revenue is about the same.

They are chasing a lot of people around, avoiding taxes. That is correct. But I want the record to show that the Appropriations Committees of the House and the Senate are cutting expenditures. We can have a balanced budget if we do not—it gets down to this point—if we do not start to cut down the revenues too much.

Most people think we should cut expenditures. Everybody likes to have their taxes cut. You and I do; all of us do. But most people think that the Government should stop a lot of expenditures.

One more point: I can balance the budget in 5 minutes. We are picking up in that budget now more than $100 billion in local tax. Revenue sharing is one of them, which you cosponsored and for which I voted. We can balance the budget tomorrow.

I cannot give the figures exactly, because I cannot get them, but in the budget is about $50 billion in loans, good loans.

So we are cooperating. If you people did not do anything this year at all, we would have almost a balanced budget. Any time you have a little balance in the till down there, which we looked at midnight on Sunday—any time you have a little balance in the till, people cannot rest until they get at it, put their "gloms" on it, and do something about it. I think part of this thing is expenditures.

As to Roth-Kemp, you cannot have it both ways. You cannot cut taxes and balance budgets, too.

I will guarantee that the Senator from Delaware would not take an amendment I might present, that you will not pay out anything that is not in the till.

You people claim there is going to be more money in the till. If that is true, then we will not have any problem. But if there is not money in the till, then you will have a bigger deficit, and you will have to cut out something. I do not know where you are going to do it. I know lots of places you can cut it out, and we do that selectively.

I think there should be a little more liaison in Congress between the people who are getting the heat for expenditures and the people who are supposed to furnish the revenue to take care of the expenditures. We would be close to a balanced budget this year if it were not for a tax cut. That does not mean you should not have a tax cut. That might turn it around to bring more money into the Treasury. But the bottom line is, how much money is going to come in, compared to what you expend?

The Budget Committee, of which I am a ranking member—I voted against them a few moments ago—is trying to do that.

I want the record to show that your Appropriations Committee has been doing a real job this year, both in the House and in the Senate, in cutting down expenditures. It is the best job we ever have done.

When Ford left the Presidency, the deficit was $58 billion. This is not a partisan matter. It is the same.

Maybe you will get more money than revenues with a tax cut, and I hope so. I want the record to show that.

Do you think we have been doing a good job or not?

Mr. LONG. I certainly do. [Laughter.]

Mr. MAGNUSON. Then, say so once in a while, and do not keep talking about all this business about whether you are going to put a tax here or a tax there. It is expenditures that count.

Mr. LONG. Mr. President, I believe that the Appropriations Committee is doing a fine job. They are within the budget. The Finance Committee also is within the budget.

We did not cut taxes as much as I had hoped we would be permitted to cut taxes. The amount of tax reduction in this fiscal year has been reduced between $5 and $8 billion, and that is one of the big items that helps to balance the budget for this year.

We should keep in mind, Mr. President, that the reasons for these big deficits go back to the last recession. We were getting the budget under pretty good control up until that point. President Ford is a good man, a conscientious man, but the Nation was worried about inflation at that time, and President Ford called a meeting on inflation. I admire the man. He got so carried away by this talk about inflation that he made a speech and said, "Look, don't buy anything."

He referred to the situation that existed in his home when he was growing up. When they were served at the table, Poppa said:

> Take what you need and eat what you take, but don't take more than you can eat.

It reminds me of what my dear old mother told me:

> Those who waste will come to want.

At the time, he said:

> Don't buy anything. Don't spend any money. Save. Cut back.

That is when they talked about inflation and put out the WIN buttons. When he did that, people stopped buying.

Mr. MAGNUSON. Why does not the Finance Committee put a lid on interest rates? That is one of the reasons for inflation. It has almost become usury.

Mr. LONG. The President's words were so inspiring that the people quit buying anything. The Chrysler Motor Co. was about to go out of business. Somebody asked the chairman of the board why Chrysler was going broke. He said:

> It's no wonder people won't buy Chrysler automobiles. The President of the United States goes on television and says, "Don't buy anything."

That year there was a near recession. President Ford called us to a meeting, and he told me:

We're going to need a big tax cut. We will have to put some money in people's pockets to get the economy going.

That is when these big deficits got going. We are working our way out of them. We are within the budget, and the Appropriations Committee is within the budget. I hope very much that next year we will be in good shape.

Mr. President, I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished chairman of the Finance Committee.

Mr. President, I rise in opposition to the pending amendment, and I hope that the Senate will be able to reach a decision on the amendment yet this evening, before too long.

The 95th Congress has played a leading role in the Nation's fight against inflation. Not only has the Congress worked successfully to hold down Federal spending through the budget and appropriations processes, but—in its consideration of specific legislative options—it has also demonstrated its commitment to finding innovative ways to stem inflation.

Congressional sentiment here mirrors the economic mood of the American people. Americans are concerned that continuing high rates of inflation will further erode the purchasing power of the dollar, as well as endanger the current economic expansion.

Over the course of the year, Americans have clearly voiced their growing concern with the rate of inflation. In May, some 42 percent of the respondents to an NBC-Associated Press poll identified the cost of living as the most important problem facing the country. According to a July Gallup poll, the proportion of Americans who viewed the high cost of living or inflation as our most important problem had risen to 60 percent. And a Harris poll taken last month disclosed that some 95 percent of the respondents consider inflation to be the No. 1 issue.

The American people's view is echoed by our major trading partners who hold that inflation is our central problem. After all, what we do about inflation has ramifications for the health of their economies which are closely entwined with our own. It is no surprise that they view our curbing inflation as the paramount issue in international affairs—of primary importance for the peoples of the industrial democracies.

Mr. President, as the Senate begins consideration of the tax cut bill—designed in part to offset the impact of inflation on the tax burden of Americans—I would like to review some of the steps which the Senate has taken to stem inflation. Although more remains to be done—and will be done, I believe that the Senate has already established an impressive record of anti-inflationary legislation.

First and foremost in my mind is the record of the 95th Congress in developing the fiscal year 1979 budget, a budget that allows simultaneously for the meeting of national needs and keeping a lid on spending.

The success of the budget process is reflected in the ceilings on budget authority contained in the second concurrent budget resolution for fiscal year 1979. This ceiling on the future cost of Government represents a significant reduction in the President's January budget. The resolution's $555.65 billion ceiling is some $13 billion under the figure in the President's budget.

The deficit, too, is headed down in the second concurrent budget resolution; this should reduce inflationary expectations and, thereby, reduce inflation. The deficit projected in the budget is now $38.8 billion, which is $12.1 billion under the deficit projected in the first concurrent budget resolution and $21.7 billion under the deficit in the President's January budget. The President's January budget assumed a deficit of $60.5 billion, and the first concurrent resolution assumed one of $50.9 billion.

The implication of these declining deficit figures is clear: We are moving in the direction of a balanced budget. Indeed, according to the Senate Budget Committee, continued spending restraint over the next 5 years should make possible a balanced budget.

A second area in which the Senate has demonstrated its leadership in the anti-inflation fight is in its consideration of fiscal year 1979 appropriations. Our commitment to holding down spending is as much in evidence here as in our efforts to move toward a balanced budget. The numbers—agreed to with the House—are going down, not up. The appropriations allocation for Housing and Urban Development in the second concurrent budget resolution is more than $2 billion below the comparable allocation in the first concurrent resolution. The appropriations allocation for Agriculture is more than $2.5 billion below that which was allocated in the first resolution. The appropriations allocation for Interior is about $1 billion lower; for State, Justice, and Commerce it is almost $1 billion lower; and for Transportation it is over $1 billion less.

Certainly, every congressional committee is to be commended for its contribution to holding down spending. The Appropriations Committees are to be particularly commended for their impressive showing.

A third area in which the Senate has begun to move against inflation is by recognizing that excessive regulation can add significantly to costs. While these costs are often justified by specific national concerns, they contribute to inflation.

In considering various pathways to achieve social goals, the Congress has placed greater emphasis on the costs involved. Only by so doing can we develop cost-effective regulations. In addition, reliance on regulation must be minimized in those sectors of the economy where economies of scale are for the most part absent. Instead, reliance must be placed on the forces of free competition.

The airline deregulation legislation, S. 2493, which passed the Senate on April 19, 1978, illustrates this point. It sets forth U.S. policy to develop an air transportation system which emphasizes reliance on market competition. At the same time, it provides safeguards against unfair or predatory prices or decreases in service to smaller communities.

The legislation altered the Federal Government's approach to the airline industry. Previously, the industry had to show that a proposed service was "required" by public convenience and necessity. Under S. 2493, the Civil Aeronautics Board is directed to authorize new air transportation services unless it determines that such transportation is not consistent with public convenience and necessity. By allowing for increased competition, this legislation will help to reduce airline fares, to the benefit of millions of Americans.

A fourth area in which the Senate has demonstrated its continued commitment to holding down inflation is exemplified by passage of the Comprehensive Employment and Training Act Amendments of 1978. The amendments provide for a partial refocusing of public service jobs on the hard-to-employ, a policy which will bring down joblessness without bidding up the wages of those already employed.

This relatively noninflationary approach to jobs creation has been strongly endorsed by the Senate and the House in light of the current economic situation. We have learned from experience that as the joblessness rate approaches 4 percent and the slack in productive capacity is taken up, overreliance on fiscal policy to achieve fuller employment may generate unacceptably high levels of inflation.

A fifth step which the Senate will take this year to help stem inflation is approval of measures designed to spur productivity. It is now recognized that the substantial growth in productivity was a major force in the relatively stable economic environment of the 1950's and 1960's.

The expansion of capital relative to the work force grew at an annual rate of about 3 percent from 1947 to 1968. Since then, it has grown at about 1 percent per year. According to the Council of Economic Advisers, this slower pace may explain at least some of the slower growth in productivity since 1968.

Accordingly the tax legislation which we are about to take up deals head on with the productivity problem. The Finance Committee has recommended a series of measures designed specifically to stimulate capital formation. These include: First, corporate rate reductions; second, a permanent investment tax credit; and third, a capital gains tax cut.

Finally, Mr. President, passage of major energy legislation this year will form an integral part of our anti-inflation program. It will demonstrate to our trading partners that we intend to put our economic house in order. Estimates show that a full percentage point has been added to our inflation rate as the result of the decline of the dollar in relation to foreign currencies during the past 12 months. The reduction in energy imports which this legislation is designed to foster should increase confidence abroad in the value of the dollar and lead to a narrowing of our trade deficit. Most importantly it should lead to improvements in our inflation situation.

These then, Mr. President, are some of the anti-inflation steps being followed by Congress: First, the movement to-

ward a balanced budget; second, the commitment to spending restraint; third, the fostering of market competition; fourth, the focusing of job and training programs on the hard-to-employ; fifth, the promotion of capital formation; and sixth, the development of a strong energy policy. These steps form the path toward reducing inflation; they show the way.

And now, as we take up the tax reduction legislation, we must continue—as I know we will—to face up to the challenge of stemming inflation by the passage of a moderate tax cut for fiscal year 1979—a tax cut that will help move the budget toward balance and reduce inflationary pressures.

Mr. President, I believe that a tax reduction far deeper than that assumed under the second concurrent budget resolution would prove to be economically counterproductive. It would unleash inflationary pressures at the very time that we need to get inflation under control. It would work against our achieving budgetary balance.

It is on these grounds that I oppose the Roth-Kemp tax proposals which are designed to reduce individual taxes by about one-third over the next 3 years.

The Roth-Kemp proposals would run counter to the moderate fiscal course agreed to by the Congress. The second concurrent budget resolution allows for approximately $20 billion in tax reduction for both individuals and business. The Roth-Kemp proposals would go far beyond this moderate course and phase in over the next 3 years more than $100 billion in tax reduction for individuals.

Proponents of Roth-Kemp suggest that providing incentives to American workers through large tax cuts will stimulate economic growth without fueling inflation. Critics of Roth-Kemp, who include many of the Nation's leading economists, disagree. They believe that a tax cut on the order of Roth-Kemp would overwhelm our existing productive capacity with a massive increase in demand and would eliminate any possibility of curbing deficits and containing inflation. According to one major study, the deficit would soar to $100 billion by 1983 and the rate of inflation would be as much as 2 percentage points higher than it otherwise would be by 1982.

The seriousness of our inflation problem suggests that the effects of Roth-Kemp could be dangerous. The latest Government statistics indicate that inflation accelerated at a 7.2 percent annual rate in August. We need to adopt policies which bring that rate down, not drive it up.

Mr. President, I fear that American consumers would pay for Roth-Kemp in the form of higher prices.

I am also concerned that a 3-year, phased-in tax cut would "lock in" our fiscal policy, with possibly disastrous results. Congress needs to review policy on a yearly basis, making midcourse adjustments in the light of current conditions. Congress would not be acting responsibly if it established our fiscal policy this year for the next 3 years—come what may.

I have no doubt, too, that the President would veto a tax reduction measure that incorporated Roth-Kemp. The measure would not provide real tax relief to middle-income Americans. It would not give the American people what they want: lower taxes and reduced inflation.

The distinguished Senator from Washington referred to a recent Harris poll which clarifies this issue. It disclosed that while some 81 percent of the respondents consider tax relief and cutting spending to be the Nation's second most important issue, some 95 percent consider controlling inflation to be the No. 1 issue.

Mr. President, the best way to accomplish these two objectives is through a moderate tax cut that can, on an aggregate basis, offset the payroll tax increases enacted last year as well as a portion of the effect of inflation on individual taxes over the past 2 years.

I urge the Senate to reject the amendment by Mr. ROTH.

Mr. LONG. Mr. President, this is a very significant amendment that is pending. We have more than 14 absentees, and I had told Senators that I was going to suggest that we leave about between 7 and 7:30. The hour of 7:30 p.m. has now arrived.

I think, Mr. President, that we should vote on this amendment tomorrow and it will be all right to me to set a time certain to vote tomorrow. I suggest that we perhaps come in at 9 a.m. and vote at 10 am.

Mr. ROBERT C. BYRD. No, we cannot do that, may I say to the distinguished Senator, because of the order previously entered. The Senate will vote on the ERA extension resolution tomorrow at 10 a.m. Some Senators want some time prior to the vote on that extension.

Mr. LONG. I suggest we vote at 11 then, debate for an hour and divide the time between 10 and 11 a.m.

Mr. ROBERT C. BYRD. Mr. President, do we have any order for recognition of Senators on tomorrow?

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

Mr. ROBERT C. BYRD. I yield.

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). There is one order for Senator LEAHY for 15 minutes.

Mr. ROBERT C. BYRD. I thank the Chair.

Yes, I yield.

Mr. BAYH. If the leader will yield, I think I expressed to him that Mrs. HUMPHREY wanted an opportunity to be heard tomorrow, and I fear that there may be some others who may have some last minute desires to be heard.

I honestly think that most of the arguments have been expressed. Perhaps individual Senators feel that they can express their views with some more persuasiveness than we have already had them expressed, and they certainly should have the right to do so.

So I suppose I should try to reserve to myself 15 minutes, not to talk for 15 minutes, but to let others who may at the last minute have a yearning to do so, to have that opportunity.

Mr. ROBERT C. BYRD. How much time does the distinguished Senator suggest?

Mr. BAYH. Mr. President, Mrs. HUMPHREY said she wanted about 20 minutes which is what she thought. I think in about perhaps 15 minutes we should be able to cover any contingencies that I could think of.

Mr. ROBERT C. BYRD. All right.

Mr. JAVITS. Mr. President, I wish to have 2 minutes, I say to the Senator from Indiana.

## ORDER FOR RECESS UNTIL 8:40 A.M. AND RESUMPTION OF CONSIDERATION OF HOUSE JOINT RESOLUTION 638 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 8:40 a.m. tomorrow and that at 9 a.m. the Senate resume its consideration of the ERA extension, that there be 1 hour debate on that extension to be equally divided between Mr. BAYH and Mr. GARN.

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

## REVENUE ACT OF 1978

The Senate continued with consideration of H.R. 13511.

Mr. LONG. Mr. President, I have been talking to some of my colleagues seeking to arrange an understanding among Senators that on this significant vote we arrange that if one side has more absentees than the other side, the side that has the least number of absentees will arrange enough pairs so that the vote will work out to the same result it would be if we had 100 Senators present, and I have had some cooperation and some indications of support from Senators for that.

But we do not have that worked out yet. I hope very much that those on the other side of the aisle will discuss our suggestion and see if they can work it out so that they can cooperate with us in this matter. When we do that we will not find it necessary to postpone votes in order that we provide time for someone to come back to town. For example, if one side has one absentee and we simply provide a pair for that one absentee, it works out the same as if 100 Senators were here, and the same thing can be done even though one side has six absentees and the other side has five absentees.

Some of these votes, and I would suggest the Roth amendment is a good example, are going to be close votes, and we are going to have some very important votes occur, and I hope that Senators will seek to do what I did the last time we had the problem. I proposed to the majority leader that either one of us should pair to provide whichever side had the most absentees with at least one pair, and we did that. On that occasion I gave a pair.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. LONG. I yield to the Senator.

Mr. ROBERT C. BYRD. I am with the Senator on the question that is now before the Senate, and I am opposed to the amendment by Mr. ROTH. I am willing to enter into this arrangement.

Mr. PACKWOOD. Will the Senator withhold just a minute?

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

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

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## ORDER VITIATING 1 HOUR OF DEBATE ON ERA EXTENSION AND PROVIDING FOR SPECIAL ORDERS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for 1 hour of debate for tomorrow morning preceding the ERA extension vote be vitiated and that in lieu thereof the following four 15-minute orders be instituted: Mr. DECONCINI for 15 minutes; Mrs. HUMPHREY, 15 minutes; Mr. GARN, 15 minutes; and Mr. BAYH, 15 minutes, these to begin at the hour of 9 a.m. and, of course, to end at 10 a.m., at which time the vote will occur on the ERA extension.

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

Mr. ROBERT C. BYRD. There is an order already entered, is there not, for a Senator?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. That Senator is not included in the four I have named.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

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

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

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## ORDER FOR THE CONSIDERATION OF TAX BILL TOMORROW AND TIME-LIMITATION AGREEMENTS WITH RESPECT TO AMENDMENTS THERETO

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the ERA extension tomorrow the Senate resume consideration of the tax bill, at which time there will be 1 hour of debate on the amendment by Mr. ROTH, to be equally divided between Mr. LONG and Mr. ROTH; at the conclusion of which time or at such time as the hour or portion of the hour may be yielded back, a vote occur on the amendment by Mr. ROTH.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, I do not intend to object. I have an amendment that is related to the rate schedule and I would be glad to enter into—this is an amendment of mine and Senator BUMPERS—and I plan to introduce it, and we would be glad to enter into—a time agreement to follow the final resolution of the Roth amendment to be convenient to the leader or manager of the bill so that Members will at least have some idea about what we will do.

Mr. PACKWOOD. Mr. President, as I understand it, when we finish voting on Roth-Kemp we will be back on tuition tax credit, which is the amendment pending, and I would be willing to enter into an agreement at that time.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. KENNEDY. Mr. President, if the Senator will yield, the only point is that if the Roth amendment is defeated then the tuition tax credit would still be open for further amendment.

Mr. PACKWOOD. Further amendment.

Mr. KENNEDY. Unless there is some measure to bring the whole matter down.

Mr. LONG. Mr. President, I was hoping very much we would be able to get an agreement to go in sequence or to go seriatim title by title, and I would hope very much we could obtain that agreement after we dispose of the Roth and Packwood amendments.

I would first like to ask unanimous consent that after we dispose of those two amendments, that what we do is proceed to consider the committee amendment, and we consider it seriatim title by title. I would like to ask unanimous consent that the committee amendment be agreed to and that titles I through VI be considered as original text for the purpose of amendment title by title.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I would not object to that tomorrow, but until we are able—I would reluctantly object, and I raised this issue about proceeding seriatim earlier in the day, and I appreciate the efforts the Senator makes and I would not intend to object after, perhaps, the early hours of tomorrow, but I would object just at this time.

Mr. LONG. I thank the distinguished Senator.

I want to accord every Senator the opportunity to offer his amendment, Mr. President, and I really think it would be far better that we go in logical sequence because it helps Senators to organize their material. I know it does help those of us managing the bill to organize the material so that we know what to expect next, and if our case is not compelling, we fully expect the other side to prevail. But we would like the opportunity to prepare and look at these matters as they come before us because otherwise we find those who are offering amendments are expert on their amendments, especially if the Senator is going to offer only one amendment. He is going to be the best expert who can be found on this green earth for his amendment, and those of us on the other side, not knowing what comes next, find ourselves at a disadvantage sometimes. It takes time for us to obtain the material we want and to organize our arguments and to present a response to their amendments.

It helps to give both sides an equal chance to present their case if we can know what to expect to come next, and if we can move in sequence, then we can do that. I can understand a Senator may have reason for objecting, but I hope very much he would be willing to let us go through the bill in sequential order and then, having done that, we would still preserve their rights to offer amendments at the end of the bill if they wanted to on whatever subject they cared to offer them on.

Mr. DANFORTH. Mr. President, will the Senator yield? I spoke to the Senator from Louisiana earlier today with respect to an amendment I will offer pertaining to the fiscal relief section on which I would like to have a vote tomorrow, if that is possible. I wonder if, perhaps, we could enter into an agreement now with respect to an appropriate time to bring up that amendment?

Mr. LONG. Mr. President, what the Senator wants to have is his amendment out of order, but he is willing to let everybody else's amendment fall in order. I hope I can persuade the Senator between now and tomorrow to let his amendment be considered in sequence, too, or at least let us go through the bill and consider in sequence the other materials and then at the end of the bill let the Senator offer his amendment.

The Senator from New York (Mr. MOYNIHAN) does not want the Senator from Missouri to offer his amendment at that particular time—at least he did not the last time I talked to him, and so I could not agree to that at this point.

Senator, so far as I am concerned, we will just do it however the Senate makes us do it, but I would hope very much the Senator would consider tomorrow letting us proceed in sequence because it makes better sense and it is a more organized way to do business.

Mr. DANFORTH. I think I understand what the chairman is saying. The chairman wants some orderly process so he can predict what is coming up next. I think it would be a very simple, relatively simple, matter to fashion a unanimous-consent request that accomplishes his objectives, although maybe not in the precise sequence that the Senator would prefer. I very much would like to call up my amendment on fiscal relief tomorrow, if that is possible. Senator JAVITS and I have both talked to the Senator or maybe some of the staff people with respect to a concept we have, to at some point debate it, and then have a sequential vote on a combination of a personal tax cut and a corporate tax cut which, I think, would be a very simple matter to work out.

Mr. LONG. I am willing to cooperate, Mr. President, provided the cooperation is mutual. I will be glad to discuss this matter with the Senator tomorrow, and perhaps we can work it out.

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

Mr. ROBERT C. BYRD. Mr. President, can we have regular order?

Mr. JAVITS. Is there a unanimous-consent request?

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. Mr. President, reserving the right to object, may it be restated?

Mr. ROBERT C. BYRD. The unani-

mous-consent request was that on tomorrow, on the disposition of the ERA extension, there be 1 hour on the amendment by Mr. ROTH, to be equally divided between Mr. LONG and Mr. ROTH, and that the Senate then proceed to vote up or down on the Roth amendment.

Mr. JAVITS. I have no objection to that, but I do wish to serve notice that I will have an objection unless my rights are preserved, as Senator DANFORTH has stated, with respect to this sequential consideration by chapters and sections. I do wish to be heard on that, and I will object unless I have had notice.

Mr. DANFORTH. I do wish to state also that I would very much like to be heard before any unanimous-consent agreement is entered into about considering the bill by titles.

Mr. LONG. I would hope the Senator would change his mind, and communicate it to the minority leader, who in his usual way protects all Members on his side of the aisle. Then if we can persuade him to our way of doing business, I would know it.

I am aware of at least one Senator who, I believe, would have a reservation about what the Senator is asking.

Mr. DANFORTH. Mr. President, I think the chairman has worked with me now for over a year and a half in the Finance Committee, and has found me to be the very soul of reason. I would hope to have the possibility of just a little bit of give from the chairman also, so we could work out something to our mutual accommodation. I am certainly willing to go more than half way, if a little bit of consideration could be worked out.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Arizona is seeking recognition.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, reserving the right to object, I am interested in submitting an amendment to what I think is going to be an amendment that the distinguished chairman of the Finance Committee has made, except that it is very possible I will not be here Saturday, and consequently I will ask the Senator to give me consideration, that my amendment might be called up tomorrow.

Mr. LONG. If I am able to get an agreement that we go in sequence, the amendment you have in mind would be in title I.

Mr. DECONCINI. Would be tomorrow, rather than Saturday?

Mr. LONG. Yes, it would be offered tomorrow.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts seek recognition?

Mr. KENNEDY. All I would ask is to be included in the notice when an agreement is made on the sequential consideration of the legislation.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. The Chair's inquiry is as to my request?

The PRESIDING OFFICER. The Senator is correct. Is there objection to the request of the Senator from West Virginia?

Mr. METZENBAUM. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. METZENBAUM. The request was only with respect to an hour limitation on the Kemp-Roth amendment, is that correct?

The PRESIDING OFFICER. The amendment of the Senator from Delaware (Mr. ROTH). The Senator is correct.

Without objection, it is so ordered.

## ROUTINE MORNING BUSINESS

### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

### EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Foreign Relations.

(The nominations received today are printed at the end of the Senate proceedings.)

### MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 10:05 a.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 415. An act to amend the Anadromous Fish Conservation Act to include fish in Lake Champlain that ascend streams to spawn;

S. 1215. An act to provide for grants to tribally controlled community colleges, and for other purposes;

S. 2376. An act to authorize withholding from salaries disbursed by the Secretary of the Senate and from certain employees under the jurisdiction of the Architect of the Capitol for contribution to certain charitable organizations;

S. 2704. An act to promote a more adequate and responsive national program of water research and development, and for other purposes; and

S.J. Res. 16. A joint resolution to restore posthumously full rights of citizenship to Jefferson F. Davis.

The enrolled bills and joint resolution were subsequently signed by the Acting President pro tempore (Mr. BURDICK).

At 3:20 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed S. 2081, an act to designate the building known as the Ozark National Forest Headquarters Building in Russellville, Ark., as the "Henry R. Koen Forest Service Building," without amendment.

The message also announced that the House has passed S. 976, an act to amend the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, with amendments in which it requests the concurrence of the Senate.

The message further announced that the House, having proceeded to reconsider H.R. 12928, an act making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1979, and for other purposes, having been returned by the President of the United States with his objections, on reconsideration by the House, and two-thirds of the House of Representatives not agreeing to pass same, failed of passage.

The message also announced that, pursuant to the provisions of section 2(a), Public Law 85-874, as amended, the Speaker has appointed Mr. MCDADE a member of the Board of Trustees of the John F. Kennedy Center for the Performing Arts, vice Mr. QUIE, resigned.

At 6:25 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House has passed S. 2588, an act to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands, with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 13635, an act making appropriations for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. MAHON, Mr. SIKES, Mr. FLOOD, Mr. ADDABBO, Mr. MCFALL, Mr. FLYNT, Mr. GIAIMO, Mr. CHAPPELL, Mr. BURLISON of Missouri, Mr. EDWARDS of Alabama, Mr. ROBINSON, Mr. KEMP, and Mr. CEDERBERG were appointed managers of the conference on the part of the House.

The message further announced that the House has passed the following bill in which it requests the concurrence of the Senate:

H.R. 13650. An act to authorize the Secretary of Energy to enter into cooperative agreements with certain States respecting residual radioactive material at existing sites, to provide for the regulation of uranium mill tailings under the Atomic Energy Act of 1954, and for other purposes.

At 7:29 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 12932, an act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1979, and for other purposes; that the House recedes from its disagreement to the amendment of the Senate numbered 4, 17, 39, 48, 49, 72, 78, 90, 102, and 104 to the bill, and concurs therein; and that the House recedes from its disagreement to the amendments of the Senate numbered 9, 21, 23, 24, 26, 33, 34, 35, 36, 40, 41, 50, 51, 63, 66, 67, 71, 73, and 103 to the bill, and concurs therein each with an amendment in which it requests the concurrence of the Senate.

## HOUSE BILL HELD AT THE DESK

The following bill was read by title and held at the desk, pursuant to order of October 4, 1978:

H.R. 13650. An act to authorize the Secretary of Energy to enter into cooperative agreements with certain States respecting residual radioactive material at existing sites, to provide for the regulation of uranium mill tailings under the Atomic Energy Act of 1954, and for other purposes.

## ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 5, 1978, he presented to the President of the United States the following enrolled bills:

S. 415. An act to amend the Anadromous Fish Conservation Act to include fish in Lake Champlain that ascend streams to spawn;

S. 1215. An act to provide for grants to tribally controlled community colleges, and for other purposes;

S. 2376. An act to authorize withholding from salaries disbursed by the Secretary of the Senate and from certain employees under the jurisdiction of the Architect of the Capitol for contribution to certain charitable organizations;

S. 2704. An act to promote a more adequate and responsive national program of water research and development, and for other purposes; and

S.J. Res. 16. A joint resolution to restore posthumously full rights of citizenship to Jefferson F. Davis.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment and an amendment to the title:

S. 3371. A bill to repeal certain provisions of law establishing limits on amount of land which certain religious corporations can hold in any Territory of the United States (Rept. No. 95-1275).

By Mr. LONG, from the Committee on Finance, without amendment:

S. 3279. A bill to provide assistance to aircraft operators to aid them in complying with Federal aircraft noise standards, to amend the Airport and Airway Development Act of 1970 to provide assistance to airport operators and aircraft operators to aid them in complying with noise standards, and for other purposes.

By Mr. DECONCINI, from the Committee on the Judiciary, with amendments:

S. 3093. A bill to provide for the seizure, forfeiture, and disposition of vehicles used to illegally transport persons into the United States, and for other purposes (Rept. No. 95-1276).

FISH AND WILDLIFE IMPROVEMENT ACT OF 1978—CONFERENCE REPORT

Mr. HODGES, from the committee of conference, submitted a report of the disagreeing votes of the two Houses on the amendments of the Senate to H.R. 2329, an act to improve the administration of fish and wildlife programs, and for other purposes (Rept. No. 95-1277).

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 3050. An act to amend the Internal Revenue Code of 1954 to provide an exclusion from gross income with respect to magazines, paperbacks, and records returned after the close of the taxable year (Rept. No. 95-1278).

H.R. 7108. An act to amend the Tariff Schedules of the United States in order to suspend the duty on Yankee dryer cylinders until the close of December 31, 1981 (Rept. No. 95-1279).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. PELL:

S. 3546. A bill for the relief of Betty Pi-Ling Chen and her daughter Alecia Juei-Hsia Chen; to the Committee on the Judiciary.

By Mr. TOWER:

S. 3547. A bill for the relief of Tadeusz Darocha, M.D., and his wife, Halina Darocha; to the Committee on the Judiciary.

By Mr. BURDICK:

S. 3548. A bill for the relief of Gang-Fung Chen, Li-Li H. Chen, Pzung-Hwei Chen, and Pzung-Kai Chen; to the Committee on the Judiciary.

By Mr. BENTSEN:

S. 3549. A bill to modify the procedures used for the promulgation of rules or regulations by the independent regulatory agencies; to the Committee on Governmental Affairs.

S. 3550. A bill to amend the Congressional Budget Act of 1974 to require the Congress to establish, for each fiscal year, a regulatory budget for each Federal agency which sets the maximum costs of compliance with all rules and regulations promulgated by that agency, and for other purposes; to the Committee on Governmental Affairs and the Committee on the Budget, jointly, and that if one committee acts to report, the other committee has 30 days in which to act, pursuant to order of August 4, 1977.

By Mr. BAKER (for Mr. STEVENS):

S. 3551. A bill to make technical corrections in the North Pacific Fisheries Act of 1954; considered and passed.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTION

By Mr. BENTSEN:

S. 3549. A bill to modify the procedures used for the promulgation of rules or regulations by the independent regulatory agencies; to the Committee on Governmental Affairs.

S. 3550. A bill to amend the Congressional Budget Act of 1974 to require the Congress to establish, for each fiscal year, a regulatory budget for each Federal agency which sets the maximum costs of compliance with all rules and regulations promulgated by that agency, and for other purposes; to the Committee on Governmental Affairs and the Committee on the Budget, jointly, and that if one committee acts to report, the other committee has 30 days in which to act, pursuant to order of August 4, 1977.

● Mr. BENTSEN. Mr. President, inflation is the most serious problem we face today. It continues to erode the confidence of average Americans in their free enterprise system. It hits hardest those least able to defend their own economic interests—the poor, the elderly, and the hard-pressed family wage earner. It ultimately destroys jobs, because higher prices mean lower consumer purchasing power and hence less sales, less production, and less jobs. In short, inflation poses a grave threat to the economic well-being of all Americans.

The persistence of unacceptably high levels of inflation can largely be laid at the doorstep of the Federal Government where, in administration after administration, economic policies failed to come to grips with the root causes of inflation. In the late 1960's, for example, we had an income tax surcharge; in 1971, we had wage and price controls; in 1974, we had WIN buttons and a White House Conference on Inflation; in 1975, we had a major recession.

The one threat that unified these varied approaches to controlling inflation is that none of them worked.

Instead of diminishing, inflation became more and more persistent.

Now, President Carter is faced with the task of devising an effective anti-inflation program before inflation becomes totally uncontrollable. For the past year, the anti-inflation program has relied on voluntary restraint; recent newspaper articles indicate that the President is now contemplating wage and price guidelines as the core of a phase II of the anti-inflation effort.

While wage and price guidelines, as well as other proposals such as a postponement of the social security tax increase, must be judged on their own merits, I am very concerned that our anti-inflation effort will fail to come to grips with one of the worst causes of inflation—the enormous costs imposed on business and the rest of the private sector by unnecessary, ineffective and often ill-conceived Government rules and regulations.

An anti-inflation program, if it is to be effective must control the ability of Federal bureaucrats to develop and impose costly new rules and regulations. Even more, the program should act to roll back the costs of many existing rules and regulations.

On June 29, I introduced two major bills to cut the private sector compliance costs of Government regulations.

The first of these, the Regulatory Cost Reduction Act of 1978, S. 3262, would require each agency to cut its private sector compliance cost by a goal of five percent for each of the next 5 years and to explain any failures to meet that goal. According to figures on regulatory costs supplied earlier this year to the Joint Economic Committee, this measure alone could reduce private compliance costs and ease inflation by up to $25 billion per year by 1985.

The second bill, the Regulatory Conflicts Elimination Act of 1978, S. 3263, requires the President to coordinate regulations among agencies as as to eliminate duplicative regulations and regulations that conflict with each other.

Today, I am introducing two new bills that could provide added punch in our fight to reduce the excessive costs of Government regulations.

The Regulatory Budget Act of 1978 will force the President and Congress each year to put a cap on the amount of regulatory costs each agency could impose on the non-Federal sector, just as we now limit spending through the fiscal

budget. This would force agencies to choose the least costly way of achieving regulatory goals.

The Independent Agencies Regulatory Improvements Act of 1978 would require the independent regulatory agencies to follow the same procedures in developing rules and regulations as are now required of the executive agencies under the provisions of Executive Order 12044. For constitutional reasons, 16 independent agencies were exempted from the provisions of the Executive order, and this bill would bring them into line in their regulatory procedures without relinquishing any congressional authority to the President.

The four bills together make up a comprehensive and effective approach to regulatory cost reduction.

They attack a problem that must be solved if inflation is ever to be brought under control, because Government regulation is a major cause of our current inflation.

This was thoroughly documented earlier this year in hearings before the Joint Economic Committee. Our hearing record showed:

That Government regulation costs the American economy more than $100 billion per year;

That regulation costs every man, woman, and child in this country $500 each and every year;

That no standard method exists for determining the economic costs of any agency's rules and regulations;

That no Government agency keeps tabs on regulatory costs;

That agencies seldom consider economic costs when they propose new regulations and most just do not care how much burden their regulations impose;

That Congress seldom considers costs when it enacts new regulatory programs; and

That Government regulation has become our biggest growth industry.

Regulation is out of control. Federal bureaucrats are out of control. And the American consumer pays through ever-rising costs, lower productivity, and higher prices. The American consumer is being pushed to the wall as, day by day, Government regulation adds more and more to inflationary pressures. Here are some examples:

Recently, Barry Bosworth, the Director of the Council on Wage and Price Stability, said that new regulations in the pipeline will add more than $35 billion to the cost of Government regulations;

The Council on Wage and Price Stability has argued before the Consumer Product Safety Commission that proposed lawnmower safety regulations would cost $330 million annually and raise power mower prices by up to 27 percent;

A Chase Economietric Associates study for the EPA has calculated the economic cost of environmental regulations in the 1976–85 decade at almost $290 billion, adding between 0.3 and 0.4 percentage points annually to the Consumer Price Index.

A recent Brookings study estimated that Government regulations have cut labor productivity by up to 0.5 percentage points during recent years, thus making American-made products less competitive with goods produced elsewhere.

Mr. President, the impact of strangulating Federal regulation is far more profound than any cold recitation of dollar and cents figures could possibly convey. Stifling Federal regulatory policy threatens to break the back of the spirit of individual creativity and individual entrepreneurship which has made this Nation a model of what is best in Western civilization.

Mr. President, in his first inaugural address 177 years ago, President Thomas Jefferson expressed eloquent opposition to excessive Government regulation. Said Jefferson:

> A wise and frugal government should restrain men from injuring one another, (but) should leave them otherwise free to regulate their own pursuits.

The bills I introduce today along with those I introduced on June 29 are designed to begin to return the Federal Government to the principle expressed by Mr. Jefferson so eloquently almost two centuries ago.

Mr. President, my legislative efforts are not aimed at the legitimate efforts of Government to clean up our environment and to improve worker health and safety. Indeed, enactment of the legislation I have offered will make the entire regulatory process more efficient and hence more effective in carrying out the serious work of protecting our environment and improving the quality of life for all citizens. My efforts are directed at excessive, unnecessary, and unreasonable Federal regulation. They are undertaken in the Jeffersonian spirit of allowing our citizens the freedom to regulate their own lives.●

## ADDITIONAL COSPONSORS

S. 3343

At the request of Mr. PERCY, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 3343, the Nuclear Waste Management Act of 1978.

S. 3527

At the request of Mr. BELLMON, the Senator from Tennessee (Mr. BAKER) was added as a cosponsor of S. 3527, a bill to authorize funds for the Robert A. Taft Institute of Government.

S. 3530

At the request of Mr. STEVENSON, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 3530, the Space Policy Act.

SENATE JOINT RESOLUTION 150

At the request of Mr. PERCY, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of Senate Joint Resolution 150, authorizing the President to proclaim the month of November 1978 as "National REACT Month."

SENATE JOINT RESOLUTION 569

At the request of Mr. PERCY, the Senator from California (Mr. HAYAKAWA) and the Senator from Iowa (Mr. CLARK) were added as cosponsors of Senate Resolution 569, to eliminate certain items in the design of the Hart Senate Office Building.

## SENATE RESOLUTION 578—SUBMISSION OF A RESOLUTION WAIVING CONGRESSIONAL BUDGET ACT

Mr. GRIFFIN submitted the following resolution, which was referred to the Committee on the Budget:

S. RES. 578

*Resolved*, That pursuant to Section 303(c) of the Congressional Budget Act of 1974, the provisions of Section 303(c) of such Act are waived with respect to the consideration of amendments to H.R. 13511 offered by Senator Griffin relating to modifications in the Internal Revenue Code.

## SENATE RESOLUTION 579—SUBMISSION OF A RESOLUTION WAIVING CONGRESSIONAL BUDGET ACT

Mr. BELLMON submitted the following amendment, which was referred to the Committee on the Budget:

S. RES. 579

*Resolved*, That pursuant to Section 303(c) of the Congressional Budget Act of 1974, the provisions of Section 303(a) of such Act are waived with respect to the consideration of amendments to be offered by Mr. Bellmon, Mr. Roth and others in connection with consideration of H.R. 13511 which would provide multi-year reductions to the general tax rate structure; and an amendment to be offered by Mr. Packwood with respect to tuition tax credits.

## SENATE RESOLUTION 580—SUBMISSION OF A RESOLUTION WAIVING CONGRESSIONAL BUDGET ACT

Mr. STONE (for himself and Mr. CHILES) submitted the following resolution, which was referred to the Committee on the Budget:

S. RES. 580

*Resolved*, That pursuant to Section 402(c) of the Congressional Budget Act of 1974, the provisions of Section 402(c) of such Act are waived with respect to the consideration of the amendment (No. 3882) intended to be proposed by Mr. Stone to the bill H.R. 13511, an Act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes. The waiver is necessary in order to provide the opportunity to consider mitigating unforeseen adverse consequences resulting from the amendment, by section 303 of the Social Security Amendments of 1977, of the earnings test under section 203(f) of the Social Security Act.

## AMENDMENTS SUBMITTED FOR PRINTING

### FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978—S. 50

AMENDMENT NO. 3816

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

● Mr. HATCH. Mr. President, it is time for all men to be reasonable, and I am submitting an amendment to strike the word "reasonable" from the definition of price stability. What, may I ask, is reasonable price stability? What is unreasonable price stability? Is 10 percent reasonable or unreasonable? Is 3 percent reasonable or unreasonable? Price stability is price stability, and this Senate

should be courageous enough to define what price stability is. The House, in discussing the amendment of Congressman RONALD SARASIN, came close to defining reasonable price stability as 3 percent inflation. If this is the definition of reasonable price stability, then let us call it price stability, and I will offer an amendment to this bill to set a goal of 3 percent price stability to be achieved within 3 years after enactment on the way to the goal of zero percent inflation.●

AMENDMENT NO. 3817

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

● Mr. HATCH. Mr. President, I rise to submit an amendment to defer the enactment of the Fair Labor Standards Act Amendments of 1977 for an additional year as the first step in achieving the goal of zero percent inflation as outlined in this bill. As you recall, those amendments increased the minimum wage rate immediately to $2.65 with continual increases to $2.90 in 1979, $3.10 in 1980, and $3.35 in 1981. In 4 years we will have increased the minimum wage by over 40 percent. At the same time the Congress failed to provide any variation to serve the needs of unemployed youth and by including new groups have seriously impaired some employment sectors such as the farm economy. During Senate debate on that bill, we warned about the potential for inflation, the effects that it might have on boosting unemployment. This is a time that we can commit ourselves to improving the health of the economy by accepting this amendment. Just look at the facts, we are quickly approaching double-digit inflation, the unemployment rate for youth remains excessively high despite a general reduction in overall unemployment, the dollar is weakening abroad and just yesterday fell to a ratio of 0.9 deutchmarks, the lowest in recent history. The cause has been European concerns about the instability of the U.S. economy, and in particular, the excessive rate of inflation in this country.

It is obvious to most enlightened observers that the time has come to defer this increase. For example, William Miller, Chairman of the Federal Reserve Board, said he "personally would welcome" a 2-year deferral of the minimum wage increase scheduled for January 1.

As he stated before the House Budget Committee:

> It seems appropriate to consider deferring the increase in the minimum wage that is scheduled for January 1, 1979, given its implication for costs and for youth employment opportunities.

Others have echoed this thought. Arthur Okun, senior economist at the Brookings Institution and former chairman of the Council of Economic Advisers under Lyndon Johnson, echoes this opinion. According to Okun:

> This country would be better off if we postponed both the minimum wage and the social security hikes. * * * It would be worth one-half a point on the Consumer Price Index and make the economy outlook for 1979 significantly better.

Mr. President, I could cite similar comments from a great many people here—Barry Bosworth of the Wage and Price Stability Council; Alice Rivlin, director of the Congressional Budget Office; Secretary of the Treasury Michael Blumenthal; economist Milton Friedman; Joel Popkin of the National Bureau of Economic Research; economist Walter Williams from Temple University, and the list goes on and on.

I believe that Congress must take the initiative here and acknowledge the well-recognized fact that the size and the timing of last year's minimum wage increases, while undoubtedly a political plus among many sectors, was a serious economic mistake. And the brunt of this misguided policy will fall hardest on those very individuals whose earnings are most closely associated with the minimum wage level.

I am reminded here of an interesting commentary on this issue written by William Raspberry. The subjects of Mr. Raspberry's article are William and Willie May Clark, who run the Sparkle Car Wash right here in Washington. Commenting on the proposed wage increases, Mrs. Clark says:

> It would just about put us out of business * * * and not just us. A lot of blacks trying to make it in business would be hurt by this.

Mr. President, it is time to put politics aside here and deal with the practicalities. Based on the cold, hard facts, and on the advice of a wide range of economic experts, I believe that the action we offer today constitutes a reasonable and effective approach to dealing with our economic problems.●

AMENDMENTS NOS. 3818 THROUGH 3843

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted 26 amendments intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

## REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 3844

(Ordered to be printed and to lie on the table.)

Mr. HASKELL (for himself, Mr. HATHAWAY, and Mr. CLARK) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, an act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

● Mr. HASKELL. Mr. President, this amendment would raise the jurisdictional amount for "small tax cases" from $1,500 to $5,000 and make some changes in the authority of the court's commissioners (special trial judges).

EXTENDING THE OPTIONAL SMALL TAX CASE PROCEDURES TO ADDITIONAL TAXPAYERS

The Tax Reform Act of 1969 added section 7463 to the Code. Under that section as originally enacted, a taxpayer who had received a notice determining a deficiency in income, estate, or gift taxes of $1,000 or less could petition the Tax Court and elect to have his case heard under simplified and expeditious procedures. The jurisdictional amount was raised to $1,500 by Public Law 92-512, the Revenue Sharing Act of 1972, effective January 1, 1974. Consistent with Senate Report No. 95-552 (1969), 1969-3 C.B. 423, 615-616 on the Tax Reform Act of 1969, the court has used its commissioners (special trial judges) to hear most of these cases.

I understand the small tax case procedures have worked extremely well. Under those procedures, the pleadings need not be technical, and the trials are conducted as informally as possible consistent with orderly handling. The rules of evidence are relaxed and neither party is required to file a brief. Neither party may appeal, and "opinions" in these cases are not treated as precedents for any other cases. On an average, the court has been able to issue opinions in these cases within about 2 months after they are tried.

These informal procedures work to the advantage of the electing taxpayers since very few of them have attorneys to represent them, and they try their own cases. The trials are held in one of about 116 cities (compared with 64 cities in regular cases), as near the taxpayer's home as can be arranged in order to save him expense and inconvenience. Generally speaking, the issues in these cases are factual, and an effort is made to assist the taxpayers in developing the relevant facts.

The small tax case procedures are also helpful to the Tax Court. Like almost every other court in the country, the Tax Court's caseload in recent years has grown tremendously—from about 6,000 new cases in fiscal year 1968 to over 12,000 new cases in the last fiscal year.

During the last fiscal year, about 6,000 of the over 12,000 new cases filed in the Tax Court involved deficiencies of $1,500 or less and were subject to the small tax case election. The election was made in 3,887 new cases. Raising the jurisdictional amount from $1,500 to $5,000, we estimate, would make another approximately 1,500 new cases eligible for the small tax case election. Assuming the same rate of election of the small tax case procedures, this amendment would relieve the regular judges each year of 800 to 900 new cases.

Under the amendment the optional small tax case procedures would continue to apply only at the election of the taxpayer. Studies indicate that the issues involved in the $1,500 to $5,000 category, like the less-than-$1,500 cases, are mainly factual. During the fiscal year 1977, the Tax Court issued 127 opinions in cases in which the taxpayers might have elected the small tax case procedures had the jurisdictional amount been $5,000 instead of $1,500. The other cases closed in this category were settled. Of those opinions, only 22 were regarded as important enough for publication in the Tax Court reporter. The remaining 105 were filed as memorandum opinions. Of the issues dealt with in these memorandum opinions, approximately three-fourths were the same as or similar to the issues routinely dealt with in small tax cases. The remaining one-fourth are not significantly more difficult than some handled under the small tax case procedures.

The Tax Court rules provide that the

Commissioner of Internal Revenue may file a motion requesting that a case treated as a small tax case be removed from that category with the result that it will be subject to trial and appeal in accordance with the procedures applicable to regular cases. It is my understanding that the Tax Court will give careful consideration to a request by the Commissioner of Internal Revenue to take a case out of the small tax case procedures when the orderly conduct of the work of the court or the administration of the revenue laws calls for a regular trial of the case. For example, in some situations proper court management may require the removal of a case from the small tax case procedures so that it can be consolidated with a regular case involving common facts or a common issue of law. Similarly, removal of the case from the small tax case category may be appropriate where a decision in the case will provide a precedent for the disposition of a substantial number of other cases or where an appellate court decision is needed on a significant issue.

The Tax Court expects to continue to assign most of the small tax cases to commissioners. In addition, as has been the practice both before and after enactment of the Tax Reform Act of 1969, the court plans also to assign certain other types of cases to commissioners subject to appropriate review by a regular judge and the chief judge. See, for example, rules 181 and 182 of the court's Rules of Practice and Procedure; U.S. Tax Court, General Order No. 6, 69 T.C. V, (March 8, 1978). In Senate Report, 92–1050 (part 1) (1972), page 63 on Public Law 92–512, the Revenue Sharing Act of 1972, where the jurisdictional amount was raised from $1,000 to $1,500, it was expressly stated that the court would continue to have the power to authorize commissioners to hear other cases (for example, small tax cases where the taxpayers have not elected the simplified procedures).

This provision would be effective 180 days after its enactment. This lead time is needed in order to enable the court as well as the Internal Revenue Service to adjust its forms and procedures to the change in jurisdictional amount.

AUTHORITY TO ASSIGN SMALL TAX CASES TO COMMISSIONERS

The amendment would give express congressional approval to the Tax Court's assignment of small tax cases to commissioners (special trial judges). This authority is now contained in section 7456(c) but only in general terms. In addition, as noted above, Senate Report 91–552 on the Tax Reform Act of 1969, expressly stated that it was contemplated that the court would use its commissioners for this purpose.

Commissioners also would be authorized "to make the decision of the court with respect to any such proceeding, subject to such conditions and review as the court may by role provide." The language in this section giving commissioners authority to make the decisions in these cases traces the language which now appears in Code sections 7476(c) and 7677(c) with respect to the commissioners' authority in declaratory judgment cases.

The decision in the Tax Court corresponds with the judgment in other courts. It flows automatically in these small cases from the commissioner's opinion. Arriving at the amount of the decision, whether a deficiency or an overpayment, is ordinarily a purely computational matter.

Commissioners now prepare opinions in small tax cases which are reviewed by a judge designated for that purpose. The decision, however, has to be signed in the name of the chief judge or some other judge. Taxpayers who receive an opinion bearing only the name of the commissioner who heard the case may be confused when they receive the decision signed by someone else. Since commissioners prepare the more important opinion, there is no reason to reserve to the judges the routine matter of entry of the decision in such cases. This section would remove some of this confusion and would make the handling of these cases more efficient.

AUTHORITY OF TAX COURT COMMISSIONERS TO ADMINISTER OATHS, PROCURE TESTIMONY, AND SO FORTH

Section 7456 authorizes the judges and certain other employees of the Tax Court to administer oaths and issue subpenas. That section also authorizes judges to examine witnesses. Subsection (c) of section 7456 authorizes the chief judge to appoint commissioners, but does not extend those powers to commissioners so appointed.

Although the authority of commissioners under section 7456 to administer oaths, examine witnesses, and issue subpenas may be implied, it would be appropriate to clarify the law on this point. The amendment makes this clarification.

The Tax Court and the Treasury Department support this amendment. In addition, the Court Procedures Committee of the Tax Section of the American Bar Association recently surveyed the members of that committee with regard to a proposal to raise the small tax case jurisdictional amount to $10,000—compared with $5,000 under this amendment—and a proposal to authorize commissioners to administer oaths, swear witnesses, and issue subpenas. The members of the committee who voted on the proposals overwhelmingly favored them.●

AMENDMENT NO. 3845

(Ordered to be printed and to lie on the table.)

Mr. WEICKER (for himself, Mr. HATHAWAY, Mr. CHAFEE, Mr. NELSON, and Mr. MOYNIHAN) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

● Mr. WEICKER. Mr. President, I am submitting today, together with Senators HATHAWAY, CHAFEE, NELSON, and MOYNIHAN, an amendment to H.R. 13511, the Revenue Act of 1978.

Our amendment is similar to S. 3320, a bill which Senators HATHAWAY, CHAFEE, DURKIN, and I cosponsored. The only substantive difference between this amendment and the bill is that the amendment, unlike S. 3320, contains a 5-year sunset provision. A detailed description of S. 3320 may be found beginning on page 21632 of the CONGRESSIONAL RECORD for July 19, 1978.

This amendment is designed to provided the stimulus needed to get the individual investor to participate in the solution of the capital formation problem confronting small and medium sized businesses.

Pursuant to the amendment, the investor would be given a credit against tax of 10 percent of the first $7,500—$15,000 in the case of a joint return—invested in qualifying stock issues during the taxable year. The credit would be recaptured if the stock is disposed of in any way—not merely sold—before being held for more than 1 year. The only exceptions to the recapture rule are for transfers of ownership by reason of death or gift, and even in these cases the stock must be held by the transferee until a time more than 1 year from the date of the original purchase. Dependents and foreign citizens would not be eligible for the credit.

The credit would be available only for investment in common or preferred stock issued in a public offering of less than $25 million by a corporation with a net equity of less than $25 million. The size limitation is derived from a recommendation made by the 1977 task force on venture and equity capital. The term "public offering" includes all primary security issues of stock registered with the SEC for immediate cash sale to the public pursuant to the requirements of the Securities Act of 1933 or regulation A of that act.

Credit would be granted only if there has not been an acquisition of the issuing corporation's stock within 6 months which exceeds 10 percent of the aggregate sales price of the qualifying stock. Furthermore, the corporation and any members of a control group may not have "passive investment income" which exceeds 20 percent of the gross receipts for the year. These provisions are designed to avoid chicanery by the corporation and to assure that the equity capital is devoted to active business functions.

The Joint Committee on Taxation has estimated that this credit would result in an annual revenue loss of $70 million.

I urge my colleagues to carefully consider this amendment when it is called up for debate.

I ask unanimous consent that the text of the amendment be printed in the RECORD.

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

AMENDMENT NO. 3845

On page 308, after line 23, insert the following new section:

SEC. 347. ALLOWANCE OF CREDIT FOR INVESTMENT IN CERTAIN NEW ISSUES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowable), as amended by sections 141 and 336 of this Act, is amended by inserting immediately before section 45 the following new section:

"SEC. 44E. INVESTMENT IN ORIGINAL ISSUE STOCK OF SMALL OR MEDIUM-SIZED CORPORATIONS.

"(a) GENERAL RULE.—In the case of an individual who is a citizen or resident of the United States there is allowed, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 10 percent of the adjusted basis (within the meaning of section 1011) of the taxpayer for in-

centive stock (as defined in subsection (c)) acquired for money during the taxable year.

"(b) LIMITATIONS.—

"(1) CREDIT NOT ALLOWED TO CERTAIN DEPENDENTS.—No credit is allowable under subsection (a) to an individual with respect to whom a personal exemption deduction is allowable for the taxable year to another taxpayer under section 151(e).

"(2) CREDIT NOT TO EXCEED $750.—The credit allowed by subsection (a) for any taxable year shall not exceed $750 ($1,500 in the case of a joint return).

"(3) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31 and 39.

"(4) CERTAIN TAXES NOT CONSIDERED TAXES IMPOSED BY THIS CHAPTER.—For purposes of this section, any tax imposed for the taxable year by section 56 (relating to minimum tax for tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 402(e) (relating to tax on lump sum distributions), section 408(f) (relating to additional tax on income from certain retirement accounts), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

"(c) DEFINITION OF INCENTIVE STOCK.—

"(1) IN GENERAL.—For purposes of this section, the term 'incentive stock' means original issue common or preferred stock registered under section 12 of the Securities Exchange Act of 1934 offered by the issuing corporation in a public offering—

"(A) which is issued by a domestic corporation the equity capital (within the meaning of the last sentence of section 1244(c)(2)) of which does not exceed $25,000,000 immediately before such offering, and

"(B) which is part of an issue of stock the aggregate sale price of which does not exceed $25,000,000.

"(2) CONTROLLED CORPORATIONS.—In the case of a corporation which is a member of a controlled group of corporations (as defined in section 1563(a)(1)), the equity capital of all members of the controlled group shall be treated, for purposes of paragraph (1)(A) of this subsection, as the equity capital of the issuing corporation.

"(3) STOCK ACQUIRED MORE THAN 180 DAYS AFTER ISSUANCE; STOCK ACQUIRED BY DEALER.—No stock shall be treated as incentive stock for purposes of this section if it is first purchased more than 180 days after the date on which it is issued. No acquisition of stock by a dealer, whether the ordinary course of his trade or business as a dealer, whether or not guaranteed, shall be treated as an acquisition for purposes of subsection (a).

"(4) Certain redemptions and refinancing issues not treated as incentive stock.—An issue of stock which, but for this paragraph, would be treated as incentive stock under this section shall not be treated as incentive stock if, within 180 days before the date of issuance, the issuing corporation (or any other corporation which is a member of the same controlled group of corporations, within the meaning of section 1563, as the issuing corporation) has acquired stock (including acquisition by way of redemption) of the issuing corporation or of any other member of the controlled group with an aggregate purchase price in excess of 10 percent of the aggregate sale price of the issue of incentive stock.

"(5) Investment company stock not treated as incentive stock.—Stock issued by an investment company shall not be treated as incentive stock. For purposes of this paragraph—

"(A) a corporation shall be treated as an investment company if the corporation has gross receipts for the taxable year in which the stock is issued more than 20 percent of which consist of passive investment income (as defined in section 1372(e)(5)(C)), and

"(B) in the case of a corporation which is a member of a controlled group of corporations within the meaning of section 1563(a), subparagraph (A) shall be applied—

"(i) first, to the issuing corporation by itself, and

"(ii) then, by treating the gross receipts and passive investment income of the controlled group as the gross receipts and passive investment income of the issuing corporation.

"(d) Disposition of Incentive Stock Before It is Held for More Than 12 Months.—

"(1) Disposition before filing return for taxable year of acquisition.—No credit is allowable under subsection (a) with respect to incentive stock acquired during a taxable year which is not held by the taxpayer on the date established by law for filling a return of tax for that taxable year, if, as of that date, the taxpayer has disposed of the stock after holding it for less than 12 months and one day.

"(2) Other premature dispositions—If during any taxable year incentive stock is disposed of by the taxpayer before the stock has been held by the taxpayer for more than 12 months, then the tax under this chapter for the taxable year shall be increased by the amount of the credit claimed by the taxpayer for any preceding taxable year with respect to the acquisition of such stock.

"(3) Exceptions.—Paragraphs (1) and (2) of this subsection shall not apply in the case of the disposition by bequest or gift unless—

"(A) the bequest or gift is deductible under section 170 (determined without regard to the limitations contained in subsection (b)), 2055, or 2522, or

"(B) the recipient disposes of the stock before the stock has been held for more than 12 months (including any periods of time during which the stock was held by the original purchaser).".

(b) Clerical Amendment.—The table of sections for such subpart is amended by inserting immediately after the item relating to section 44D the following new item:

"SEC. 44F. Investment in original issue stock of small or medium-sized corporations.".

(c) Conforming Amendments.—Subsection (b) of section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund) is amended by striking out "and 44E" and inserting in lieu thereof "44D, and 44E".

(d) Credit Not Allowed to Estates and Trusts.—Subsection (a) of section 642 (relating to special rules for credits against tax for estates and trusts) is amended by adding at the end thereof the following new paragraph:

"(3) Investment in incentive stock.—An estate or trust shall not be allowed the credit against tax for investment in incentive stock provided by section 44E.".

(e) Effective Date.—The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1978, and before January 1, 1984, and to stock acquired after the date of enactment of this Act and before October 14, 1983. For purposes of the preceding sentence, stock acquired before January 1, 1979, shall be treated (except for purposes of section 44E (c)(3) and (d) of the Internal Revenue Code of 1954) as acquired on the first day of the first taxable year of the taxpayer beginning after December 31, 1978 and before January 1, 1984.

AMENDMENT NO. 3846

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mr. WEICKER, Mr. HATHAWAY, Mr. PACKWOOD, Mr. MCINTYRE, Mr. HEINZ, Mr. LEAHY, Mr. CHAFEE, Mr. CHURCH, Mr. RIEGLE, Mr. PELL, Mr. SPARKMAN, and Mr. MATSUNAGA) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

DEPRECIATION REFORM

● Mr. NELSON. Mr. President, today I am submitting an amendment to the Revenue Act of 1978, H.R. 13511. I ask unanimous consent that the text of the amendment be printed in the RECORD.

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

AMENDMENT NO. 3846

At the appropriate place in the bill insert the following new section:

DEPRECIATION REFORM

(a) Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.".

(b) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) The amendments made by the foregoing sections this Act shall apply in the case of property acquired after the date of enactment of this Act and placed in service in taxable years ending after the date of enactment of this Act.

AMENDMENT NO. 3847

(Ordered to be printed and to lie on the table.)

Mr. MORGAN (for himself, Mr. BAKER, Mr. SASSER, Mr. MAGNUSON, Mr. HODGES, Mr. INOUYE, Mr. PERCY, Mr. MATHIAS, Mr. RIEGLE, and Mr. SCHMITT) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 3848

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mr. KENNEDY, Mr. JAVITS, Mr. ANDERSON, Mr. CRANSTON, Mr. EAGLETON, Mr. HASKELL, Mr. HATHAWAY, Mr. MOYNIHAN, Mr. PELL, Mr. RIBICOFF, Mr. RIEGLE, Mr. WILLIAMS, Mr. HART, and Mr. ABOUREZK) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

Mr. NELSON. Mr. President, earlier, this week, Senators all received a letter on the subject of hospital cost containment, signed by a broad and unprecedented coalition of groups. Thirty-one different public interest, health care, labor, and business organizations have gathered together and, in a single voice, have urged enactment of hospital cost containment legislation this year as a "critical anti-inflation measure."

Mr. President, we have proposed a hospital cost containment measure that will save the American economy more than $30 billion in the course of the next 5 years; $11 to $12 billion of that would be saved by the Federal Government. Another $1.5 to $2 billion would be saved by the States, and the rest in the private sector.

The groups which have signed this letter, as well as the Carter administration, have demonstrated their strong commitment to enactment of this legislation.

These groups include the American Public Health Association, the American Nurses Association, the National Governors' Association, the Group Health Association, the National Mental Health Association, the United Auto Workers, and a number of insurance companies.

In addition, my amendment has the strong support of the AFL–CIO, the Consumer Federation of America, and a host of other individuals, organizations, and businesses.

And what these supporters are all saying to us is that it is high time for Congress to put up or shut up on issues like controlling inflation, reducing governmental expenditures, and alleviating economic burdens for the American, both as private citizen and as taxpayer.

Hospital cost containment will be before the Senate this year, Mr. President—either on its own, or as an amendment to the tax bill or some other suitable vehicle. The U.S. Congress must and will vote on this, the most important deficit cutting, anti-inflation legislation to come before us this year.

I ask unanimous consent that the letter signed by 31 groups be printed in the RECORD at this point. I also ask unanimous consent that a number of other letters from groups and individuals supporting hospital cost containment be printed in the RECORD following the coalition letter.

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

OCTOBER 4, 1978.

Hon. ROBERT C. BYRD,
*Majority Leader,*
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR BYRD: A broad coalition of groups concerned with the escalation of hospital costs has joined to urge the Senate to enact meaningful hospital cost containment legislation. We are writing to urge your support and to enlist your help in ensuring that the Senate is provided an opportunity to vote on this critical anti-inflation measure.

This coalition is comprised of representatives of almost every sector of the economy that underwrites the excessive rate of inflation in the hospital sector, a rate twice the overall rate of inflation in our economy. From labor, the aged, and disabled, to commercial health insurers, States, counties, and cities—all pay far more than is required for the care that they purchase.

In addition, knowledgeable health care providers, such as the American Nurses Association, the National Association of Community Health Centers, the National Council of Community Mental Health Centers, the Group Health Association of America, and Individual Health Maintenance Organizations, have also joined this unprecedented coalition. Public health interest groups, which have watched uncontrollable Medicare and Medicaid expenditures erode the resources available for discretionary health programs, have lent their support as well.

All have jointed to urge you and your colleagues to consider the merits of a proposal that can make a critical difference to the diverse constituencies we represent. No other proposal pending in Congress speaks so directly to the desires of the American people. As shown by the September 21 Harris Survey, three of the four issues of greatest concern to Americans—controlling inflation, Federal spending, and health costs—are all addressed by meaningful hospital cost containment legislation.

The need is clear and the opportunity available. Your efforts on behalf of our coalition and the American people will be greatly appreciated.

Sincerely yours,
Aetna Life and Casualty.
Alliance of American Insurers.
American Association of Retired Persons.
American Health Planning Association.
American Nurses Association.
American Public Health Association.
American Speech and Hearing Association.
Association of State and Territorial Health Officers.
Connecticut General Life Insurance Company.
Epilepsy Foundation of America.
Family Health Program.
Group Health Association of America.
Health Insurance Association of America.
Kaiser Foundation Health Plan.
Kemper Insurance Company.
National Association of Casualty and Surety.
National Association of Community Health Centers.
National Association of Counties.
National Association of Life Underwriters.
National Caucus on the Black Aged.
National Coalition of Hispanic Mental Health and Human Services Organizations.
National Conference of State Legislatures.
National Council of Community Mental Health Centers.
National Council of Senior Citizens.
National Governors Association.
National Indian Council on Aging.
National League of Cities.
National Mental Health Association.
Prudential Insurance of America.
United Auto Workers.
U.S. Conference of Mayors.

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U.S. CONFERENCE OF MAYORS,
*Washington, D.C., September 6, 1978.*

DEAR SENATOR: On behalf of the U.S. Conference of Mayors, we seek your support of Senator Talmadge's Medicare-Medicaid Reform bill as amended in committee (S. 5285). We also seek your support of any hospital-cost containment amendments to strengthen the bill which may be offered when it is considered by the Senate.

Cost containment has been a major health issue for the U.S. Conference of Mayors and its affiliate, the U.S. Conference of City Health Officers. U.S. Conference of Mayors' policy calls for hospital-cost containment.

Mayors are concerned with rising hospital cost, since some cities administer and support general hospitals. Mayors must ensure that all persons in need of health care are able to obtain that care and, at the same time, we must keep an eye on how much of the municipal budget is directed to supporting local hospitals. If prices continue to rise, people in cities simply will not be able to afford hospital care.

As President of the U.S. Conference of Mayors, I strongly urge you to vote in favor of S. 5285 and any additional cost containment amendments which are proposed.

Thank you for your thoughtful consideration.

Sincerely,
WILLIAM H. MCNICHOLS, JR.,
*Mayor of Denver, President.*

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AUGUST 29, 1978.

DEAR SENATOR: The problem of inflation is very much on the minds of all Americans, and has been cited a great deal recently during Senate consideration of spending programs. And while there is room for discussion about the consequences for inflation of different bills, there is no doubt that the Senate has a unique opportunity to make valuable inroads against inflation and to curb federal spending through the enactment of hospital cost containment legislation.

While double digit inflation is rightly viewed as a threat to our economic well-being, hospital costs rose a remarkable 15.6 percent last year, following in the wake of even larger increases in 1975 and 1976. Not only have hospital costs risen at a far faster rate than the overall cost-of-living, hospital costs are also rising more rapidly than other medical costs. Since 1950 hospital costs have risen from 30 percent of the total of all medical costs to 40 percent of the total.

The consequences of the rise in hospital costs is felt by every American. Most feel it directly in the soaring premiums for hospital insurance. Others, who lack insurance or who are burdened with co-payment requirements, feel the burden of hospital costs even more directly. And, because of the high proportion of hospital costs covered by Medicare and Medicaid, the soaring cost of hospital care has had a direct bearing on federal spending, and, as a result, on federal income and payroll taxes. Moreover, state and local governments also feel the burden of hospital costs through their health benefit and public hospital programs.

The enactment of hospital cost containment legislation provides an opportunity to address this specific issue and the broader problem of inflation very directly. The UAW favors compulsory hospital cost containment legislation such as that approved by the Human Resources Committee. If that is not to be enacted we cetrainly believe that the plan proposed by Senator Nelson, for voluntary cost containment by the hospitals and standby mandatory controls if the voluntary program does not work, should be enacted. Both the bill approved by he Human Resources Committee and the Nelson Amendment represent major improvements over the less reaching proposal approved by the Finance Committee as an amendment to H.R. 5285.

The bill reported from the Finance Committee holds the prospect of saving less than a billion dollars in the costs of Medicare and Medicaid over a five year period. The savings from the Human Resources Committee bill and the Nelson Amendment, on the other hand, are measured in the tens of billions of dollars and obviously are far preferable to the narrow proposal approved in the Finance Committee.

An argument is made by some that it is

unfair to control hospital costs at a time when there is broad sentiment against general wage and price controls. But that argument ignores the fact that hospital costs have risen far faster than the overall rate of inflation and pose a special burden because of the essential nature of medical care. Moreover, the Nelson Amendment would not result in federal controls unless and until the hospitals failed to achieve their own voluntary control program.

As a matter of equity, as a matter of sound economics, and as an essential blow against inflation, the UAW urges you to support hospital cost containment when it comes before the Senate following the current recess. Thank you.

Sincerely,

HOWARD G. PASTER,
*Legislative Director.*

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NATIONAL COUNCIL OF SENIOR CITIZENS, INC.,
*Washington, D.C., August 22, 1978.*

DEAR SENATOR: It is our understanding that the Senate is to take up legislation to contain the costs of hospital care this week.

In previous statements, testimony and letters, the National Council of Senior Citizens has strongly endorsed the concept of hospital cost containment and urged passage of legislation along the lines of the original Administration bill.

The Senate Human Resources Committee bill is the strongest, and has the most potential to restrain the inflationary escalation of hospital costs. By placing a cap on total hospital revenues, the Kennedy bill will have the effect of requiring hospitals to plan and budget, as do other businesses.

The alternative legislation, the Talmadge bill, which emerged from the Senate Finance Committee, is unfortunately lacking in several respects: It restricts its cost containment design to Medicare and Medicaid payers and it applies only to routine services which are the so-called hotel-type services. The result is a savings of only $500 million over the next five years.

In stark contrast, the Kennedy bill will save the public $56 billion over the next five years. To repeat, the difference between the Talmadge and Kennedy approaches is 1,112 per cent. If the Congress, and in particular the Senate, is going to curtail inflation, there is no better vehicle on the horizon than the Administration-backed Kennedy hospital cost containment bill.

NCSC would also like to call your attention to three other items associated with the cost containment legislation. The most important of these is the amendment Senator Nelson intends introducing, if the Kennedy bill fails to be adopted. Senator Nelson would amend the Talmadge bill to include hospital services other than simply routine services and expand the application of the cost containment approach to include all payers, not just Medicare and Medicaid. The Nelson Amendment is, in effect, a compromise proposal. Although NCSC cannot in good conscience support the Talmadge bill in its present form, we would nevertheless support the Nelson compromise if the Kennedy bill were not adopted.

The second item of concern is a provision in the Talmadge bill which would, in effect, allow states to introduce various cost-sharing schemes in Medicaid and allow the federal government to do the same in the Medicare program. Though current law permits this experimentation with reimbursement schemes, the practice has not been widespread. In fact, when the State of Georgia recently attempted to initiate a co-payment procedure in Medicaid, it was successfully challenged in the courts. NCSC strongly opposes cost-sharing and, in order to protect Medicare and Medicaid patients from further erosion of their already modest benefits, opposes Section 19 of the Talmadge bill.

The third item of interest to NCSC, and which we strongly support, and which we have learned has come under attack by the nursing home industry, is Section 31 of the Talmadge bill, which requires skilled nursing facilities to participate in both Medicare and Medicaid as a condition of participation in either program. The disparity between states and within states of skilled nursing facilities, electing to participate in only Medicare or only Medicaid, has significantly reduced the number of skilled nursing facilities available in some areas to both Medicare and Medicaid beneficiaries. The financial incentives are sufficient to avoid the possibility of significant withdrawal from both populations; the effect of Section 31 can only be to enlarge the options for both populations, Medicare and Medicaid recipients.

We would be pleased to discuss our position on the above provisions, or any others that are of concern, at your convenience.

Sincerely,

WILLIAM R. HUTTON,
*Executive Director.*

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AMERICAN NURSES' ASSOCIATION, INC.,
*Kansas City, September 1, 1978.*

DEAR SENATOR: The American Nurses' Association would like to seek your support for the Nelson Amendment to S. 1470 (Talmadge) Medicare/Medicaid Reimbursement Reform Act.

We are in full support of the voluntary approach to hospital cost containment and hope that it will be successful without the need for further action. The Nelson Amendment affords an opportunity for the voluntary effort and would impose controls only if that effort fails.

The Nelson measure retains many of the key features of S. 1470, including the provision for classification of hospitals into groups with similar characteristics. This recognizes the concerns about maintaining quality patient care if there had been imposition of controls on all hospitals with very dissimilar needs, resources and track records on cost inflation as in other bills The lack of such discrimination was one of our objections to S. 1391.

We also support the Amendment in that, if controls have to be implemented, it affects all payors, all costs, not just "routine costs" as called for in S. 1470. We endorse the Nelson wage pass-through for increases in salaries of non-supervisory employees who have only recently begun achieving parity with similar workers in other sectors of the economy.

Experience has shown there has been difficulty with interpretation of the term "supervisory" but hospitals, and we hope care will be taken that this process be fairly implemented to include all staff who do not carry major responsibility for making policy or for hiring and firing employees.

Finally, we think it eminently fair, as provided in the Nelson Amendment, that bonuses be paid to hospitals which operate economically and that such bonuses be shared with employees who help make such savings possible. We think the amendment does allow hospitals the chance to curb the escalation of their costs without government controls, while providing a reasonable recourse to alternative action if needed. Nurses, like all other groups included, will be affected by this legislation. We are concerned about maintaining quality health care and the welfare of hospital employees.

We recognize this Amendment as a reasonable compromise and we urge you to support it.

Sincerely,

BARBARA NICHOLS,
*President.*

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AUGUST 21, 1978.

DEAR SENATOR: The National Retired Teachers Association and the American Association of Retired Persons, urge you to vote in favor of Senator Nelson's amendment to H.R. 5285, the Medicare/Medicaid reimbursement reform legislation recently reported out by the Senate Finance Committee.

Senator Nelson's proposal is a compromise that expands upon Senator Talmadge's bill for revising Medicare/Medicaid reimbursement of routine costs. It broadens the Talmadge bill by recognizing the hospital industry's present voluntary attempt to bring down their costs over the next two years. Standby controls would go into effect only if the hospitals fail to meet their own proposed goals. Small hospitals and hospitals in states that have effective cost containment programs would be exempted from these standby controls.

Our 12 million member Associations believe Senator Nelson's proposal would be more effective than Senator Talmadge's bill because first, it would control all cost (including ancillary costs), whereas the Talmadge approach would control only 16 percent of hospital costs; and second, the Nelson program would apply to all payors and not be restricted to just the Medicare/Medicaid programs which apply to only 40 percent of all hospital bills. The comparative effectiveness of these two proposals is dramatically illustrated by the cost savings each would yield. The Nelson compromise would save between $30 and $35 million over the next five years, while the Talmadge plan would only save less than $500 million over the same time period.

The cost savings which the Nelson proposal would yield could be used to provide long overdue benefit improvements in the Medicare/Medicaid programs as well as a beginning for national health insurance. The fiscal 1979 budget estimates for Medicare/Medicaid alone are up by $5.2 billion over 1978—with no increase in services. This inflationary spiral will not permit any expansion of government health benefits and, in fact, it could prompt a cut in benefits unless taxes are increased to cover this cost escalation.

Increasing numbers of older persons, even with Medicare protection, are being priced out of the health care market. In 1965, Medicare beneficiaries paid $40 for their in-patient deductible, they now pay $144. Medical expenses have similarly soared. As a result, in constant dollar terms the elderly pay more out-of-pocket today for medical expenses than they did in 1965.

Acceptance of the Nelson amendment is critical not only for the millions of elderly people in this country for whom rising health care costs have become an unbearable burden, but for all Americans who pay for this intolerable inflation in many ways, including increased health insurance premiums, increased prices and increased taxes. Almost everyone agrees that inflation is our number one domestic threat. The Senate now has a chance to cast a vote for an effective weapon to fight inflation—a meaningful hospital cost containment program.

Sincerely,

PETER W. HUGHES,
*Legislative Counsel.*

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SERVICE EMPLOYEES INTERNATIONAL UNION, AFL–CIO, CLC,
*Washington, D.C., August 22, 1978.*

DEAR SENATOR: As the nation's largest union of hospital workers, SEIU fully supports the concept of hospital cost containment embodied in S. 1391 as ordered reported by the Senate Human Resources Committee in August 1977. This bill, sponsored by Senator Kennedy would save $60 billion over the next five years while at the same time assuring equitable treatment for low-wage hospital workers.

Currently opponents of meaningful hospital cost containment legislation are seeking to obtain passage of H.R. 5285, a tariff bill, to which a substantially weaker hospital cost

containment program has been attached. This program, by comparison, would have less than $1½ billion in hospital costs over the next five years.

We ask that you reject this unfair, ineffective approach by supporting either the Kennedy legislation or an amendment to H.R. 5285 offered by Senator Gaylord Nelson (Amendment No. 3478). Senator Nelson's amendment would save over $30 billion in hospital costs over the next five years, and it includes a pass-through for the wages of nonsupervisory hospital workers.

The choices are clear. Hospital workers are not responsible for health care inflation. The average non-supervisory hospital worker earns almost $1.00 an hour less than the average manufacturing employee. We believe that a hospital cost containment legislation should properly focus on the real causes of hospital inflation—mismanagement, poor planning, wasteful duplication of services and expensive technology.

We strongly urge you to support the Kennedy bill or the Nelson amendment to H.R. 5285 which seek to secure fair treatment for non-supervisory hospital workers as well as a meaningful hospital cost containment program.

Sincerely,

GEORGE HARDY,
*International President.*

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AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
*August 22, 1978.*

DEAR SENATOR: With over one million members, several hundred thousand of whom work in public general hospitals, the American Federation of State, County and Municipal Employees supports effective and equitable cost controls is the hospital industry. The rapid increase in hospital costs must be controlled by a program which curbs excessive and wasteful spending while not repressing the wages of low-paid nonsupervisory hospital workers.

You will shortly be considering on the Senate floor H.R. 5285, the Medicare-Medicaid Administrative and Reimbursement Reform Act, sponsored by Senator Talmadge. At that time Senator Kennedy will offer as an amendment (No. 3477) the hospital cost control bill approved by the Human Resources Committee last year. Senator Nelson also will offer an amendment (No. 3478) as a compromise between the Human Resources Committee bill and H.R. 5285.

AFSCME strongly opposes the Talmadge bill and urges you to do the same. The bill's cost savings are minimal. Covering only 16 percent of all hospital costs (routine costs under only Medicare and Medicaid), it would save less than $400 million in the next five years by grouping hospitals into categories (e.g., urban, rural, large, small) and disallowing some of the costs in hospitals that have significantly higher costs than the average for their category.

The Talmadge bill also is inequitable. It allows unlimited funding for such important items as capital expenditures, equipment, lab tests, malpractice insurance and energy. However, it imposes harsh government controls on nonsupervisory hospital workers when, historically, their wages have been declining as a percentage of total hospital costs and the rate of increase in their wages has lagged behind the rate of increase for the hospital industry as a whole. The area-wide wage indexing mechanism in the bill would freeze some hospital workers' wages, while possibly causing a wage rollback for others. It would not reimburse for the amount of wages above an undefined "general wage level" for comparable work in hospital and non-hospital jobs in the area regardless of whether the work is done by organized workers or even covered by minimum wage laws.

Finally, the Talmadge bill could hurt poor people and senior citizens. Reduced reimbursements could cause hospitals to reject Medicare/Medicaid patients or send them to already financially strapped and overburdened public hospitals where Medicare and Medicaid constitute a high percentage of their total inpatient revenues. Increased pressures on state and local governments to meet this demand could result.

Senator Kennedy's amendment, by contrast, imposes immediate, mandatory federal controls on all hospital revenues. It establishes a uniform cost increase limit on all hospitals that would save around $60 billion over the next five years, about $29 billion of which would be in Medicare and Medicaid. The amendment also prevents any artificial depression of nonsupervisory worker wages. It establishes a government policy of neutrality through a wage pass-through mechanism that allows wages to be determined by free collective bargaining in unionized hospitals.

The Nelson amendment also achieves substantial savings: about $30 billion over the next five years, of which about $11.5 billion would be in Medicare/Medicaid payments. The amendment retains the Talmadge bill's provisions for revising Medicare/Medicaid routine cost reimbursements with several cost-saving modifications. It endorses the hospital industry's present voluntary control effort by establishing the goal of a 2 percent reduction in the rate of increase in hospital costs for each of the next two years. Standby, mandatory controls that generally extend the mechanisms in the Talmadge bill to all costs and all revenues would go into effect if the voluntary effort failed. Like the Kennedy amendment, the Nelson amendment would protect nonsupervisory hospital workers.

The Kennedy amendment clearly is the most effective cost control proposal. The voluntary control program, which raises questions about the anti-trust implications of industrial price-fixing, and the lower cost savings of the Nelson amendment make it acceptable only as a compromise if the Kennedy amendment fails.

We urge you to support the Kennedy amendment, and, if it fails, to vote for the Nelson amendment as long as the worker protections are retained in both proposals. We strongly urge you to oppose any effort to weaken or strike the nonsupervisory employee wage provisions and to oppose any hospital cost containment proposal that does not contain them.

Hospital cost containment is essential, but equity demands that it not be achieved at the expense of low-wage hospital workers who have not been responsible for the main increases in the industry anyway. The provisions in the Kennedy and Nelson amendments simply protect from unfair pressure and controls some of the lowest paid workers in the American economy.

Sincerely,

WILLIAM B. WELSH,
*Executive Director for Governmental Affairs.*

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CONSUMER FEDERATION OF AMERICA,
*Washington, D.C., September 7, 1978.*

Re: H.R. 5285

DEAR SENATOR: As you consider H.R. 5285, which includes provisions authored by Senator Herman Talmadge relating to hospital cost controls, we urge your vigorous support for the amendment submitted by Senator Edward M. Kennedy. This amendment is Title I of the Hospital Cost Containment Act of 1977 which was reported by the Committee on Human Resources and which CFA has enthusiastically endorsed.

At a moment when consumers are confronted with near double-digit inflation and hospital costs continue to increase at twice the rate of other goods and services, the Kennedy amendment would save consumers approximately $60 billion over the next five years. That savings compares sharply with the Talmadge proposal which would save only $500 million over the same period—none of which would be realized during the first two years.

With the adoption of the Kennedy amendment and its limitations on revenues, hospitals will at long last have an economic incentive to hold down costs. Without cost containment the average rate of increase in hospital costs has been 16 percent since 1973—nearly three times the rate of inflation in the general economy. Clearly, no meaningful fight against health care inflation can be waged without significantly controlling hospital costs.

We are decidedly less enthusiastic about the proposed compromise of Senator Gaylord Nelson, a co-sponsor of the Kennedy amendment. If the Nelson amendment is ultimately considered, we view it as a much weakened alternative to the Kennedy measure, but one which should be supported if (and only if) the Kennedy measure fails. The Nelson compromise should be supported for the following reasons:

1. It would save over $6 billion a year. By encouraging hospitals to continue their voluntary efforts to control hospital costs, total savings through fiscal year 1983 would be $34 billion.

2. It would provide the hospital industry with a much needed incentive to succeed in its voluntary effort. Under the Nelson proposal no mandatory controls would go into effect unless the national voluntary effort fails to meet its objectives. This approach recognizes that even the most well intentioned voluntary efforts are easily thwarted and lack incentive when standby controls are absent. The Nelson amendment would serve to supply the hospital industry with the necessary incentive to keep its promise.

3. Standby controls would involve limitations applicable to all costs and all payors. If the voluntary effort fails, the standy controls which would go into effect under the Nelson amendment would more equitably go beyond the routine ("bed and board" type) hospital costs which are the only ones covered by the Talmadge approach and which account for only 40 percent of all hospital costs. Furthermore, the voluntary controls would extend beyond Medicare/Medicaid payors who are the only ones covered by the Talmadge approach and who comprise only 40 percent of all payors. In addition, there is no guarantee under the Talmadge bill that hospitals will not raise the fees for other services such as laboratory fees or shift expenses to non-Medicare/Medicaid payors in order to meet these limitations.

4. Exemptions are provided for states whose hospitals have achieved the national voluntary goal. Regardless of whether or not the national effort succeeds, these states would not be subject to the standby controls. It should be noted that Wisconsin and Washington have already met the proposed goals of the legislation.

5. The need for equipment and other essential items necessary for high quality health care would not be jeopardized. Since the Nelson proposal permits a cost increase rate that is 1½ times the overall rate of inflation in any given year, hospital administrators should be more than able to accommodate the special needs of the population they serve.

6. Hospital employees would not sacrifice potential wage increases. Since neither the voluntary nor mandatory controls take into account wage increases for non-supervisory hospital employees, the Nelson proposal in no way compromises the economic well-being of hospital workers.

For all of these reasons, we urge your support for this compromise if it is introduced. However, successful passage of the Kennedy

amendment would eliminate its necessity and present tangible evidence to the American consumer of your sincerity in controlling health care inflation.

Sincerely,

KATHLEEN F. O'REILLY,
*Executive Director.*
KATHLEEN D. SHEEKY,
*Legislative Director.*

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NATIONAL CONFERENCE OF STATE LEGISLATURES,
*August 30, 1978.*

DEAR SENATOR: While the National Conference of State Legislatures believes that administrative and reimbursement reform in Medicare and Medicaid, as suggested in HR 5285, are critical, we also believe that containing the rate of increase in hospital costs ought to be an immediate national priority. For this reason, our organization fully supports Senator Nelson's amendment to HR 5285 to establish a national, voluntary hospital cost containment program to be followed by a mandatory control program in the event the voluntary effort fails. We would suggest that if mandatory controls are necessary, they should be implemented on a state-by-state basis according to each state's performance with respect to the voluntary goals. Moreover, we further support Senator Nelson's effort to extend the reimbursement methodology to be utilized under the mandatory program to all payors, so that it not be limited to Medicare and Medicaid.

We believe that the provisions in Senator Nelson's amendment provide adequate assurances that States which are operating effective cost containment programs would be able to continue to administer their own systems if the mandatory program takes effect. It is our conviction that state cost containment programs have been operating very effectively and should not be pre-empted by federal law.

Finally, we would suggest that an appropriate role of the federal government ought to be one of providing financial incentives to encourage many other States to experiment with alternative hospital cost containment programs.

As you know, the NCSL is the official representative of the nation's 7,600 state legislators.

Thank you very much for your assistance.

Sincerely,

JASON BOE,
*President, NCSL; President, Oregon Senate.*

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AMERICAN PUBLIC HEALTH ASSOCIATION,
*Washington, D.C., September 11, 1978.*

DEAR SENATOR: A unique coalition of concerned national public health organizations have joined to urge your favorable consideration of hospital cost containment legislation, which will be taken up by the Senate in the near future.

In the period of budgetary constraints, none of us can ignore the devastating effect of unbridled increases in health care costs on the resources available to programs targeted on the special health needs of millions of Americans. From biomedical research into the causes of disease, to a diverse multitude of preventive efforts at the federal, state and local level, to special capacity building programs for those poorly served by mainstream health care—all of these critical efforts face severe resource limitation due to ever-escalating outlays for acute medical care services.

Provision of services to our poor, aged and disabled remains a profound commitment of this society. However, passage of the Medicare and Medicaid Amendments of 1965 was never intended to underwrite the excessive hospital costs that have led to an inflation rate of 2½ times the inflation in the rest of the economy. Legislation is needed to control in-patient hospital costs, including those of Medicare and Medicaid.

We call upon you and your colleagues to respond affirmatively to this one available opportunity for Congress to apply some brakes to the inflation that is first among the concerns of the American people. Unless Congress acts now to enact legislation to slow these expenditures, unchecked hospital cost inflation will continue to limit the options available for the discretionary programs which we believe are vital to the diverse health needs of the American people. Equally important is the fact that these cost increases will ultimately lead to curtailment of Medicare and Medicaid benefits and services as well. We urge your favorable consideration of critical cost containment legislation.

American College of Preventive Medicine, 1015 18th Street, N.W., Washington, D.C. 20036.

American Health Planning Association, 2560 Huntington Avenue, Alexandria, Virginia 22303.

American Public Health Association, 1015 18th Street, N.W., Washington, D.C. 20036.

American Speech and Hearing Association, 10801 Rockville Pike, Rockville, Maryland 20852.

Association of State and Territorial Health Officials, 101 2nd Street, N.E., Washington, D.C. 20002.

Association of Teachers of Preventive Medicine, 3900 Reservoir Road, N.W., Room SW-312, Washington, D.C. 20007.

COSSMHO/National Coalition of Hispanic Mental Health and Human Services Organizations, 1725 K Street, N.W., Suite 1212, Washington, D.C. 20006.

Epilepsy Foundation of America, 1828 L Street, N.W., Washington, D.C. 20036.

National Association of Community Health Centers, 1625 I Street, N.W., Suite 420, Washington, D.C. 20006.

National Committee Against Mental Illness, 1101 17th Street, N.W., Washington, D.C. 20036.

National Council of Community Mental Health Centers, 2233 Wisconsin Avenue, N.W., Washington, D.C. 20007.

National Easter Seal Society, 2023 West Ogden Avenue, Chicago, Illinois 60612.

The Mental Health Association, 1800 North Kent Street, Arlington, Virginia 22209.

United Cerebral Palsy Associations, Inc., 425 I Street, N.W., Washington, D.C. 20001.

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NATIONAL ASSOCIATION OF COMMUNITY HEALTH CENTERS, INC.,
*Washington, D.C., September 26, 1978.*

Members of the United States Senate:

It is my understanding that shortly you will consider H.R. 5285, the Hospital Cost Containment Bill. On behalf of our organization and its membership, I would strongly urge your adoption of the Nelson amendment to H.R. 5285.

The amendment to this bill proposed by Senator Gaylord Nelson is a reasonable and responsible measure which will allow for voluntary efforts to control hospital costs and authority for federal containment which would go into effect *only* if voluntary efforts fail.

The issue of escalating hospital costs is an extremely important one. The costs for hospital care has risen at a rate of 2½ times the rate of inflation. This *cannot* continue. The unending escalation will inevitably deprive many people of important and necessary health services. However, Community and Migrant Health Centers have been able to successfully contain costs and proven that such efforts do not compromise the quality of care that is offered. We have shown it can be done.

The public concern in the face of such drastic inflation is well-founded. The Nelson Amendment is probably the most significant move against inflation to be considered by Congress this year and, as such, deserves your unstinting support.

On behalf of our organization, which represents over 500 federally supported Community and Migrant Health Centers throughout the country, we urge you to take a leadership role in the support of the Nelson Amendment.

Sincerely,

LOUIS S. GARCIA,
*President.*

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HEALTH INSURANCE ASSOCIATION OF AMERICA,
*Washington, D.C., August 18, 1978.*

LETTER SENT TO ALL HIAA CHIEF EXECUTIVE OFFICERS

For almost two years, committees of the U.S. House of Representatives and the U.S. Senate have been wrestling with the problem of controlling the rapid escalation of costs in the hospital area. The problem has been a highly controversial one, opposed by hospitals, doctors, and some business groups as the possible beginning of price and wage controls. The health insurance business has supported the voluntary program initiated by the providers, but has felt that should the voluntary program fail, there should be a legislated program to be triggered by any such failure.

A week ago the Senate Finance Committee reported to the Senate H.R. 5285 which includes the text of S. 1470 originally introduced by Senator Talmadge of Georgia, Chairman of the Senate Finance Committee Subcommittee on Health. The bill as reported lacks two major provisions which should be included in any bill that might pass. The first is a provision to make any controls apply not only to government programs such as Medicare or Medicaid but also to third party insurers and individuals. (Without this provision the bill won't contain costs but merely shift the excess cost from the Medicare or Medicaid patient to the private patient.) The second would recognize the program already in place in certain states and exempt them from the Federal program. (Without this provision there is no incentive for states to enact their own cost containment programs.)

Senator Gaylord Nelson of Wisconsin, with some input from us, will offer an amendment on the floor of the Senate to add the aforementioned provisions to the bill when it comes up for consideration. He has approximately twelve additional sponsors for his amendment.

Whether or not this bill passes in this Session of Congress, it is essential that the principles upon which we stand be established in whatever legislative activity may take place. If the bill does not pass this year, you can rest assured it will come up next year and it would be very difficult if our principles had not been included in this year's version to get the new Congress educated on them. Each Congress tends to look back as a starting point at what they did in the Session before on a given subject.

Timing is uncertain. This bill and the amendment may come before the Senate as early as August 23, or it may be put over until later. The doctors and hospitals have already launched an immense lobbying effort to kill the amendment. I would urge that you communicate directly by wire, telephone, or letter to each of your two Senators and any others that you might know personally urging support for the Nelson amendment.

I am attaching a copy of a letter sent to each of the Senators from our office which sets forth quite clearly and concisely our position on this matter. Your early and, I am sure, effective cooperation will be very much appreciated

Very truly yours,

ROBERT F. FROEHLKE,
*President.*

AMENDMENT NO. 3849

(Ordered to be printed and to lie on the table.)

Mr. MUSKIE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3850

(Ordered to be printed and to lie on the table.)

Mr. HELMS (for himself, Mr. RIEGLE, Mr. HATCH, and Mr. TOWER) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

● Mr. HELMS. Mr. President, I take strong exception to the proposed deletion of the gasoline tax deduction. At the very moment when we are trying to provide some long overdue relief for the American taxpayer, there is no reason to increase taxes by disallowing this particular deduction. Repeal of the gas tax deduction is simply inconsistent with the general thrust of this bill.

Contrary to myth, this deduction is not a rich man's deduction. For the very wealthy, the dollar value of this deduction is insignificant. Rather, this is a modest tax break for the average citizen. In the wake of proposition 13, this is hardly the time for Congress to slap a "backdoor" tax on the American people.●

AMENDMENT NO. 3851

(Ordered to be printed and to lie on the table.)

Mr. MORGAN (for himself, Mrs. HUMPHREY, Mr. DOMENICI, Mr. ANDERSON, Mr. RIEGLE, and Mr. MATSUNAGA) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

● Mr. MORGAN. Mr. President, today I am submitting an amendment to the Revenue Act of 1978 on behalf of myself, Mrs. HUMPHREY, Mr. DOMENICI, Mr. RIEGLE, Mr. ANDERSON, and Mr. MATSUNAGA. This amendment would maintain the fiscal year 1979 funding ceiling for title XX of the Social Security Act in subsequent fiscal years.

Title XX provides States with block grants to develop comprehensive social service systems. It is a program that has proven to be extremely effective in encouraging State and local governments to provide services to meet the critical needs of many of our citizens, and is very popular both with the general public and with all levels of government.

The Finance Committee, during markup of the Revenue Act, approved a temporary, 1-year increase in the ceiling for title XX funding to $2.9 billion. In fiscal year 1980, as a result of the Finance Committee's actions, title XX funding will suffer a $400 million decrease to $2.5 billion, a drop of nearly 14 percent, without a decrease in need or any convincing explanation as to why.

The main purpose in placing the title XX program on an entitlement basis, instead of making it an authorization subject to annual appropriations, was to provide the program with known and consistent funding levels, well in advance. This will allow for responsible and effective planning at State and local levels and insure continuity in the design and delivery of these vital social services.

A temporary, 1-year increase in the title XX ceiling thus works to negate one of the greatest features of this program: The ability to engage in multiyear planning.

Earlier this year, the House approved a bill to increase the title XX ceiling by a vote of 346 to 54. This measure provides for a three-step increase in the ceiling, finally reaching $3.45 billion in fiscal 1981. A similar measure was sponsored by Senators GRAVEL and DOLE along with 18 other Senators.

By comparison, our amendment must be regarded as more fiscally responsible. It would cost the Government one-quarter of a billion dollars less in 1980, and over one-half billion dollars less in 1981 and subsequent years.

My amendment has the support of the National Governors' Association, the National Association of Counties, the U.S. Conference of Mayors, the National Conference of State Legislatures, the National Association for Retarded Citizens, the American Parents Committee, the Child Welfare League of America, the National Society for Autistic children, the National Association of State Units on Aging, the American Association of Retired Persons, the Urban Elderly Coalition, and the American Public Welfare Association.

I believe my amendment is both needed and responsible, and urge my colleagues to support it when it comes to the floor of the Senate.●

AMENDMENT NO. 3852

(Ordered to be printed and to lie on the table.)

Mr. MORGAN (for himself, Mr. MARK O. HATFIELD, and Mr. NUNN) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

● Mr. MORGAN. Mr. President, the amendment I am now submitting on behalf of myself, Senator HATFIELD of Oregon, and Senator NUNN, would require that the legislative branch be covered under the social security system. Passage of this amendment is the right and proper thing to do. It will show the people that we support the social security program, that we feel the program is valuable and so sound that we ourselves are prepared to take part in it. Congress has no business passing major social programs and then exempting itself from the tax burden the program requires.

It is true that there is an excellent pension plan available to Members of Congress and legislative branch employees, but this is no justification for our social security exemption. Many people in the private sector have excellent pension plans, or need none, but if they earn a living they must take part.

Social security is not a simple retirement plan where benefits are strictly related to contributions, because Congress has decided that the purpose of social security is not only to provide a supplementary pension, but also to provide some basic security to the elderly and disabled. Social security is a social insurance program, and as a result, millions of people have and will pay more in taxes than they will ever receive in benefits.

Medicare is equally available to everyone covered, regardless of one's contributions. Extra benefits are paid for spouses and dependents who have never worked. Lower wage earners, when retired, receive a higher percentage of their income as pension than wealthier ones.

To the public, especially those at middle- or upper-income levels, our failure to participate signifies that we believe social security is a bad bargain. It also indicates that we have little faith in the viability of the program. We have to remember that for many people, the social security tax is or will soon be larger than their income tax, but we are not paying it.

The amendment is identical to a bill introduced last year, except that it will not go into effect until 2 years after enactment. Last fall's social security bill mandates a study which will deal with the problem of how to equitably bring workers not now covered into social security. This study is due in December 1980. The 2-year delay in this amendment will allow the Congress almost 1 year to use the results of the study in determining what changes need to be made in our retirement system.

Some sort of coordination between social security and our retirement will be desirable. Otherwise, the benefits will be greater than most of us need, and the tax burden will be heavier than necessary. Virtually all private pension plans are now coordinated with social security, so we do not anticipate any real difficulty in achieving this for ourselves.

In light of the recently approved social security tax increases, which have yet to go into effect, there is no better step that Congress can now take than bringing itself into the social security system. It will be a clear sign to the public that we value and have faith in social security.●

AMENDMENT NO. 3853

(Ordered to be printed and to lie on the table.)

Mr. STONE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

● Mr. STONE. Mr. President, I intend to offer as an amendment to the tax bill, the bill that I introduced, S. 3464, which would provide for a nonrefundable tax credit against Federal income tax liability of up to $200 for the amount of the upcoming increases in the social security taxes for employees, employers, and the self-employed.

While the social security tax rate has increased by only 1.65 percent in the past 10 years, the taxable wage base has increased by a whopping 227 percent in the same period. Under the 1977 amendments, effective January 1, 1979, the taxable wage base will increase to $47,100 by 1988, a 604-percent increase from the 1968 level. By 1988, this wage base will include the entire salary of most of the work force.

I am limiting the time limit of my amendment to 3 years in the hope that Congress by then will be able to enact comprehensive legislation which will maintain the solvency of the social security program without placing a heavy burden on the American wage earner as will be the case if the scheduled social security tax increases are not ameliorated.

For fiscal year 1979, my amendment will give a tax break of $2.6 billion to the hard-working American people. For fiscal years 1980 and 1981, the amount of the tax break will be approximately $6.9 billion and $12.8 billion respectively.

As can be seen by the table, workers in the $10,000 to $15,000 bracket will receive a credit for their entire social security tax increases over the next 3 years ($60 and $90 respectively in 1981). The worker in the $20,000 a year bracket will be entitled to a tax credit for the entire amount of the scheduled increase in 1979 and 1980, and $200 of the $260 increase in 1981. Those in the higher level income brackets, $25,000 and up, will receive the maximum credit of $200 for each of the 3 years which will partially offset their increases in social security taxes.

Mr. President, there is no doubt about the fact that adequate social security funding is a necessity. The personal well-being of millions of our citizens depends on it. However, it is equally important that, in funding the social security program, we do not place an intolerable Federal tax burden on the American worker.

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

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

AMENDMENT No. 3853

On page 160, strike out lines 7 and 8, and insert in lieu thereof the following:

"Subtitle C—Credits

On page 161, between lines 11 and 12, insert the following new section:

SEC. 123. CREDIT FOR POST-1978 INCREASES IN SOCIAL SECURITY LIABILITY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of subchapter 1, as amended by sections 134 and 136 of this Act (relating to credits allowable), is amended by inserting immediately before section 45 the following new section:

"SEC. 44E. POST-1978 INCREASES IN SOCIAL SECURITY TAX LIABILITY.

"(a) GENERAL RULE.—

"(1) EMPLOYEES AND SELF-EMPLOYED INDIVIDUALS.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the excess social security tax liability of the individual for the taxable year.

"(2) EMPLOYERS.—In the case of an employer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the excess social security employer tax liability of the taxpayer for the taxable year.

"(b) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the amount of tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation that this section, other than the credits allowable by sections 31, 39, and 43.

"(c) DEFINITIONS, SPECIAL RULES.—

"(1) EXCESS SOCIAL SECURITY TAX LIABILITY.—For purposes of this section, the term 'excess social security tax liability' means the amount by which—

"(A) the liability of the individual for taxes imposed under sections 1401 and 3101 for the taxable year, exceeds

"(B) the amount of such liability which would be determined for the taxable year if—

"(i) the rates of the taxes imposed under section 1401 totaled 8.1 percent,

"(ii) the rates of the taxes imposed under section 3101 totaled 6.05 percent and

"(iii) the contribution and benefit base determined under section 230 of the Social Security Act were $17,700.

"(2) SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT EMPLOYEES.—For purposes of this section, any tax imposed on an employee of any State or political subdivision thereof—

"(A) which is paid by the State to the Federal Government under an agreement under section 218 of the Social Security Act, and

"(B) which, under such agreement, is equivalent to the tax imposed by section 3101, shall be treated as a tax imposed by section 3101.

"(3) EXCESS SOCIAL SECURITY EMPLOYER TAX LIABILITY.—The term 'excess social security employer tax liability' means the amount by which—

"(A) the liability of the taxpayer under subchapter B of chapter 21 for the taxable year exceeds

"(B) the amount of such liability which would be determined for the taxable year if—

"(i) the rates of tax imposed under section 3111 totaled 6.05 percent, and

"(ii) the contribution and benefit base determined under section 230 of the Social Security Act were $17,700.".

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following:

"SEC. 44E. POST-1978 INCREASES IN SOCIAL SECURITY TAX LIABILITY!".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1978, and before January 1, 1982.●

AMENDMENT NO. 3854

(Ordered to be printed and to lie on the table.)

Mr. HART submitted an amendment intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 3855

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed to H.R. 13511, supra.

## FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978—S. 50

AMENDMENT NO. 3856

(Ordered to be printed and to lie on the table.)

Mr. GARN submitted an amendment intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

● Mr. GARN. Mr. President, many people in this Nation are becoming alarmed by the growing control of our Nation's economy by the Federal Government. One way in which this is occurring is through the increasing level of Government regulations. Even more insidious, however, is the control of our economy caused by the expansion of Government.

This year total U.S. Federal outlays will be greater than the gross national product of every single country of the world except the Soviet Union—greater than the whole economy of every other nation. Further, Federal outlays will account for 23.2 percent of the U.S. GNP this year. That is, more than $1 out of every $5 spent in this country in 1978 will be spent by the Federal Government. Thus, not only is the economy placed under Government regulation, but for $1 out of every $5 spent the Federal Government is the economy.

Mr. President, this is not productive employment. It saps the strength of our economy. If we are to restore health to our economy, as S. 50 purports to do, then including a goal for the reduction of Federal outlays is not only complementary to the other goals of the bill, but important for their achievement.

A good step in this direction is found in the Banking Committee version of the bill, which calls for a slight reduction in the percentage of GNP accounted for by Federal outlays. It is a good step, but it is not sufficient. The provision presently in the bill establishes an interim goal of 21 percent of GNP and a longer-term goal of 20 percent of GNP within 5 years. During the 1950's and the 1960's, however, the situation was even better than the level called for by these goals: Federal outlays accounted for approximately 19 percent of GNP.

Mr. President, my amendment would lower the percentage goals in the bill by a mere 1 percent to 20 percent and 19 percent, respectively. In so doing, however, we would be bringing the percentage of Government in our economy closer to its historic level, before the budget bulge of the late 1960's and the 1970's.●

AMENDMENT NO. 3857

(Ordered to be printed and to lie on the table.)

Mr. GARN submitted an amendment intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

● Mr. GARN. Mr. President, some of the opponents of the inclusion of a specific inflation goal in the Humphrey-Hawkins bill assert that inflation and unemployment goals are mutually exclusive. The concern is expressed that pursuit of lower inflation will result in greater unemployment. The other side of this theory, which is mentioned less often, is that greater employment will necessarily result in higher levels of inflation.

If this argument is correct, then it raises a serious concern that the lowering of unemployment cannot be achieved, for it is clear that the American people will not stand for any higher levels of our already too high inflation. That message is clear. Ask anyone in the street, and they will tell you that inflation is the biggest problem facing the Nation. You can even ask George Meany.

Mr. President, I reject the theory that there is a necessary trade-off between inflation and unemployment. I think that history shows that the reverse is true, that periods of high inflation have often led to recession and high unemployment. This is particularly true at the present time, when the causes of both our unemployment and inflation are largely structural. Attention directed toward these structural problems need not result in the trade-off, which sometimes occurs when macroeconomic policies alone are implemented.

My amendment recognizes this. It rec-

ognizes the need for coordinating—I stress coordinating—our policies for the achievement of both goals of reducing unemployment and inflation. It is a minor amendment. It clarifies wording, making clearer that there is need for achieving both reduced inflation and lower unemployment for either to be meaningful.●

AMENDMENTS NOS. 3858 THROUGH 3863

(Ordered to be printed and to lie on the table.)

Mr. GARN submitted six amendments intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

AMENDMENTS NOS. 3864 THROUGH 3869

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted six amendments intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

## FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978—H.R. 50

AMENDMENT NO. 3870

(Ordered to be printed and to lie on the table.)

Mr. GARN submitted an amendment intended to be proposed by him to H.R. 50, the Full Employment and Balanced Growth Act of 1978.

## DEEP SEABED MINERAL RESOURCES ACT—S. 2053

AMENDMENTS NOS. 3871 THROUGH 3876

(Ordered to be printed and to lie on the table.)

Mr. GRIFFIN submitted six amendments intended to be proposed by him to S. 2053, a bill to promote the orderly and environmentally sound exploration for and commercial recovery of hard mineral resources of the deep seabed, pending adoption of an international regime relating thereto.

## REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 3877

(Ordered to be printed and to lie on the table.)

Mr. BELLMON (for himself and Mr. WALLOP) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, the Revenue Act of 1978.

AMENDMENT NO. 3878

(Ordered to be printed and to lie on the table.)

Mr. CLARK submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3879

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3880

(Ordered to be printed.)

Mr. PACKWOOD submitted an amendment to H.R. 13511, supra.

AMENDMENT NO. 3881

(Ordered to be printed.)

Mr. ROTH submitted an amendment to amendment No. 3880 proposed to H.R. 13511, supra.

AMENDMENT NO. 3882

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself and Mr. STONE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 3883

(Ordered to be printed and to lie on the table.)

Mr. GRAVEL submitted an amendment intended to be proposed by him to H.R. 13511, supra.

EXPORTS OF ALASKAN OIL

● Mr. GRAVEL. Mr. President, it has become increasingly obvious that efforts to stem the decline of the dollar against the major currencies of the world, and particularly against the Japanese yen, have as yet been wholly unsuccessful. The consequence has been a further undermining of the world economic structure, and continued inflation at home.

The time has come to look at different approaches to this on-going problem. Summarized below is a most feasible approach.

I believe the Mineral Leasing Act and the Export Administration Act should be amended to provide new criteria by which Alaskan North Slope oil could be exported given certain conditions. These provisions would provide the requisite incentive to the producers of North Slope oil to take the steps necessary to expand North Slope production from 1.2 eventually to at least 2 million barrels per day, the ultimate design capacity of the trans-Alaskan pipeline system.

There are three conditions. First, U.S.-flag vessels would transport one-half of all oil exported. Second, the authority to export would be revoked in the event of future embargoes or other related national catastrophe. Exports could resume upon conclusion of the crisis, with no further governmental action necessary. Third, the pipeline would have to operate at its full capacity. Once these conditions have been met, exports could begin automatically. Temporary interruptions because of operating difficulties or related problems would not infringe upon the ability of the producers to export oil once those difficulties were corrected.

The ability to export Alaskan oil would have the following salutory effects:

First. It would increase the Nation's oil production capacity. The trans-Alaskan pipeline is designed for a maximum flow of some 2 million barrels per day, but it is operating now at less than 1.2 million barrels per day. This is occurring because the current throughput cannot be accommodated on the west coast. Furthermore, current plans for west-to-east pipelines in the Lower 48 will only transport the existing surplus. Further delays in construction of those lines increasingly exacerbates the problem of finding and producing additional supplies of Alaskan oil. Shipment to the eastern United States much in excess of current levels is further hindered by shipping limitations surrounding the current Panama Canal. And transportation around the horn of South America is extremely expensive.

Current production from the North Slope comes solely from the Sadlerochit formation of the Prudhoe oil field. Two other pools, Kupurak and Lisburne, could yield as much as 200,000 barrels per day total. At the same time, USGS estimates undiscovered recoverable resources could assure utilization of further increases in the throughput of the TAPS line. Recent discoveries outside of the Prudhoe Bay area show great promise. The State of Alaska and the Federal Government have proposed a lease sale for the Beaufort Sea next year. However, while some exploration continues, no incentives exist to develop further prospects or to expand the pipeline to accommodate production from said reservoirs. By allowing export to Japan, these nonproducing fields could be opened and, over a period of time, capacity of the pipeline could be increased.

Second. It would lessen the impact of future embargoes. Given that the ability to export Alaskan oil will provide the necessary incentive to expand production from the North Slope, then that production of up to 2 million barrels per day would be available to the Nation in the event of an oil embargo or other foreign supply interruption. As previously mentioned, it is only by opening the Japanese market that the desired expansion can be realized.

Third. It would improve our balance of trade. Today, as much as 800,000 barrels of oil per day—or some 10 percent of our existing domestic production—are not being developed and produced because of the lack of marketing opportunities. If we produced and exported that oil, our balance of trade with Japan would improve by some $4.066 billion per year—see the chart below.

More than one-third—$12 billion—of our projected balance of trade deficit—some $35 billion—for 1978 can be attributed to one country—Japan. Export of the "incremental barrel" of North Slope oil could cut this deficit by one-third, or $4 billion per year. Exports of 400,000 barrels per day would eliminate 20 percent of the annual deficit with Japan, or $2 billion per year. Exports of the current west coast surplus could provide benefits further in excess of $2 billion per year.

One might argue that there is no, or minimal, balance of trade benefit because the exported barrel will require a barrel of imported oil to replace it. That argument lacks credibility when we recognize that the incremental barrel is not available to reduce our imports now, nor is it likely the incremental barrel will ever be produced for the markets of the east or gulf coast because the incentives do not exist to encourage higher production until some decisive measures are taken to open a desirable market for increased production, and until there are assurances for its economic viability. In other words, that incremental barrel will not otherwise be produced, and the economic benefits to this Nation will be lost.

It should now be clear that exports of Alaska North Slope oil will provide the

incentives necessary to encourage further exploration, production, and development of oil to increase throughput of the TAPS line. That action will improve the economic, energy, and security status of the Nation. Important tangential benefits will also accrue to the U.S. shipping industry, as half of all oil exported would move in U.S.-flag vessels.

Mr. President, I ask unanimous consent that the chart prepared by CRS on the impact on U.S. balance of payments by the export of oil to Japan be printed in the RECORD, together with the text of the amendment.

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

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| | Exports to Japan | | | | Imports to United States | | Impact on U.S. balance of payments (exports minus imports) | | | Impact on United States-Japan balance of payments (exports only) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Transportation cost gains | | | | | | | | | | |
| | Cost of oil | 100 percent U.S. flag (A) | 50 percent U.S. flag (B) | No U.S. flag (C) | Cost of oil | Transportation costs | (A) | (B) | (C) | (A) | (B) | (C) |
| Assumption III—Exports to Japan of 182,500,000 bbl (500,000 bbl/d.) | +$2,427.2 | +228.1 | +114.0 | 0 | −2,427.2 | −246.4 | −18.3 | −132.4 | −246.4 | +2,655.3 | +2,541.2 | +2,427.2 |
| Assumption I—Exports to Japan of 292,000,000 bbl (800,000 bbl/d) | +3,883.6 | +365.0 | +182.5 | 0 | 0 | 0 | +4,248.6 | +4,066.1 | +3,883.6 | +4,248.6 | +4,066.1 | +3,883.6 |
| Assumption II—Exports to Japan of 438,000,000 bbl (1,200,000 bbl/d) | +5,825.4 | +547.5 | +273.7 | 0 | −1,941.8 | −197.1 | +4,234.0 | +3,960.3 | +3,686.5 | +6,372.9 | +6,099.1 | +5,825.4 |

AMENDMENT 3883

At the appropriate place in the bill, add the following new section:

SEC. . (a) Section 28(u) of the Mineral Leasing Act of 1920 (30 U.S.C. 185(u)) is repealed.

(b) Section 4(1) of the Export Administration Act of 1969 is amended to read as follows:

"(1)(1) Notwithstanding any other provision of this Act, no domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) (except any such crude oil which (A) is exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States) may be exported from the United States, its territories and possessions, unless the requirements of paragraph (2) of this subsection are met.

"(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

"( ) the pipeline described in paragraph (1) is operating at full capacity,

"(B) not less than 50 percent of such crude oil is to be transported to its foreign destination on privately owned United States commercial vessels as defined in section 901(b) of the Merchant Marine Act (46 U.S.C. 1241), and

"(C) contracts for such exports may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened as determined by the President.".●

AMENDMENT NO. 3884

(Ordered to be printed and to lie on the table.)

Mr. GRAVEL. submitted an amendment intended to be proposed by him to H.R. 13511, supra.

NATIVE CORPORATIONS: TAX REVISIONS

● Mr. GRAVEL. Mr. President, today I am submitting an amendment to H.R. 13511 dealing with some problems which have come up in the tax treatment of the Native corporations established under the Alaska Native Claims Settlement Act passed by Congress in 1971. These corporations were to be the vehicles through which lands and moneys would be channeled in settlement of the aboriginal rights of the Alaska Natives. All of the Alaska Natives within the regional boundaries of these corporations were to become stockholders in their respective regional corporation. In furtherance of this act 12 regional corporations were established and the Alaska Natives are now stockholders in these corporations.

The Native corporations were allowed to select some 44 million acres of Alaska lands in settlement of their claims. In addition the corporations were to receive payment of some $950 million in cash. To date approximately 5.3 million acres of land have been conveyed and less than $400 million has been paid.

In the process of setting themselves up in business these Native corporations have been faced with severe potential tax liabilities which threaten their very existence. Through the Internal Revenue laws we are threatening to undue the work we undertook in the 1971 legislation. My amendment is intended to resolve these issues in a manner which does minimal violence to principles of sound tax policy. The amendments which I propose here have been reviewed by the Committee on Energy and Natural Resources and approved for inclusion in their Alaska lands bill. Because of objections to other provisions of that bill it appears likely that it will not receive floor action this year. The tax problems of the native corporations are pressing and therefore it appears appropriate to include these changes in this tax legislation.

IMPUTED INCOME AND STARTUP COSTS

The Internal Revenue Service has disallowed deductions claimed by the Native corporations which have been characterized by the IRS as nondeductible pre-opening expenses. The pre-opening expenses were for items such as wages and salaries, payroll taxes, travel expenses, per diem, director and staff training, village workshops, telephone and postage, supplies and equipment, and similar matters. These items would normally be deductible under section 162 of the IRS if the taxpayer is in a trade or business. The IRS has taken the position that the corporations were not in a trade or business, and therefore, these items are not deductible as ordinary and necessary business expenses. However, it is clear that the initial business of these corporations was to implement the Settlement Act by organizing the regional and village corporations into profitmaking corporations. The establishment of these entities was undertaken in the Settlement Act itself, the implementation of that act was their first business effort. The amendment simply makes it clear that these corporations are to be treated as carrying on a trade or business as of the date of incorporation.

The IRS has disallowed deductions attributed to land selection costs incurred by the Native corporations. The service contends that land selection costs should be capitalized into the value of the land. If land selection costs are capitalized into the value of the land which Native corporations hold, the corporations would show a loss for any sale or other disposition of such land sold for fair market value, since the tax basis in the land would be its fair market value under the terms of the Settlement Act plus the pro-rata land selection costs. This result is both unnecessary and contrary to section 21(c) of the Claims Act, which states that:

> The basis for computing gain or loss on subsequent sale or other disposition of such land or interest in land for purposes of any federal, state or local tax imposed on or measured by income shall be the fair value of such land or interest in land at the time of receipt.

Congress intended that the basis for computing a gain or loss on a sale of land conveyed to native corporations shall be the fair value at the time of receipt, and not the fair value of such land at the time of receipt plus the capitalized value of land selection costs. When Congress enacted the Settlement Act, its intent was to have native corporations incorporate for profit. Congress did not intend to set up a basis in the land for tax purposes which would create an immediate loss when the profit oriented corporations began to dispose of their lands. The amendment would allow the deduction of land selection costs by the corporations through the trade or business treatment explained above.

Finally, the IRS has taken the position that exploration benefits derived by

the Native corporations from agreements with private companies must be included in the corporations' income. In order to determine which lands to select, and being cash poor, the corporations contracted with private companies for exploration of possible land selections. The work was done without charge to the Native corporations and the results, while remaining the property of the companies, were made available to the corporations. This is an unprecedented example of the service attributing income to an organization which it has neither received nor earned. The only benefit derived by the corporations from this work was assistance in pursuing their congressional mandate to select lands. To subject to tax any portion of the selected lands would do violence to the Settlement Act provisions which assure that the corporations will receive their lands free of tax. The IRS position artificially divides the value of the land into two parts—one, the value of the additional knowledge about the land and, two, the value of the land itself—and is attempting to tax the first while being precluded from taxing the second. The amendment addresses this problem by providing that receipt of information or analysis, and the expenditure of funds by third parties to generate such information, used for land selections by the Native corporations shall not be treated as income to those corporations.

BASIS IN LANDS

The Settlement Act originally provided that the basis in land should be the fair market value of land at the time of receipt of such land. Because the bulk of the lands received under the Settlement Act is found in areas where it is difficult to determine the value of the land at the time of receipt this amendment provides an option for such a calculation. Under this amendment the basis in land would be calculated by taking the sale price of land and discounting it back to the time of receipt using the National Price Deflator Index. This amendment also provides a similar option for computation of depletion under section 611 of the Internal Revenue Code of 1954.

PERSONAL HOLDING COMPANY

Because a number of Native village corporations have a small number of shareholders who comprise five or less families these corporations may fall under the provisions of the Personal Holding Company Act. The Personal Holding Company Act was designed to penalize related family members from five or less families who try to shelter income by making passive investments in stocks, bonds, and other securities through a closely held corporation. The provisions of the Personal Holding Company Act would provide severe penalties for those small village corporations which have closely related family members and only wish to use their capital in passive investments. Thus, the amendment exempts corporations formed under the Settlement Act from the Personal Holding Company Act.

INTERPRETATION OF NATIVE LEGISLATION

The Supreme Court has stated that the interpretation of native legislation should be made in a manner most favorable to the Natives for which the legislation was written. The Settlement Act stands alone as a statement of Federal policy and where it conflicts with provisions of other Federal legislation it should be controlling. The act itself states that "to the extent that there is a conflict between any provision of this act and any other federal laws applicable to Alaska, the provisions of this act shall govern."

These amendments merely clarify, for the benefit of the Internal Revenue Service, our intent in setting up the Native corporations. We hoped to create viable economic entities whose shareholders were the aboriginal Natives of Alaska. We funded those corporations with payments of land and moneys. We did not intend that what we gave in that act we should take away through the taxing power of the Federal Government. These amendments assure that the Native corporations and their shareholders are not driven into bankruptcy by the Federal Government. They do not set up any continuing subsidy or go beyond the intent of Congress in the Settlement Act. They only give these unique corporations a fair chance of survival making clear what we thought we had made clear in the Settlement Act itself. Mr. President, I urge their adoption and request that a copy of the amendment be printed in the RECORD immediately following this statement.

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

AMENDMENT No. 3884

At the end of the bill add the following new section:

"SEC. . TAXATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS.

Section 21(c) of the Alaska Native Claims Settlement Act is amended to read as follows:

"(c)(1) The receipt of land or any interest therein pursuant to this Act or of cash in order to equalize the values of properties exchanged pursuant to subsection 22(f) shall not be subject to any form of Federal, State, or local taxation. The basis for computing gain or loss on subsequent sale or other disposition of such land or interest in land for purposes of any Federal, State, or local tax imposed on or measured by income shall, at the option of the recipient, be—

"(A) the fair value of such land or interest in land at the time of receipt; or

"(B) the amount realized on the sale or other disposition of such land or interest in land adjusted, by means of the price deflator index for the gross national product published by the United States Department of Commerce, to the time of receipt of such land or interest in land;

adjusted as provided in section 1016 of the Internal Revenue Code of 1954 (relating to adjustments to basis).

"(2) All rent, royalties, profits, and other revenue or proceeds derived from real property interests received pursuant to this Act shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation: *Provided*, That with respect to any such revenues or proceeds received by a Native individual, Native group, or Village or regional Corporation with respect to which a deduction for depletion would otherwise be allowable under section 611 of the Internal Revenue Code of 1954 (relating to allowance of deduction for depletion) or any corresponding provision of State and local law, the amount of such deduction shall be the greater of—

"(A) an amount equal to the deduction as determined by such section 611, using as the basis on which the depletion is to be allowed with respect to any property that basis provided in section 21(c) of this Act for purposes of computing the gain or loss on subsequent sale or other disposition of such property; or

"(B) an amount equal to the amount of such revenue adjusted, by means of the price deflator index for the gross national product published by the United States Department of Commerce, to the time of receipt of the property interest from which the revenue is derived; or

"(C) an amount equal to the deduction computed pursuant to section 613 of the Internal Revenue Code of 1954 (relating to percentage depletion).".

TAXATION OF NATIVE CORPORATIONS

Section 21 of the Alaska Native Claims Settlement Act (43 U.S.C. 1620) is amended by adding two new subsections at the end thereof, as follows:

"(g) In the case of any Native Corporation established pursuant to this Act, income for purposes of any form of Federal, State, or local taxation shall not be deemed to include the value of—

"(1) the receipt, acquisition, or use of any resource information or analysis (including the receipt of any right of access to such information or analysis) relating to lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this Act;

"(2) the promise or performance by any person or by any Federal, State, or local government agency of any professional or technical services relating to the resources of lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this Act, including, but not limited to, services in connection with explorations on such lands for oil, gas or other minerals; and

"(3) the expenditure of funds, incurring of costs, or the use of any equipment or supplies by any person or any Federal, State, or local government agency, or any promise, agreement, or other arrangement by such person or agency to expend funds or use any equipment or supplies for the purpose of creating, developing, or acquiring the resource information or analysis described in paragraph (1) or for the purpose of performing or otherwise furnishing the services described in paragraph (2): *Provided*, That this paragraph shall apply to any funds paid to a Native Corporation established pursuant to this Act or to any subsidiary thereof.

This amendment shall be effective as of December 18, 1971, and, with respect to each Native Corporation, shall remain in full force and effect for a period of twenty years thereafter or until the Corporation has received conveyance of its full land entitlement, whichever first occurs. Except as set forth in this subsection and is subsection (d) hereof, all rents, royalties, profits, and other revenues or proceeds derived from real property interests selected and conveyed pursuant to sections 12 and 14 shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

"(h)(1) Notwithstanding any other provision of law, each Native Corporation established pursuant to this Act shall be deemed to have become engaged in carrying on a trade or business as of the date it was incorporated for purposes of any form of Federal, State, or local taxation.

"(2) All expenses heretofore or hereafter paid or incurred by a Native Corporation established pursuant to this Act in connection with the selection or conveyance of lands pursuant to this Act, or in assisting another Native Corporation within or for the same region in the selection or conveyance of lands under this Act, shall be deemed to be or to have been ordinary and necessary

expenses of such Corporation, paid or incurred in carrying on a trade or business for purposes of any form of Federal, State, or local taxation.".

PERSONAL HOLDING COMPANY ACT EXEMPTION

No Corporation created pursuant to the Alaska Native Claims Settlement Act shall be considered to be a personal holding company within the meaning of section 542(a) of the Internal Revenue Code of 1954 prior to January 1, 1992.●

AMENDMENTS NOS. 3885 THROUGH 3902

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted 18 amendments intended to be proposed by him to H.R. 13511, supra.

## AUTHORITY FOR COMMITTEE TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. STENNIS. Mr. President, on behalf of the majority leader, Mr. ROBERT C. BYRD, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold a mark-up session on the Montana Wilderness bill and consider the Du Noir Wilderness bill only.

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

## ADDITIONAL STATEMENTS

### SATELLITE SOLAR POWER SYSTEM

● Mr. BUMPERS. Mr. President, I would like to have printed in the RECORD, a letter I have received from the Institute of Electrical and Electronic Engineers (IEEE) regarding S. 2860, the solar power satellite research. development demonstration program bill that is pending before the Committee on Energy and Natural Resources. The IEEE is the world's largest engineering, technical, and professional society. Its members include 150,000 engineers and technologists resident in the United States. Undoubtedly, many of these members stand to gain a great deal from a commitment of the United States to a major demonstration program of the solar power satellite (SPS). In spite of it, the IEEE Energy Committee feels that it is premature to commit vast resources on the SPS. I commend them for demonstrating a sense of social and fiscal responsibility. Even though it may not be in the best financial interest of the individual members, their position is certainly in the best interest of the Nation. I hope the Congress will heed its recommendation and not rush into the SPS program at this time.

The letter follows:

SEPTEMBER 25, 1978.

Senator DALE BUMPERS,
*Washington, D.C.*

DEAR SENATOR BUMPERS: The Energy Committee of The Institute of Electrical and Electronics Engineers (IEEE) is committed to a study of the proposed Satellite Solar Power System (SSPS). Although our study is not complete it appears to us to be premature to enter a "Solar Power Satellite Research, Development, and Demonstration Program" as contemplated in Senate Bill 2860.

Many fundamental questions in the areas of technical feasibility, economic viability, and environmental and social acceptability of the SSPS concept need to be addressed before the United States commits major resources to the SSPS. A program plan, jointly prepared by DOE and NASA, designed to obtain the initial information needed to make recommendations on developing the SSPS, is in place in DOE, NASA, and the Institute of Telecommunications Sciences. This effort, which will be completed in 1980, will provide the basis for a rational plan to move forward with the SSPS.

The IEEE Energy Committee therefore recommends against Senate Bill 2860, and urges the Senate Committee on Energy and Natural Resources to find against the bill.

The IEEE Energy Committee is continuing its consideration of the Satellite Solar Power System. We will be pleased to make the results of our study available to the Congress and the Department of Energy as soon as they are complete.

Sincerely,

HILTON U. BROWN III,
*Chairman, IEEE Energy Committee.*●

## ADDRESS BY NELSON A. ROCKEFELLER ON NATO

● Mr. BAKER. Mr. President, for four decades Nelson Rockefeller has been a forthright spokesman for the national defense of this Nation and a champion of America's role in the free world.

Although former Vice President Rockefeller is no longer active in political affairs, he is still a close and interested observer of international affairs, and I know that his concern for maintaining a strong national defense is as great as ever.

Two weeks ago Mr. Rockefeller addressed the assembly of the Atlantic Treaty Association in Hamburg, Germany, on the North Atlantic Treaty Organization and its role in the mutual security of the free nations of Europe.

Mr. President, I ask that this address be printed in the RECORD so that others in the Senate and elsewhere may have the benefit of Mr. Rockefeller's views.

The remarks follow:

EXCERPTS FROM THE REMARKS OF NELSON A. ROCKEFELLER

This is an opportune meeting. It calls upon us to review our perspective of NATO and, indeed, of the defense of the Free World. For they are inseparable. Perspective, however, is not easily attained nor kept these days.

The very volume of our information and the strength and the vast extent of our free news coverage bombard our leadership with masses of communications—fact and opinion, singificant and insignificant. The shifting out of the real and the relevant is a prodigious task. And a complicating factor is that the essential freedom of voluntary association facilitates the organization of group pressures for parochial purposes. Thus special interests, both domestic and foreign, impact policy determinations. They seriously complicate the basic duty of leadership to advance truly national and international obligations, and common concerns ahead of narrow selfish interests.

The exaggeration of crises of the moment, the heightened pressures of the immediate, and persistent, if not frantic, demands for instant responses, both becloud the climate and crowd the calendar essential for deliberate consideration and calculated decision.

Yet, our present security and our future well-being require that our leadership cut through the distractions, the untruths and the distortions to focus their efforts, and our people's attention, upon the realities, the dangers and the opportunities that face us and the strengths and weaknesses of our capacity to meet them.

Any such assessment should start with where we find ourselves.

Despite former and continuing difficulties, despite new problems that beset NATO and our free community of nations, this is no time to deride our accomplishments nor ignore our strengths.

NATO, in spite of all the troubles of some three decades and all of its critics, has succeeded. Founded to deter the threat and thrust of Soviet power to overrun all of Europe, it has done so. Designed as a voluntary association of free nations to cooperate for their mutual security, it has made that design a reality. It stands in marked contrast to the Eastern bloc where national efforts for freedom have been suppressed by Soviet military occupation forces.

NATO was conceived to provide security that would allow free institutions to flourish. They have done so. It was expected to give a stability that would encourage economic growth and development and help raise the standards of living of the people of the Free World. It has done so.

Without the stability and security of NATO, European recover would never have come so rapidly nor would the free European economic community have come to pass in our time. Without NATO, the human rights and civil liberties of many who now enjoy them here in Europe and, indeed, elsewhere, would not exist.

But times and circumstances change. Technology alters the scene and new challenges confront us.

NATO's frontier—the frontier of Free Europe—is no longer just the frontier of Central Europe but is to be found in the Middle East and Africa as well. Soviet flanking moves in the Horn of Africa, the southern end of the Arab peninsula and other areas must be matters of concern to the NATO nations and the whole Free World.

We cannot afford indifference to a Soviet sponsored coup in Afghanistan. We cannot ignore the heightened threats to the independent strengths of Iran and Pakistan. We cannot close our eyes to Cuban mercenaries in Angola and elsewhere in Africa and their threat to the self-determination of African peoples.

The Soviet flanking movements, their covert operations, their subsidization of clandestine activity to overthrow indigenous governments and to sabotage established nations friendly to the Free World must be recognized for the menace they constitute for all of us. They must be dealt with. We should not shrink from our responsibilities because of the form of the provisions of the NATO treaties—but rather deal forthrightly with the urgent necessities of the times.

This requires a new perspective not only for NATO's organization, strategy and military potential. In a sense, it means NATO must stand not alone for North Atlantic Treaty Organization, but for all Nations Against Totalitarian Oppression.

This broadened concept will require of the Free World more creative action:

1. Military:

There is a need to strengthen regional defense and for the partners in this effort to accelerate their efforts. This means a larger role and contribution by Free Europe to its defense as well as an alert and focused American presence.

This means that NATO should take account of other advantages that technology is affording defense capability today as compared to the offense advantages so long dominant, a willingness and a commitment to use the potent new weapons of defense to meet any military invasion of Free Europe.

New anti-tank weapons can offer a new defensive strength. Advances in the sciences

and technology provide opportunity to overcome the mass of numbers and the sheer weight of weaponry. This means the development and deployment of the neutron bomb. It has enormous potential as a weapon of defense, sufficient to deter any invading army, no matter how numerous his tanks, how heavy his artillery or overwhelming his manpower. It offers a means to stop an enemy advance without the wholesale danger to civilian populations inherent in traditional nuclear weapons.

This implies no "Maginot Line" mentality but recognition of how costly a military invasion can be made to any enemy and the deterrent this entails not alone to those who may order it but more particularly to those who must fight it. It offers real promise for more local defense efforts.

This does not mean any retreat from nuclear capacity to strike the enemy's homeland, to deter any preemptive strikes or the nuclear blackmail that could result from overwhelming enemy advantage in long-range strike and survival ability.

The broader NATO concept requires a recognition of the vital need to keep the sealanes open for the Free World. It means naval and air power not alone to meet any overt military challenge but equally to forestall the threats and blackmail that Free World weakness would invite. The large Soviet naval power and the extent of its naval and air base support stations, linked by sophisticated satellite intelligence and communications networks around the world, are facts to be considered.

The countries of the Atlantic community must recognize that friendly nations with friendly governments must be supported and assisted in their resistance to subversion, sabotage and coups undertaken by subsidized, highly-organized cadres, armed and trained by the Soviets or their Cuban colonials.

2. NATO political strength:

This larger spectrum for Free World defense must go beyond military considerations alone. It demands that NATO recognize that a global political outlook and a common strategy are essential. It importantly involves settling disputes within the NATO community and the Free World through peaceful means.

We have to settle conflicts among the NATO partners, such as the Greek-Turkish dispute. We must also work jointly in meeting global thrusts to our security, such as exist in the Middle East and Africa.

A commitment to resolve disputes between the nations of our own Free World peacefully and constructively is essential to our mutual strength and well-being.

3. Intelligence:

Essential to the effectiveness of this broader concept for Free World defense is a full range of intelligence activities. It means my own nation, the United States of America, and all democratic countries, must face the fact that intelligence services and clandestine operations are essential to the survival of freedom in this world.

The hard facts are that the Soviets pursue intelligence and covert activities with energy and persistence. We are witnesses to the tragic results. Unfortunately, we in the United States have gravely weakened our intelligence services to the point of undermining our own security.

The people of the Free World had better wake up to the fact that the quiet work of intelligence services is essential if they are not to be rudely awakened by the loss of freedom itself or the need to fight military actions to hold or retrieve it.

4. Economic and social:

It equally involves economic and social commitments by the nations of the Free World.

One of the first of these should be a commitment to economic growth and development. The "no growth" virus has already sapped some of the vitality of our common society. Offering the false premise that growth and a wholesome environment are incompatible, it plays into the hands of the opponents of freedom.

Actually, only through growth and development can the NATO nations sustain themselves, work with the developing world, help to raise the standards of living for all people, and keep our common economic, political and military strength.

NATO economic growth means development of more energy from nuclear and coal resources to replace limited oil supplies.

The attacks on nuclear safety and coal compatibility with the environment are out of all proportion to any demonstrable risks and contribute to the lessening of our capacities to meet the economic and military challenge of the Soviet World and its colonial satellites.

The opposition to offshore drilling for new supplies of oil and natural gas, coupled with the "head in the sands" attitude in my own country on the need for adequate energy prices to encourage new energy development, have similar adverse impact.

A solution of the energy problem, especially in the United States, is also essential to the control of inflation.

The other major element to control the inflation that confronts so much of the Free World is productivity—productivity of capital, productivity of management, productivity of labor and productivity of government. All these segments must have incentive for productivity and share equitably in it.

5. Human rights:

The social commitment must be to enhancement of the well-being of the people of the Free World and to an affirmative, realistic espousal of the cause of human rights. Where these rights are now enjoyed they must be protected and enhanced. Where they are developing, they must be encouraged.

We have and we should have deep concern about the massive violations of human rights in the communist nations. But in pressing our views on this subject, we have to take care that our manner of doing so doesn't highlight our impotence to bring about any changes in their system.

In a world where the Soviet Union makes a mockery of human rights, a Khmer Rouge commits genocide, and an African dictator exterminates thousands, it is folly to turn all our pressure on friendly nations, supportive of our foreign policy, which are trying to broaden the rights and privileges of their people. To try to penalize nations like Argentina, Brazil, Chile, Indonesia, the Philippines, South Korea, and others so important to the Free World, whose people enjoy liberties unheard of in the Soviet Union, is sheer folly. We shall enhance their people's well-being and human dignity more by working with them than against them.

6. Moral commitment:

But, above all, the peoples of the Free World and their leaders must have the will to make these commitments, the will to make the efforts required and the courage to see them through to successful conclusion.

My own view is that the people of our own countries have this will, this dedication and this courage.

The snide denigrations of our society, the cynical deriding of our values, the distorations so blatantly paraded before us are far from what the great peoples of our nations believe, live and cherish for their children and their children's children.

We must have the will to espouse openly the values that have made our world the most productive for individual men and women, values that offer unparalleled opportunity for human dignity. These spiritual values are ties that should bind us even more forcefully than military, economic or social considerations—important as they are.

By following this broader course, by building and uniting in strength, we can forestall military incursions against us and other free nations. We can prevent subversion and blackmail. We can demonstrate by economic and social strength the continued superiority of our way of life. We can enhance our espousal of the cause for individuality and human dignity.

Through such strength we can deal with the Soviet World with confidence. We can achieve a plateau of peace and a basis for trade and commerce, the interchange of science and technology, the sharing of cultural pursuits. By expanding the role of give and take, through mutual respect, we have the opportunity for developing more understanding and more hope for fruitful cooperation.

This, to me, is the perspective from which to view NATO, and the dangers that confront us and the problems that challenge us. The times are grave but it is not too late.

For NATO never was an end in itself. It was but a beginning—a major first step toward a cooperating Free World, secure to foster the quality of human life and the enhancement of human dignity. It was one expression of faith in ourselves, our progress and the rightness of our cause.

It is time not only for reaffirmation of that faith. It is far more. It is time to act on that faith, with courage, with purpose and confidence. The future of freedom demands it. And we have the capacity to do it.●

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## CONSUMER JOURNALISM AWARD RECIPIENTS FOR 1978

● Mr. FORD. Mr. President, I recently had the opportunity to participate in the fifth annual National Press Club awards for excellence in consumer journalism luncheon, and I want to call my colleagues' attention to the significance of this particular occasion.

I do so, because far too little attention is given to the good the media does and the positive contributions newspapers, television, radio, and periodicals make in the public interest.

The award winners for 1978 received well-deserved recognition for outstanding achievement in their reporting. As far as I am concerned, I can think of no more valuable—or lasting—service that the media provides to the public than through the relatively new phenomenon of consumer reporting.

Take a look at some of the subjects for which these awards were presented, and try to calculate their value to the public.

It is impossible to measure the injuries, and even deaths, that might have been prevented by consumer-oriented stories about a defective or dangerous product.

It is impossible to measure in dollars and cents the benefits consumers realized after being alerted through the media of the cost-benefit analysis of various products.

You cannot put a price tag on the service the media is doing in the area of consumer reporting, but it is an indisputable fact that their efforts offer the only opportunity for many people to re-

ceive much-needed consumer information.

Consumer misinformation—or a simple lack of information—is the root of many of the consumer problems which exist today. The media's efforts in this area are filling a void that was allowed to exist far too long, and in the process the media are carrying out a basic responsibility to inform and educate.

Mr. President, as chairman of the Senate's Consumer Subcommittee, I extend my congratulations and appreciation to this year's award winners, and I ask that the award winners listed on the program be printed in the RECORD:

The material follows:

NPC CONSUMER JOURNAL AWARDS 1978

(Entries written in 1977)

NEWSPAPERS

First Place: News-Press (Fort Myers, Florida).

Citations: St. Louis Post-Dispatch, Maura Lerner, Eric P. Mink; Allentown Call (Pennsylvania), Charlyne Varkonyi; Cincinnati Enquirer, Ron Schoolmeester.

WIRE SERVICE OR SYNDICATE

First Place: The Associated Press, Louise Cook.

TELEVISION

Best Coverage: First Place, WBBM-TV Chicago, Factfinder Unit, headed by Susan Anderson.

Citations: WMAQ-TV Chicago, Roberta Baskin; WBZ-TV Boston, Sharon King.

Best Program: First Place, WBBM-TV Chicago, Factfinder Unit, headed by Susan Anderson.

Citations: WCBS-TV New York, John Stossel; NBC Nightly News New York, Robert Bazell.

PERIODICALS

Best Coverage: First Place, Mother Jones.

Best Commentary: First Place, Mother Jones, Dr. Hugh Drummond.

Best Consumer Journalism for 1977 ($1,000) (Selected from the above), Susan Anderson, WBBM-TV Chicago Factfinder Unit.●

## THE PUBLIC WORKS APPROPRIATION BILL

● Mr. LUGAR. Mr. President, in recent weeks newspapers throughout the country have carried editorials objecting to excessive spending in the public works appropriations bill.

I believe that these editorials clearly and accurately reflect the sentiments of citizens across the country who are demanding much more careful spending of their tax dollars. The public works bill includes several costly water projects whose benefits do not justify the expenditure of millions in public funds. The Congress has made some progress toward paring down the huge deficit in next year's budget, and I am deeply concerned about any action which might jeopardize our achievements to date.

I am also concerned, it should be noted, about the serious environmental consequences involved in some of the water projects we are about to approve. I urge my colleagues to take a close look at both the excessive cost of the public works projects and the threat they pose to the environment, and to support the President in opposing them.

Mr. President, I ask that the text of seven editorials be printed in the RECORD.

The editorials follow:

[From the Boston Globe, Sept. 29, 1978]

THE CLATTER OF THE PORK BARREL

The noise levels in Washington ought to rise considerably in the days ahead. Congress is sending a mammoth $10.2 billion public works pork barrel bill clattering down Pennsylvania avenue to the President. And we trust the President will follow the advice of Sen. William Proxmire, veto the bill and "roll this pork barrel right back down Pennsylvania avenue and insist on getting a better value for the taxpayers' money."

In the bill are 27 water projects that the President did not request, including many he adamantly opposes and some that have not even received even a moment of environmental or cost-benefit analysis. Further, some of those that have been studied propose the expenditure of hundreds of millions of taxpayers' dollars to build projects that would benefit only a few dozen individuals.

In its desire to do a little bit for the folks back home in an election year, Congress has virtually ignored the President's efforts to begin fashioning a water policy in the nation—one that would put the emphasis on water conservation before new impoundment structures are built, one that would subject water projects to a more reasonable cost-benefit analysis, one that would require that more than lip service is paid to existing statutes requiring some respect for environmental values.

If the public really wants to measure the Washington political establishment's sympathy for the tax-cutting, efficiency-inspiring spirit of Proposition 13, it could hardly have a better gauge than the public works bill. A failure by the President to follow through on his veto threats and a failure by Congress to sustain that veto would send a clear message to the nation that Washington has not yet sensed the public mood.

[From the Washington Star, Oct. 2, 1978]

CAPITOL HILL'S PORK-FLAVORED TURKEYS

President Carter ought to stand his ground and veto the swollen public works bill that Congress is about to present him. And if Senate-House conferees don't trim down the House's version of the highway-transit bill, he ought to consider vetoing that one, too.

The fight over the public works bill is a rerun of last year's executive-legislative battle over water projects. President Carter's retreat that time probably was a mistake. It encouraged members of Congress to stuff more pork in the public works barrel this year.

Not only has Congress revived six projects that Mr. Carter thought had been killed in the largely one-sided (in Capitol Hill's favor) "agreement" he accepted last year, but it has run roughshod over the president's new water policy.

President Carter thinks the benefits to be derived from water projects ought to be in reasonable ratio to the cost, which hasn't always been the case. Any resemblance this year's public works bill bears to the water policy announced by Mr. Carter last June is purely coincidental.

Mr. Carter recommended that 26 projects be included in the bill; Congress has put in 53. Congress mandated the hiring of 2,300 new federal employees, mostly for the Army Corps of Engineers, whom the White House doesn't want. Congress would abolish the interagency Water Resources Council, which Mr. Carter intended to have an integral role in carrying out his new water policy.

The bill is expensive and inflationary. As Mr. Carter said at his press conference the other day, it "is a horrible example to set for the rest of the country" when inflation is the nation's "number one" domestic concern.

House leaders have warned that a veto of the public works bill might cost the administration votes on the gas deregulation measure, which is scheduled to come up in the House within the next several days. That smacks of blackmail and Mr. Carter shouldn't let it deter him. Surely House members aren't so cavalier as to vote against an important energy measure because of disgruntlement over a public works bill veto.

The transportation bill passed by the House last week also is expensive and inflationary. A cute feature of the bill is deficit financing for highway projects. The House wants to spend more on highways during the next four years than the highway trust fund can finance with four years' worth of federal gas tax revenues. That didn't stop the House—it simply said it would use revenues expected for the next five years. How it expects to build and maintain roads during that fifth year, when the money coming in is paying for past projects, is not exactly clear.

President Carter would be justified in vetoing both the public works and the transportation bills as they now stand. The pork-barrellers have produced two turkeys.

[From Newsday, Sept. 24, 1978]

CONGRESS IS BEGGING FOR A PUBLIC WORKS VETO

When a congressional subcommittee passed the usual public works appropriation bill earlier this year, it recommended changing the title to "energy and water development"—the better to reflect the bill's content. Senator John Stennis (D-Miss.) objected that the name "public works" has "prestige" and connotes "progress". As far as we're concerned, it still connotes "pork barrel."

No matter what you call it, the $10 billion bill is as larded as its predecessors. It contains funding for six water projects President Carter thought Congress had agreed to stop last year—plus extra money to start work on several new dams and other projects. The House has passed the conference report and Senate action is expected at any moment. The administration is already trying to line up the votes to sustain a possible presidential veto.

Carter has dropped plenty of hints that he wants to veto the public works bill, and we hope he'll follow through. Not only does it provide funding for a number of highly dubious and expensive undertakings, but it pays scant attention to the water policy the administration announced last summer. And though the bill passed easily in both houses, the failure of Congress to override Carter's nuclear carrier veto and the prestige he acquired at the Camp David summit should help his cause now.

Carter had proposed that states and localities provide more funds as evidence of their own strong commitment to a project; Congress disagreed. Carter had asked that the bill reflect the full cost of new projects; since it does not, Congress was able to claim that it had actually cut the administration's request.

Finding arguments against these projects isn't hard. Some would provide irrigation to make dry land suitable for raising corn—but the nation is about to harvest a bumper crop, and the government in effect is now paying farmers not to plant corn. If Carter wants to show that he's serious about better controls on expensive and environmentally unsound water projects, he must veto this bill and risk the battle that's sure to follow.

[From the Detroit Free Press, Sept. 19, 1978]

CONGRESS PERSISTS IN ITS DAM FOOLISHNESS

Congress is taking up another public works measure this week, and wretched excess is once again the norm. The new authorization bill is jammed with projects of considerable expense and dubious benefit, for which cost figures have been juggled or ignored by the House Public Works Committee that crafted it.

Authorization bills are what set the pork barrel rolling. Once authorized, a project acquires a kind of independent life, even though funds for it may not be appropriated for several years. Authorization is a promise, to a congressman and his district, to developers and speculators and the public works lobby, that a project will someday be funded and built; you tamper with those expectations at your risk. Look what happened to Jimmy Carter and his "hit list" of Western water projects.

So the best time to stop wasteful, expensive and unnecessary projects is before they are authorized. The bill the House will be asked to approve this week contains enough such proposals to justify defeating it or sending it back to committee for major surgery.

Thirty-seven of the 51 projects in the bill would be authorized for construction even though the Army Corps of Engineers hasn't decided whether they are needed, or has given them an unfavorable review. In some cases, where costs outweigh benefits or are as yet unknown, the committee has simply declared the projects "economic" by legislative fiat; never mind what the figures show.

On a number of projects, the bill provides for 100 percent federal funding, breaking from sensible past precedents that required minimal local cost-sharing; one project, on the Trinity River in Texas, has e en been rejected by local voters. On others, the cost has never been computed. One, Gulfport Harbor in Mississippi, is being built for the nearly exclusive benefit of a single firm.

Last week the House gave final approval to a bloated, $10 billion public works appropriations bill which the president has indicated he may veto, and deservedly so. Eight Michigan congressmen, we note gratefully, voted against that bill, including Republicans Garry Brown and Dave Stockman and Democrats James Blanchard, David Bonior, William Brodhead, John Conyers, Dale Kildee and Lucien Nedzi. Now Rep Bonior is trying to mount a floor fight against the new authorization bill, and its list of sugar plums we will be asked to finance in the future. He will need all the help he can get.

A vote against these public works bill is a vote against inflation and waste, against inequity and special interests and, in the case of several projects, against considerable environmental damage as well.

It is also a vote that will strengthen the president's hand in future confrontations over spending, and give the House Public Works Committee a nudge back in the direction of economic sense. In an election year, there's hardly a better platform for a congressman to stand on.

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[From the Dayton Daily News, September 14, 1978]

CONGRESS PROBLEM ISN'T CARTER

At least a few Members of Congress admit responsibility for the congressional inaction President Carter is getting blamed for. Some of the representatives and senators recently interviewed by Congressional Quarterly agreed with Rep. David R. Obey that "things would be only marginally better" if the administration had been more effective in dealing with Congress.

To be sure, the administration has made mistakes in dealing with Congress, which not only is a diverse and competing group of interests but also is a sensitive collection of egos.

Other factors contributing to the logjam in Congress include Senate rules, House reforms, the power of lobbyists, and weakening party loyalty.

The filibuster privilege in the Senate has obstructed some pending bills, such as the measure to protect federal land in Alaska. The filibuster gives a lot of power to a few. But neither the public nor President Carter is requiring the Senate to put up with that. The Senate can stop the filibuster any time it wants.

House reforms, breaking and sharing the power once held by committee chairmen, has brought more democracy. But that has been time-consuming because more interests have to be satisfied. As a result, proposals often have to be watered to nothing in order to get anywhere, the hospital cost containment bill being a recent example.

Tied into that is heavier and more sophisticated lobbying, coupled with a public that isn't stirred into any great consensus. Thus Congress has suffered no public anger for tearing up President Carter's welfare reforms or the proposal for public financing of congressional elections.

President Carter got off to a bad start with Congress by attacking pork barrel water projects. Congress ever since has balked at the President's legislative program, and blames its own balking on Mr. Carter's supposed ineffectiveness. Congress may blame Mr. Carter for that, but the public, whose money President Carter was trying to save, ought to hesitate before throwing that stone.

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[From the St. Paul Dispatch, Sept. 20, 1978]

OL' PORK KEEPS ROLLIN'

Peace in the Middle East may be easier to attain than peace between Congress and President Carter over funding public works projects. The House of Representatives has done it to him again.

The President, you no doubt will recall, some time ago issued what came to be known as a hit list of proposed public works projects he felt were not justified or were environmentally unsound. Since public works provide congressmen with their greatest tool for taking care of the folks back home, Carter's hit list produced screams of agony.

Then the bargaining began.

Last week, the House passed a $10.2 billion public works appropriations bill that includes six projects from the President's hit list: six of eight it did not fund last year. How did it manage to skip two? One was opposed by both of the affected state's senators: the other was opposed by a back-home referendum. Makes you wonder how some of these things get as far as they do.

The President's people are talking veto: Congressman are trying to convince the President that the ditches, dams and waterways—far from being the pork barrel projects they seem to be—are either worth building or are merely receiving "study" funds and therefore shouldn't worry anybody.

Sometimes it's tough to save a buck.

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[From the Christian Science Monitor, Oct. 4, 1978]

THE PORK BARREL ROLLS AGAIN

Can it be, after all the growing evidence in the wake of Proposition 13 that American taxpayers are fed up with wasteful government spending, that Congress has yet to get the message? With proposals to cut taxes and curb government spending on the ballots in 14 states this November, one would expect Congress to back up its members' oft-repeated concern about waste by, at the very least, cutting back on costly and inefficient pet "pork barrel" projects. But, alas, as this session draws to a close, Congress has dusted off its all-too-familiar pork barrel and sent it tumbling toward the White House. President Carter, we trust, will stick by his guns and use the veto to send it clattering right back up Pennsylvania Avenue.

The President's promised veto of the public works bill faces tough opposition in both houses. House speaker O'Neill and Senate majority leader Byrd both have said they will try to override the veto. There has also been talk of tying the water projects bill to the natural gas legislation, which Mr. Carter very much wants, to force him to accept it. We agree with the President that such a move would be highly irresponsible and uncalled for. Both bills should be weighted on their merits.

The $10.2 billion public works bill is not the only one that contains pork barrel projects, but it offers voters the clearest evidence of where Congress stands on giving taxpayers the best value for their money. And there can be little doubt that, when viewed from a cost-benefit standpoint, it has little going for it but politics. It would commit the government to $1.8 billion above current plans. Among the 27 projects the White House opposes are some that have not been adequately planned from an environmental or economic standpoint. Some of the proposed new projects call for long-term spending programs much larger than their initial start-up costs would indicate.

A number of the projects would benefit only a very few people. The proposed project for Bayou Bodeau, La., to name just one, would benefit about 150 landowners at a cost to the government of almost $100,000 per person; and in the process, would eliminate 1,560 acres of wildlife habitat.

Others earmarked for "study" purposes already have been extensively studied and found not to be justified. Research shows that the proposed Bureau of Reclamation project for Fruitland Mesa, Colo., for instance, would require an investment of $1 million per farm family and, according to the White House, would result in an economic return of only 50 cents on the dollar.

President Carter has proposed a national water policy that would stress water conservation, environmental controls, state and local input, and a trimming back of needless dam building. The public works bill meets a few of these criteria. Inasmuch as inflation is the No. 1 concern in the U.S., the President is right to insist that Washington set an example for the rest of the nation.●

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## POLISH-AMERICAN DAY

● Mr. DOLE. Mr. President, on October 11, 1779, Casimir Pulaski, a Polish hero, lost his life for the Colonies fighting in the Revolutionary War. His death is commemorated every year, in recognition of his contributions. He remains a central figure in the long list of Polish Americans who have contributed to make this a great Nation.

The contribution of the Polish community in the United States, and their role in the political life of this country, is being further commemorated today by the Department of State. Today, the 5th of October, the State Department is holding Polish-American Day—a series of lectures and discussions on the state of relations between the Polish People's Republic and the United States, and of the role that the Polish-American community plays in this relationship. At a point when human rights and humanitarian affairs appear to have taken a

back burner in national priorities, this is an encouraging development. To find that the State Department is concerned with the nature of our relationship with Poland is even more encouraging, as the focus on this Nation, and the other nations of Eastern Europe has not been as clear and direct as it should be.

NEED FOR CREDIBILITY IN OUR POLICIES

Our relationship with Poland, and with the other nations of East and Central Europe is sorely in need of reexamination. At a time when events are moving swiftly, often violently, in other parts of the world, in the Middle East, in Africa, parts of Latin America and Asia, there appears to be a general lack of interest in the problems and affairs of these countries. The dramatic harshness with which dissidents are dealt with in the Soviet Union also overshadows the state of humanitarian affairs in Eastern Europe. But great problems and humanitarian concerns do exist. These problems are no less important than those in other countries. And these problems are of great concern to the peoples involved, both those who are citizens, and their countrymen in the United States if our policy of promoting adherence to internationally accepted standards of human rights is going to retain its credibility, then this policy must be applied uniformly, with no exceptions or "grey areas."

STATE DEPARTMENT RECOGNITION AN IMPORTANT STEP

The State Department has indicated that it desires affirmative action—at all levels—in our relations with Poland. This is an important step toward fitting Poland into the framework of our national stand in humanitarian affairs. This is a welcome sign of sincerity. And a welcome sign for those Poles who feel that their affairs and problems have been taking second place to others. This is also signficant for the other ethnic groups of this part of the world—the Czechs and Slovaks, the Hungarians, the Romanians, the Bulgarians, and the peoples of Yugoslavia and Albania.

NEED TO TEMPER OUR RELATIONS WITH POLAND

Our relations with Poland have improved markedly within the last decade. The United States is actively involved in helping Polish industry develop and utilize Western technology. This close working relationship is one of the best we enjoy with the socialist countries of East Europe, one that must be protected and improved. But we must not lose sight of humanitarian issues that still affect the lives of many Polish citizens, and their relatives and countrymen here in the United States. Poles still encounter many difficulties in emigrating from their country, the same type of problems encountered by Soviet citizens. These are problems which must be actively recognized by the United States and dealt with accordingly, within the same context as those cases involving the Soviet Union and other countries who unjustly restrict the freedom of movement of their citizens. For many Poles, this is a matter of emigration and family reunification, a free flow of important information, and the freedom to practice their religion—rights which are guaranteed by the provisions of the Helsinki accords. That the State Department has recognized the need to pay closer attention to these matters, and give them a greater role in our relations with Poland is to be applauded. Affirmative action for all ethnic groups in this country is a must. I encourage the State Department to hold to its pledges.

NEED FOR PROPORTIONATE INTEREST IN EAST EUROPE

Mr. President, I want to take this opportunity to reemphasize the importance of the countries of Eastern Europe to the United States. These countries play a very important role in our relationship with the Soviet Union politically and strategically, one that must not be allowed to weaken. Our ability to deal with them on a one-to-one basis gives us a greater degree of influence in this area. Our independent relations with Poland, and all of these countries must not be unrated. Beyond the political advantages of such ties, it also gives us an opportunity to more effectively encourage adherence to the principles of the Helsinki accords, to the improvement of their human rights records, and to the benefit of those concerned in this country. East European ethnic groups in this country have a right to expect proportionate interest and activity on their behalf. It is my hope that their interests will be more respected now. The activity of the State Department in this direction is a positive sign.

POLONIA A VALUABLE HERITAGE

America has been fortunate in her development to have been able to receive so many immigrants on her shores. The cultural and social diversity this has provided us gives us the strength we need as a Nation. The sons of Polonia are a proud segment of our great land. We salute their achievements and contributions. Their importance as a part of our society is not to be forgotten. ●

## MR. PACKWOOD GOES TO LEBANON

● Mr. JAVITS. Mr. President, in the days and now weeks since the Camp David summit, the people of the world have felt the stirrings of real hope. The prospect for peace in the Middle East, once merely a mirage, now appears to have form and substance. Negotiations are opening between Egypt and Israel.

In reflecting on Camp David and the future security of Israel, it is necessary to keep in mind the very closeness of war and the impact of this reality on Israel's people. The fear of nightly terror and attack and the fragile cease-fire on Israel's borders are fiction but a tragic way of life for most Israeli citizens.

Last spring, my friend and colleague, Senator BOB PACKWOOD of Oregon, returned from a visit to Israel and to the UN buffer zone in southern Lebanon—the first Member of Congress to observe the peace-keeping efforts in this area since the Israeli move into Lebanon. His diary of this trip was published recently by the Federation News of the United Jewish Appeal of Greater Washington. I find this eyewitness account both frank and compelling and I believe it deserves a wide audience. I ask at this time to submit the article, "Mr. Packwood Goes to Lebanon," for printing in the RECORD:

[From the Federation News, September–October 1978]

MR. PACKWOOD GOES TO LEBANON

(By U.S. Senator ROBERT PACKWOOD)

This story should probably start with a confession. When Georgie and I visited Israel this spring, we were both excited to again see this beautiful country. We had not been back for a number of years. The situation in March of 1978, with the recent occupation of Southern Lebanon, was especially tense. I knew that no member of the American Congress had been into the Israeli-occupied area of Southern Lebanon. In the back of my mind I hoped I could see it firsthand. I also knew that any official request on my behalf could prove embarrassing to the Israeli government and that was the last thing I wanted. So, as we made the long journey by plane, I decided to "play it by ear." After all, who knew where our journeys would take us?

On Tuesday, March 28, we were at the Golan Heights. I wrote in my diary, "We crossed the River Jordan at the Sea of Galilee and after a brief stop for lunch went up to an Israeli bunker on the Golan Heights. The dedication of the troops occupying the bunker was obvious. This was a bunker that looked eastward across the long sloping plain toward Damascus. It gave Israel a very commanding position. I can understand why Israel is reluctant to give up the Golan Heights. To give Syria back those dominating heights from which she could shell Israel's agricultural developments would be worse than foolish. It would be folly.

"We turned down the hill a bit and came to the UN buffer zone. We viewed it from an Israeli outpost flying an Israeli flag. A hundred yards further flew the flag of the United Nations. No more than a hundred yards beyond that, the Syrian flag. I began to realize how closely these people have lived together for almost 4,000 years.

"At this stage, Georgie and I split from the group we are traveling with and went to Safed. We had been there on our trip in 1971. It is a picturesque artists' village, and we had bought a painting there which now hangs in our home. We looked forward to returning to this beautiful spot on the evening of March 28. Safed is as enchanting as we remembered it.

WEDNESDAY MORNING, MARCH 29

"We hit the road about 8:15 a.m., driving toward Metulla in the upper northeast thumb of Israel. At Metulla, we were going to meet Gad Ranon who had been one of the guides with our group. He had arranged to meet us at a courtyard cafe in Metulla, attached to a hotel which was the forward command post of Israeli Army in that area. From there Gad, our guide, said he would see if he could 'talk our way into Southern Lebanon.' Georgie and I arrived about 9:30. Gad was there. The captain in charge of the advance post was not, so Gad, Georgie and I had coffee in the courtyard. Presently Georgie decided to stroll a bit around the town to take in the sights. This doesn't take too long in Metulla.

"Gad was carrying his ever-present Uzi. I asked him to show me how it worked. He was carrying it without the ammunition clip attached to the rifle. Gad showed me where the ammunition clip went. He said in order to shoot the gun, you have to pull back a safety on the top of the gun. He pulled back a metal slide much like a bolt on a bolt-action rifle. As he pulled it back it had the unmistakable clack of metal hitting metal. It was a sound I was to remember later. 'When you pull this top safety back, it also

pops the first bullet into the gun. The gun won't shoot at all until the safety on the top is pulled back. As soon as you do this, you are almost ready to shoot,' Gad said, 'but first you have to pull the trigger and push your thumb against the back.' 'Although it's a second safety,' Gad emphasized, 'the second safety is so sensitive it's almost no safety at all. When you've got the clip in the gun, you never want to pull that top safety back unless you think you are going to have to fire imminently'.

"A young lieutenant showed up apologizing for the captain's delay. Gad said that Senator Packwood was here for the tour through Southern Lebanon. The young lieutenant said, 'Oh, yes, of course. Let me get an escort officer and you can be on your way.' It was a great bluff. Maybe there was no problem, but Gad just spoke with great force like the tour was all arranged and the lieutenant knew all about it. The lieutenant obviously didn't want to appear to be ignorant.

"We were assigned a young, very handsome Israeli captain, Ilan Levin, as an escort officer to accompany us through Southern Lebanon. In addition, Gad Ranon would accompany us and our driver. We were going to make the drive in a civilian car. Just as we were about to leave the shack that passed as the advance command unit, an Israeli television commentator came up to me and said. 'Aren't you Senator Packwood?' I responded affirmatively. He indicated he had seen me on Jerusalem television a day or two earlier. He asked if we were going into Southern Lebanon. I responded, 'Yes.' He asked if he and the crew could accompany me and take pictures. I said that would be fine with me, whereupon the television commentator went over to the lieutenant and said, 'Senator Packwood wants us to go into Southern Lebanon with him.' The lieutenant felt he had no option but to say, 'Go ahead.' Only later did I learn that the Israeli television crew has been denied admittance to Southern Lebanon that day for some reason, but seeing that I was about to be able to enter, they jumped on that opportunity as a pretext for getting in themselves. Ah well. Television journalists are the same the world over. We drove to the Good Fence. This border between Lebanon and Israel is called the Good Fence because many Lebanese cross here into Israeli territory to work and to be treated at a permanent medical mission maintained by the Israelis on this spot. We drove through the Good Fence and turned north, going up a ridge of hills to find two very small villages, Marjayoun and Kleia. To call them towns would be an overstatement. They were basically a main road running along the ridge top of the mountains with a house here and there on either side of the road.

"From Marjayoun we were able to see the old Crusader fortress of Beaufort just north of Litani River. It contains 150 to 200 members of the PLO. According to our briefing, officer, Ilan Levin, the PLO forces have several cannons, rockets, and mortars inside Beaufort. On occasion, they shell in all directions. Since the time of the Crusaders, this fortress has commanded the area all around it. It could not have been a better location for a fort—then or now.

Both Marjayoun and Kleia had been shelled consistently from Beaufort on one side and from another PLO stronghold on the other. These two towns in Southern Lebanon are primarily Christian towns and therefore the Christians were fighting the PLO Arabs, although they're both Arabs. One Christian, one Moslem.

"Next to almost every house was parked a military vehicle of some type. It might be a jeep, armored personnel carrier or a tank, but every house had one. Most of them were of World War II vintage. In the field next to some of the houses, however, we would see an old man plowing with an ancient wooden plow pulled by two oxen. Except for the relatively modern military equipment, the scene could have taken place 2,000 years ago. I thought it a startling contrast to see the 2,000-year-old agricultural methods taking place cheek by jowl with 20th century military equipment.

"The villages were badly scarred and war torn. As we drove slowly along the ridge road, little three and four-year-old children would run alongside our car with a 'V' for victory sign and at the same time shouting, 'Shalom, shalom.' It was a very touching scene. The Israelis had told us that the Christians didn't want the Israelis to leave and it was obviously true. The Israeli occupation was the first tranquility and peace these people had known in years.

"There are three principal bridges across the Litani River. One is close to the mouth of the river at the Mediterranean, another one, the Qaaquiyet Bridge, midway up and a third one, the Khardali Bridge, not far from Leye.

We were able to look down on the Khardali bridge with binoculars. There was a fair degree of activity on our side of the bridge. I could see a truck and an ambulance and a number of men. Only later did we learn that barely an hour before we were viewing the bridge, a Swedish military truck had driven over a landmine and the explosion had killed one man and injured another.

"We now drove south back down the ridge from Marjayoun and Kleia and headed west toward the town of Abbasiyah. The buildings in this town were fairly intact. It seemed a good-sized town, possibly big enough to hold 1,500 to 2,000 inhabitants when occupied. But no one was there. It had been abandoned entirely during the Civil War in 1974 and '75. I assume it was a Christian town, although I'm not sure. Now it is a ghost town.

"In the hotel at Metulla, we relaxed with a coke while our car was being repaired. It was an American passenger car, slung much too low for the roads in Southern Lebanon. We apparently hit a rock and punctured the gas tank and were dripping gasoline. The driver took it to a local service station for repair, while we talked to some local residents. In addition, I played three or four games of backgammon with one of the Israeli television crew technicians. To my surprise, I learned that Metulla had been hit by 18 Kitushka rockets in the past few days. No one had been injured although there was some property damage. The thought of an impending rocket crashing through the ceiling didn't do much to calm me. Again, war and death seemed more than a remote possibility. I thought to myself, 'And Israelis live in this situation every day.'

I walked out to the hotel portico and spoke with Gad Ranon who was in turn speaking to another Israeli lieutenant. The lieutenant told us about a conversation he had had with a Frenchman who was a member of the unit occupying the bridge across the Litani near the Mediterranean. The lieutenant said he had asked the Frenchman what the French were going to do if armed men came across the bridge. The French officer replied, 'Nothing. Our orders are not to shoot unless we're shot at. If the armed men come across the bridge and don't shoot, we'll let them pass.'

"At that moment, a young Norwegian officer had approached. He was the commander of a Norwegian United Nations force just coming in to replace the Swedes at the bridge the Swedes had been guarding. The Norwegian spoke English well and couldn't resist the passing reference that the 'Norwegians always have to take over the Swedes' chores.' According to the Norwegian, the Swedes were leaving the bridge because their man had been killed, and they didn't want any further part of the danger.

"I can't verify if that indeed was the reason they were leaving, but that's what the Norwegian said. The Israeli lieutenant asked the Norwegian what he would do if armed men came across the bridge that he was about to guard. The Israeli lieutenant repeated the Frenchman's comment that they would not shoot unless shot at. The Norwegian soldier said, 'No, that wasn't quite true.' He said that they could shoot in self defense and to carry out their 'terms of reference.' By that he meant 'orders,' but he very quickly added that he had not yet seen his orders. I then interjected and said, 'You mean you're going down to guard this bridge and you don't know exactly what your orders are?' He replied that was the case. I asked him if the Swedes had had any orders. He said not to the best of his knowledge. I further asked him then if the French on the bridge at the Mediterranean or the Iranians at the middle bridge had their orders. He said as far as he knew, none of the units had their orders and they were each left to interpreting their United Nations mandate as they saw it. A hell of a way to run a railroad, I thought.

"The Israeli lieutenant pursued the conversation with the Norwegian and said, 'Well, what will you do if the PLO starts to cross the bridge and they're armed?' The Norwegian said, 'You mean uniformed armed men crossing the bridge?' The Israeli lieutenant said, 'No, they're not going to be in uniform. They will be in civilian dress.' The Norwegian then responded, 'Lieutenant, you've got to understand. We don't know what a PLO looks like. We don't even speak their language. How are we going to know if some armed civilians want to cross the bridge; whether they're PLO or not?'

"At that stage our car arrived and we had to leave. Everything I had seen and heard that day, however, gave me no great confidence. Units to guard bridges without orders, Swedes leaving a bridge because one man was killed, the French who were not going to shoot unless shot at, the Iranians who couldn't see if anybody was crossing the bridge. I thought, 'This United Nations force will never keep the PLO out of Southern Lebanon if the PLO wants back into Southern Lebanon. Maybe the Syrians can keep them out, but the UN surely will not be able to keep them out if they want back in.'

"We now doubled back eastward to possibly Taibe although I'm not sure. In any event the town had been one of the large PLO strongholds in Southern Lebanon, and here the Israelis had blown up all the buildings. They wanted to insure that the PLO could never use it again as a stronghold. They succeeded beautifully. From Taibe, we were taken to a place overlooking the Qaaqaiyet Bridge. The Israeli television crew had hoped we could drive down to the bridge and they could do a stand-up piece with me in the middle of the bridge. However, there was an Israeli roadblock on the road leading down to the bridge. Apparently the Iranian United Nations peace-keeping force had moved in a day or two earlier and the Israelis had agreed to pull back from any of the areas the UN moved into. Therefore, all we could do was again view the bridge with binoculars. When I viewed it, I was delighted we couldn't get down to it. Immediately on the north side of the bridge, and I mean immediately—not five feet beyond the bridge—were two well-fortified bunkers. The PLO was in them. You could tell they were there because the glint of sunlight reflected off the metal of their rifles or machine guns. That would have been all I needed—to be standing in the middle of a bridge probably not 75 to 100 feet across and have the PLO at their end wondering what the devil I was up to. On the southern end of the bridge was supposed to be a detachment of Iranians on patrol. They were no place in sight. The road came off the bridge and then curved 90 degrees to the right. In addition, in the elbow of the curve, the terrain rose slightly, perhaps 10 to 15

feet. About 300 yards down the road was the Israeli outpost. Both because of the curve and the raise in the terrain, it would have been impossible for them to see anyone crossing the bridge by day or night. It left me with little faith in the UN operation.

"The Israeli television crew asked to film me on the brim of the hill overlooking the bridge. In the middle of the interview, I could hear a helicopter behind me. My natural tendency was to want to look around at the helicopter. My practiced tendency, however, was to finish the interview once it had started. As the interview went on, however, the helicopter became louder and closer. It suddenly dawned on me this wasn't a helicopter passing overhead. It was a big, big helicopter and it was landing. When we completed the interview, Captain Levin came over excitedly and said, 'Senator, come over. I want you to meet the General.' I was introduced to General Rafael Eytan. Although I did not know it then, Eytan was due to become the next Chief of Staff, succeeding Mordecai Gur in just a few days.

"Captain Levin said, 'General, this is Senator Packwood.' Before he looked at me, the General looked at Captain Levin and said, 'Captain, look at you. You're a disgrace. You need a shave, your shoes are unshined. What kind of a representative of the Israeli army are you? Captain Levin had two or three days of beard growth all right, but he'd certainly done his job well as far as I was concerned. You could see crestfallen disappointment in his eyes, however. The General then turned to me and without further pausing said, 'Will you please tell your American countrymen that we are being shot at by the PLO with M–16 rifles supplied from Saudi Arabia and the GR standard NATO rifle being supplied from Germany.' I told the General I had heard the rumor of the standard GR rifle, but had not heard about the M–16's. The General continued, 'And if you insist upon supplying Saudi Arabia with advanced jet aircraft, they'll be supplying those to our enemies also. I hope you'll carry that message home to your countrymen, Senator.' The General prepared to leave but before doing so turned once more to Captain Levin. 'Captain,' and the General paused slightly and then ever-so-slightly smiled, 'your section is doing an excellent job in this area. Congratulations. Keep it up.' He then got back in his helicopter and took off. There was an unmistakable excitment in the captain's eyes. Eytan was obviously a soldier's soldier, and either a criticism or a commendation were taken at their full meaning by his subordinates.

"We finished our tour and drove to Metulla, arriving about 3:00 in the afternoon. We parked the car about half a block from the advance headquarters, our starting point that morning, and walked down the street. We noticed three armed United Nations soldiers standing at attention by a flatbed truck with improvised sides about two feet high. I wondered why all the security was about this truck, until I saw what was obviously a coffin draped with a United Nations flag. It was the body of the dead Swedish soldier. War and death suddenly seemed closer.

"As we left Metulla I asked our driver how long it would take us to drive back to Jerusalem. He indicated it would take about six hours. I exclaimed, 'Six hours. It shouldn't take us more than 3½.' The driver responded that he had been ordered not to take us back through the West Bank at night. Therefore, we would have to drive over to the coast, down the coast highway and in. To put it in American terms, it would be like going from Philadelphia to Washington by driving west to Harrisburg, down to Charleston or Winchester, Virgina, and then over to Washington. I said it was ridiculous to avoid the West Bank at night. That it was perfectly secure.

"The driver said he had his orders. I turned to Gad Ranon who was going to ride back with us with his trusty Uzi. Gad and the driver discussed the situation in Hebrew. The discussion of course meant nothing to me except that every third sentenced seemed to end with, 'Okay.' Finally after some obviously heated exchange of words, the driver agreed to take us back through the West Bank. Georgie, Gad and I were in the back seat, with Georgie in the middle, Gad on the right and me on the left. As we crossed the border into the West Bank, I heard a very faint clicking sound. I looked casually over at Gad and noticed that he had put the clip into his rifle. After driving a bit we came around a corner and noticed a jeep with many soldiers around it. The headlights of the jeep were shining on a stretcher with a body on it. I turned to Gad and said, 'What's that?' Gad said it could be an ambush or it could be a training exercise. We slowed down, there was an exchange of conversation between the driver and one of the military personnel. It was a training exercise. There was a certain lilt in the exchange of banter between the driver and Gad. While the language was Hebrew, I sensed what they were saying, 'As long as the Senator is insisting upon us going back through the West Bank at night, let's show him a little excitement.'

"We had been driving only another 15 or 20 minutes when a flare went up perhaps 75 yards off the side of the road. I've seen flares before. They light up very large areas very well. I turned to Gad and asked why the flare. He responded by saying that it could be a training exercise or perhaps they were looking for someone. Again, the lighthearted banter in Hebrew between the driver and Gad. Another 15 or 20 minutes and another curve. About 150 yards down the road stood a roadblock. This is not unusual in Israel. In the week we had been there, we had seen a number of roadblocks and had been stopped at them. This one, however, had a certain different flavor to it. There was a barricade, a wooden barricade, almost all the way across the road. Behind the barricade was a large truck similar to the kind used to deliver freight in a city. It was parked diagonally across the road. If anyone wanted to run the barricade, it would have been difficult to do, because getting around the truck would have been almost impossible without going off the road into the ditch. I initially didn't worry but simply thought to myself, 'That's a different looking roadblock.' One thing I did notice, however, was that the banter between the driver and Gad no longer had a light to it. The driver reached to the switch controlling the dash lights and turned them off.

"Georgie was looking straight ahead at the roadblock. As we got within 50 yards of it, I noticed Gad searching around in the dark for the door handle on his side of the car. It's that same feeling we all have with cars nowadays. The handle is always in a different place, and you can't figure out how to open it. When Gad found the handle, he very surreptitiously pulled it and opened the door so that it was ajar. No further action with the handle would be necessary to open it. For the first time, I began to get a sense of both fear and excitement. As we got to within 25 or 30 feet of the roadblock, Gad placed his right foot on the side of the door and then when we were no more than 10 feet from the roadblock, I heard that sound, that clacking sound of metal hitting metal, that I had heard earlier in the day when Gad was teaching me how his Uzi worked. Gad had thrown the bolt action safety off his rifle. I remember what he said. 'You never take this safety off the rifle unless you think you're going to have to use it imminently.' Only then did I sense the full meaning of what the situation might be. This indeed could be a PLO roadblock. Without wanting to arouse Georgie, I looked over at Gad and made sure that his eyes caught mine so that he understood that I understood the situation. It was very clear what he had in mind. If necessary, he was prepared to kick that door open with his foot and leap out of the car with his guns blazing, in the hope that Georgie and I could somehow escape.

"As we so very carefully approached the man in military uniform waving the flare, the tension eased. It was very quickly determined this was another legitimate Israeli roadblock. But by then, I had the full feeling of what every Israeli must know and fear. That day in and day out, they must live with tension and know of the possibility of death. I thought to myself, 'Before the United States goes about imposing solutions in the Middle East and drawing boundaries, and telling everyone what they're going to do, I wish that every person responsible for making such a policy could understand its full implications. And by full implications I don't just mean that Israel's military borders might be secure. By its full implications I mean that every Israeli citizen should be able to live in peace and tranquility without the feeling of fear of ambushes, and bazookas on buses and grenades in apartments and bombs in marketplaces. Only when that fear is gone would peace return to this country and only Israel can determine when that fear is gone.

"The car deposited us at the Jerusalem Hilton. As Georgie and I thanked the driver and Gad and walked hand in hand into the lobby, we both knew without saying that one thing had not changed in the intervening seven years between our trips. Israel's indomitable spirit has remained, thank God, constant and unfaltering."●

## THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

● Mr. KENNEDY. Mr. President, it is unfortunate that the recent controversy surrounding the natural gas bill almost totally eclipsed one of the most important legislative accomplishments of this Congress. In my view, the Outer Continental Shelf Lands Act amendments are the most important energy legislation to be passed in recent years. The Outer Continental Shelf is our most important domestic petroleum frontier. Our future role as a petroleum producing nation depends to a great extent upon what we will be able to find in this area. Despite the optimism about alternatives, oil and gas are quite likely to remain our cheapest and safest energy source for a long time to come. How well we develop our remaining oil and gas resources will have a significant effect on the economic welfare of the Nation. And, in particular, all of us have an important stake in the careful and efficient development of the OCS resources.

The development of this legislation required the resolution of extremely complex, difficult, and, at times, emotional issues. Hard trade-offs had to be made between seemingly conflicting goals: public ownership of lands and resources versus private development; energy development versus environmental protection; consumer interests versus producer interests; local community interests versus national energy planning; the interests of small oil companies versus the majors.

No one will argue that these conflicts were resolved to the satisfaction of all. I, for one, was disappointed with a number of compromises. Nor have all the conflicts been resolved. Much will depend upon the regulations that imple-

ment the legislation. But, as a broad scheme that deals in a responsible and constructive way with these problems, the legislation is a piece of work the Congress can be proud of. The chairman and members of the Senate Energy and Natural Resources Committee deserve special congratulations, as does the chairman and members of the House Ad Hoc Committee. Interior Secretary Andrus should also be congratulated on the extremely constructive role he played in the development of the legislation. At a time when Congress has been harshly criticized for its role in the energy area, it can point to a very solid accomplishment.●

## A VISA FOR TYRANNY

● Mr. McGOVERN. Mr. President, in the October 5, 1978, edition of the Washington Post there appeared an article by Randall Robinson, the respected executive director of TransAfrica, a black American lobby for Africa and the Caribbean.

In that article, Mr. Robinson clearly and convincingly puts forth the case that the State Department's recent decision in issuing a U.S. visa to Ian Smith, the Prime Minister of Rhodesia, will have a serious and negative impact on our foreign policy on that continent in the weeks and months ahead.

In recent conversations I have had with high level State Department officials who are intimately involved with the formulation and implementation of our African policy similar fears have been expressed.

I deplore what Ian Smith stands for. Any durable settlement in Rhodesia must include the groups led by Joshua Nkomo and Robert Mugabe. Notwithstanding his claims to the contrary, Mr. Smith's so-called "internal settlement" plan is actually a formula for civil war, for more Soviet influence, and for ultimate military defeat. When Mr. Smith comes to the United States I hope we can help the peace process along by disabusing him of the mistaken notion that there might be a significant reservoir of support here for a military involvement to perpetuate his regime.

I ask that Mr. Robinson's article, "A Visa for Tyranny," be printed in the RECORD.

The article follows:

A VISA FOR "TYRANNY"

(By Randall Robinson)

Over the past two weeks, virtually the entire national black leadership has urged the administration to remain steadfast in its compliance with United Nations Security Council mandatory sanctions against Rhodesia by rejecting the visa applications of Prime Minister Ian Smith and members of his executive council.

Conceding that granting a visa would be disastrous for our foreign policy in Africa, the State Department has meekly caved in to the wishes of the 27 conservative senators who had threatened to confirm no administration appointments and to stall all legislation until Smith was granted entry. Unless opposing court action succeeds, Smith will get his visa. Why?

The applicable law is clear enough.

Security Council Resolution 253 provides that all member states of the United Nations shall "prevent the entry into their territories, save on exceptional humanitarian grounds, of any person traveling on a Southern Rhodesian passport" and shall "take all possible measures to prevent the entry into their territories of persons whom they have reason to believe to be ordinarily resident in Southern Rhodesia."

Nor can it be persuasively argued that there is any basis for waiver here "on exceptional humanitarian grounds." The State Department's visa guidelines drawn to implement Resolution 253 provide that such "grounds" exist only for students, visitors of close relatives, applicants for special medical treatment and others of that general variety. Smith meets none of those waiver requirements. Moreover, the binding international obligations of Resolution 253 have been further invested with the force of American domestic law by at least two executive orders.

Any visa to Smith and his party, then, could only be unlawfully granted.

Yet, lamentably, and with vast American foreign-policy consequences, nearly a third of the Senate stands prepared to see America flagrantly violate a treaty-force Security Council resolution that we not only voted for but solemnly co-sponsored.

Perhaps many of us have forgotten why the Smith regime was made subject to U.N. sanctions in 1968 and why it remains subject to them today.

Unlike the African colonies preceding Rhodesia to independence and majority rule, Smith's regime in November 1965 defied British orders to surrender power to the African majority and announced for Rhodesia a "unilateral declaration of independence" from the United Kingdom. After several unsuccessful attempts to turn Smith from his cause of white minority rule, the British government requested the Security Council to impose limited sanctions in 1966 and total sanctions in 1968 against Rhodesia.

Earlier, Smith had banned the Zimbabwe National Union and the Zimbabwe African Peoples Union for peacefully advocating the African right to vote and majority rule. Smith also jailed much of the African leadership, including Joshua Nkomo and Robert Mugabe. Others were executed. The white Rhodesian resolve was unwavering. Under no circumstance were Africans to be given the right to govern themselves. Thus the war began.

Today with white emigration soaring, the economy a shambles and his army losing the war, Smith rejects the British-American diplomacy, which is supported by the Patriotic Front, Organization of African Unity, Western countries and the United Nations. He is taking one last desperate stab at maintaining de facto white minority rule through "internal settlement".

It is inconceivable that any American of democratic inclination could find Smith's proposal for an "internal settlement" acceptable. Under its terms, less than 4 percent of the population—the whites—would control 28 percent of the elected parliament. The Africans, who make up 96 percent of the population, would be without the capacity to amend their own constitution. In a land where the white minority controls 54 percent of the land, the black majority would be constitutionally disabled from redressing the most egregious property wrongs. The police, the army, the public service and the judiciary would remain under white control for at least 10 years, perhaps indefinitely.

White minority rule in blackface. Thus, the Security Council sanctions remain in force against Ian Smith, who for 13 years has obdurately opposed genuine majority rule, but not against those who have sought and still seek to win freedom for all Zimbabweans.

In what assuredly are the final months of the Smith regime, it is sad indeed that the United States has lost its resolve to honor sanctions and thus is giving Mr. Smith hope for a new lease on tyranny.●

## THE NATIONAL ART BANK

● Mr. MOYNIHAN. Mr. President, on Tuesday a column appeared in the Washington Post praising a bill introduced by my distinguished and good friend, Senator WILLIAMS, that would establish a National Art Bank. So that it may be widely read, I submit it for the RECORD at the conclusion of my remarks. Senator WILLIAMS' bill would commence a national collection of art within the National Endowment for the Arts. Purchased by the Federal Government, these works could be distributed and viewed around the country. This is a splendid proposal and one the Senate will surely want to consider next year.

In this spirit I want to mention a companion measure, introduced by me and Senator CHAFEE last March, which shares many cosponsors with the Art Bank bill. It would provide for leased art works in existing Federal buildings and purchased works for new ones. I am pleased that both bills have generated enthusiasm.

I believe Senator WILLIAMS' legislation would have admirable and far-reaching consequences for our country, and I do look forward to laboring with him.

The column follows:

A NATIONAL BANK FOR ART (AND ARTISTS)?

(By Brooke Stauffer)

Sen. Daniel Patrick Moynihan: *"The best way to promote art is to make it illegal."*

That remark, though taken as a jest, all too accurately characterizes traditional legislative attitudes toward art, but now 15 separate pieces of art-related legislation are pending before Congress, dealing with a broad range of subjects, from royalties and taxes to the "moral rights" of artists.

Of these, the one bill that would have the biggest effect on artists is the National Art Bank Act, which would put the federal government squarely into the business of buying art, and thus bring about a major shift of emphasis in government support for art. At present, such support is limited to fellowship-type grants to individual artists, indirect or matching-funds grants to communities and organizations, and occasional commissions of art for public buildings. Valuable as those programs are, they reach relatively few artists and, conceptually, are only means of buying time—time for artists to work under reduced economic hardship. The art bank bill, sponsored by Sen. Harrison R. Williams Jr. (D-N.J.), proposes instead that the government buy finished artwork.

The measure is patterned on the successful Canadian Art Bank, which in six years has built a collection of about 7,000 works by more than 900 artists for display in government buildings. Williams' legislation goes beyond the Canadian model both in funding ($9 million over three years, compared with $1 million a year), and in the wider distribution of artworks—and hence greater exposure of people to art.

The works bought and leased by the art bank would be lent to museums and federal buildings, leased to private corporations and other institutions and shown in traveling exhibitions. Work would be auctioned periodically to keep the collection current and everchanging.

The development of the art bank bill illus-

trates the growing influence of organized art. Public and private groups sensitive to artists' concerns informally discussed the concept of an art bank with Williams's staff.

As the measure evolved, these same groups, including the National Endowment for the Arts and the Artists Equity Association, consulted in the drafting of the bill's language, which thus contains a number of provisions considered essential by artists. These include payment for the use of works, insurance protection for exhibited works, recognition of the need to include little-known artists from all parts of the country, and a buy-back privilege to permit artists to retain control over the final disposition of their works.

In all these respects, William's measure differs from an art bank bill introduced earlier this year by Rep. Larry Pressler (R-S.D.). Pressler's bill would establish a limited art collection for the decoration of congressional office buildings and, like the State Department's Art in Embassies program, would depend on borrowed works of art without compensation to artists. The measure aroused lukewarm interest and some outright opposition within artists' circles and provided impetus for the development of Williams's more comprehensive proposal.

As a chairman's bill in the Senate Human Resources Committee, the National Art Bank Act enjoyed an auspicious introduction. Two days of testimony before the labor and industries subcommittee attracted representatives from the National Endowment for the Arts, the Government Services Administration and art circles. Noted artists Richard Anuskiewicz and Walter Darby Bannard testified, as did Suzanne Rivard LeMoyne, founder of the Canadian Art Bank.

Although Senate support for the measure also is considered good, a vote is unlikely this year. Williams plans to reintroduce it in the next session, with some revisions based on the subcommittee testimony. In the House, Rep. John Brademas (D-Ind.) has sponsored a companion bill with very similar language, which also will be reintroduced in 1979.

Establishment of an art bank, which could well become the nation's largest public art collection, would finally recognize art as a business and artists as professionals.●

## UKRAINIAN HUMAN RIGHTS

● Mr. GLENN. Mr. President, this year marks the 60th anniversary of Ukrainian independence. From the declaration of independence in Kiev on January 22, 1918, to late 1920, these proud people enjoyed their cherished dream of independence, like so many other nations of Eastern Europe. That independence was shattered, of course, in 1920 by the Soviet Union's force of arms.

Today there are more than 2 million Americans of Ukrainian descent in the United States, including many thousands in my State of Ohio. They are loyal, hard-working people who have made major contributions to America.

Increasingly, Mr. President, these Americans of Ukrainian descent have expressed their concern about the treatment of intellectuals and other dissidents in Ukraine. There are nearly 50 million citizens in the Ukraine, and their unique language and culture have remained strong, despite six decades of foreign rule.

The world was shocked in 1972 and 1973 when about 600 Ukrainians were arrested and sentenced to long terms. Since then there have been periodic reports of brutality within the Ukraine, and President Carter personally protested when two members of the Ukrainian-Helsinki group were sentenced to 12 and 15 years in prison.

Mr. President, I support détente and believe Americans want all avenues to peace explored with the Soviet Union. However, the repeated arrests of those who seek to monitor compliance with the Helsinki Accords have put a cloud over détente. "Human rights" is a term that is subject to interpretation, but there are certain rules of law and decency that should touch all citizens of the world.

The arrests of Mykola Rudenko and Oleksa Tykhy in 1977, and subsequent continued harassment of Ukrainian intellectuals and others, prove beyond the shadow of a doubt that the Helinski Accord hasn't altered the Soviet Union's attitude toward the principal of human rights.

If the feelings expressed to me as U.S. Senator from Ohio are matched by those of nationality groups in other parts of the country—and I'm sure they are—there are many millions of first and second and third generation Americans who love the United States but who also want the world to know that those who live in their homelands have not been forgotten.●

## GASOHOL AND REDTAPE AT THE DEPARTMENT OF AGRICULTURE

● Mr. McGOVERN. Mr. President, the Food and Agriculture Act of 1977 as passed by the Congress contained a provision with respect to converting farm produce to energy substitutes. It provided a fund of loan guarantees for the establishment of four so-called "gasohol" plants and authorized loan guarantees in total of $60 million.

As one of the conferees I think that I can speak to the intention of the Congress in embarking on this program. There are many in the Congress who feel that there is great potential in solving a part of the energy problem by the effective and efficient conversion of surplus agricultural production or agricultural waste or a combination of the two to alcohol or ethenol for the purpose of creating a mix with refined gasoline, thus reducing in part our need for crude imports. We felt that we had signaled the executive branch and in particular the U.S. Department of Agriculture that we wanted them to move with dispatch toward these intentions.

It is now more than a year since the passage of the act and the only discernible movement I can perceive at the Department is to establish an October 16, 1978, deadline for the submission of applications for Federal loan guarantees.

With this thought in mind, I recently arranged an appointment at USDA for a group of constituents from South Dakota who had banded together to establish a firm known as Northern Agri-Fuels, of 2040 West Main, Rapid City, S. Dak. Northern Agri-Fuels had the foresight to employ competent research and engineering experts and formulated an energy plan to extract 100,000 gallons of alcohol from 35,000 bushels of wheat at a cost of around 50 cents a gallon with gluten, feed meal, and oil residues of sufficient value to make the plant operate efficiently and profitably.

To do this, they estimate a plant costing about $18 million, well within acceptable cost ranges for that volume of production. Being enterprising and self-reliant farmers and businessmen, they proceeded to line up private lines of credit to the extent that they felt that they would only need to ask the Government for a credit guarantee of something less than $5 million, vis-a-vis the normal guarantee request of up to $15 million.

They returned from the Department of Agriculture to tell me one of the great horror stories of the bureaucracy.

First of all, they were advised that loan guarantees were not available to firms which had any equity capital generated themselves or which had established any line of commercial credit. Though there was no "credit elsewhere" test in the legislation, nor am I aware of any from the legislative history, I now find that the only projects USDA proposes to guarantee are the Rube Goldberg schemes that fail to gain support in the money market. My constituents felt that the only good position was a pauper position.

Next they were told that successful applicants would be subject to an environmental impact study which would take at least a year after the USDA had evaluated the pauper applications—USDA estimates that it will take them at least 6 months to review the applications they now have in order to select the four authorized plants.

After the environmental impact study is completed, I am given to understand that there will be further study for effects on endangered species with no time limit or even estimate involved.

Next comes a regulation that USDA must participate in the selection of the plant site and no construction work can commence until USDA has given its approval. My constituents, if they were to opt for this route, could conceivably end up in a State far removed from the geography of South Dakota.

In summary, to get the gasohol business going according to Government standards, you must first be penniless and second be willing to wait for about 30 months for the Government to work itself out of its own redtape. Probably after all this happens it would take another 24 months to complete plant construction. Conceivably, an experimental operation at best could be operational by the spring of 1983.

Mr. President, I have always considered myself to be a patient man but in this instance patience must give way to outrage. Is there any wonder that citizens have lost confidence and trust in Government? Are my constituents not justified in returning to me and telling me that they will go it alone? Is it not reasonable to question the Department of Agriculture's dedication to the concept of fuel conversion of agricultural products?

Mr. President, there is simply no reason for the Congress to pass legislation that is blocked from every angle by administrative regulation. I now have the conviction that there is no interest at the Department at all in implementing

this process. For this reason, I shall contact the chairman of the committee (Mr. TALMADGE) requesting that the Department be called to answer this statement before the Senate Committee on Agriculture, Nutrition, and Forestry. I recognize that we are late in the session and facing adjournment within the next week or so. It may be impossible to accomplish these ends before the Congress winds up its business, but I want to serve notice on the Secretary of Agriculture that I intend to pursue this inquiry even though I have to wait until the new Congress convenes in January.

The October 4 edition of the Rapid City Journal carried an editorial about the Northern Agri-Fuels Research & Development Corp. I ask that, for the interest of my colleagues, that article, entitled "Wheat Alcohol Researchers Have Done Their Homework," be printed in the RECORD.

WHEAT ALCOHOL RESEARCHERS HAVE DONE THEIR HOMEWORK

It makes sense to try to use a surplus of one commodity to alleviate a shortage of another commodity.

And that's the reasoning behind a proposal to build a plant in Rapid City which would convert wheat to alcohol for use in gasoline.

There's nothing new about making alcohol out of grain, but what is new is the technology needed for the process, especially on the scale envisioned by its developers.

That's why the farmers and ranchers investigating the possibilities of establishing such a plant here are to be commended.

Rather than embracing without reservations any plan which provides a new use for wheat, the members of Northern Agri-Fuels Research & Development Corp. of Rapid City are doing their research in a thorough and orderly fashion.

Questions are being asked regarding site selection, costs, availability of raw materials, transportation, power sources, and the marketing of the finished product.

Even the possibility of federal financing of the more than $16 million plant proposed by Cyro Systems Inc. of Greenwich, Conn., has now been undertaken.

The No. 1 question, of course, is whether the plant could produce alcohol at a price competitive with gasoline.

And if it could, the benefits are obvious.

Grain, and the alcohol produced from it, are renewable resources, unlike gasoline. And any new source of fuel would lessen our dependence upon high-priced imported oil.

Then, grain has proven to be such a renewable resource that U.S. farmers worry as much about crop surpluses as crop failures. Finding another use for that surplus grain would help farm income and decrease the need for huge grain storage facilities.

It's too early to know if a wheat-to-alcohol plant is feasible in Rapid City. But the idea is worth pursuing.

And with the attention to detail being paid in the proposal's early stages, the eventual decision to build a plant or abandon the idea will have been made from a sound basis of research.●

## THE 20TH ANNIVERSARY OF NASA

● Mr. HAYAKAWA. Mr. President, on Sunday, October 1, our Nation observed the 20th anniversary of the National Aeronautical and Space Administration. It is fitting that we pause to salute the many and varied accomplishments of the men and women who represent that Agency. In its infant years NASA was faced with the tremendous challenge of landing the first human on the Moon. With great courage and determination that goal was accomplished on July 20, 1969.

It is important to note that many advancements in communications, medicine, weather, and transportation, to mention only a few, are a result of NASA programs. However, as we reflect upon these accomplishments we should not be lulled into inactivity, but invigorated by new challenges to seek new frontiers. The United States needs to develop a space policy which would provide the direction to enable the United States to maintain its leadership in space.

"Civilization In Space" may well be our new frontier. My good friend and colleague, Senator HARRISON SCHMITT recently discussed this new challenge in a speech given at the annual conference of the Institute of Electrical and Electronic Engineers (IEEE). To the Senator from New Mexico I extend a heartfelt thanks and congratulations for his participation December 7, 1972, in Apollo 17, the final mission in the Apollo program.

Mr. President, I ask that the text of Senator SCHMITT's remarks to the IEEE be printed in the RECORD. The Senator has defined the challenges of the future and is offering a space policy to assist us in attaining those goals.

The speech follows:

CIVILIZATION IN SPACE: THE CHRONICLES PLAN

(By Senator HARRISON SCHMITT)

The Carter Administration's policies for space are a disaster. Rather than exerting the leadership that the American people and the world expect, Carter has continued and appears on the verge of accelerating the policies of retrenchment begun by Nixon.

As the Soviets steadily move their civilization into space, we merely talk of gradually building a worldwide satellite information system.

As the rest of the industrialized world run technological and marketing circles around us and the dollar steadily weakens, we further close our principal faucet of innovation in technology and productivity, namely, new activity in space.

As the extreme danger of our dependence on external sources of fossil fuels increases, we stagnate in the development of alternative conservation, production and conversion energy technologies, most of which have their roots in aerospace research and development.

Most critically, when there are younger generations of Americans chomping at the bit to move our civilization of freedom back to the frontier of space, we say to them "wait; one percent of our budget or one fifth of one percent of our GNP is too much for such childish dreams." Hogwash!

Ladies and gentlemen, this continuation of a no-vision space policy, which in reality is no policy at all, is rapidly putting this great nation and freedom in grave danger; danger of technological domination, then economic domination, then military domination, then political domination.

The hope of the free world's ability to prevent long-term Soviet dominance of the planet Earth is the technology of space. From the monitoring of compliance with international arms control agreements, to the defense against military space systems, to the control of our own defense systems, the preservation of our civilization of freedom on Earth is increasingly dependent on our expansion of activities in space.

This country, and Americans, need to flex their muscles and their motivation against all the frontiers of human endeavor, against both the risks and the benefits of those frontiers.

If we were to imagine a space policy that would carry this country and the civilization of freedom we lead into space and into the 21st Century, upon what factors should such a policy rest?

Let me suggest the following essential criteria:

1. The policy must present a sense of direction and continuity for all present and future generations who must implement the policy.

2. The policy must have flexibility that can take advantage of new science and technology as well as adapt to rapidly changing goals which events may dictate.

3. The policy must have clearly identifiable significance to the direct or indirect solutions of the major terrestrial problems of hunger, disease, unemployment, and ignorance.

4. The policy must integrate budgetary requirements between the various elements of the policy, and between the governmental and private sectors, so that the demands on the taxpayer are both reasonable and consistent from year to year.

Although the over-all space policy I have been considering contains long-term and significant activity in aeronautics, the discussion of the details of such programs is beyond the scope of today's remarks. It is important to note, however, that our efforts must be expanded in basic aeronautical research for general, commercial, lighter-than-air, hydrogen-fueled, supersonic and new aviation concepts. The Administration's head is in the sand on these issues as much as on any other.

The space policy that I am developing matches the real world of science and engineering with the perspective of the younger generations who must give it life. My activities with young Americans from five to twenty-five have convinced me that dreams of adventure on the Moon, on Mars and throughout space have become a principal motivating factor in their lives.

This space policy for our civilization covers three decades of activity, but also has the clear implications of indefinite continuity.

The decade of the 80's, a World Information decade, should have programs aimed at permanent, eventually self-financing, services for worldwide communications, weather and ocean forecasting, earth resources discovery or monitoring, societal services, and prediction of natural events of disastrous human consequences or broad scale economic impact.

A World Information Decade is consistent with, although much more aggressive and far reaching than the rumblings from the Carter Administration about their space policy for the '80's. Of particular interest is the capability such a decade will provide in our assistance to those developing countries of the world who wish to move with us as free nations into the technological 21st Century. The benefits of the high technology of space will be available to them without the need to invest alone in its creation.

The decade of the '90's, an Orbital Civilization decade, should emphasize the progressive creation of permanent facilities in near-Earth space. Such facilities will utilize and augment this unique research, service and manufacturing environment. The weightlessness, the vacuum, the unique view of the Earth, sun and stars provide unparalleled opportunities for research, education, space power production, manufacturing, health care, Earth power generation and recreational activities.

As with a World Information System, the management of the development of an Orbital Civilization should be rapidly assumed by largely non-governmental groups. In most

cases, the facilities will be economically self-sustaining except for continuing federal involvement in high-risk improvements in technology.

In the first decade of the 21st Century, a space policy for our civilization should reach major culmination of excitement with the initiation of a second Solar System Exploration decade. This is the decade about which most of the very young have their dreams. Bases and settlements on the Moon, missions of exploration to Mars and Venus, and the beginnings of the establishment of a Martian settlement, all are the stuff these dreams are made of. The parents of the first Martians are looking over our shoulder as they work their way through elementary school, high school and college.

In order to sustain the technological and scientific requirements for these three decades of space activity, a significant level of basic research must be maintained, and development programs must be phased in to support the major programmatic efforts.

Of particular significance are the continued development of basic transportation systems, units and structures for space facilities, heavy capacity boosters, deep space boosters and new power and communication systems; particularly those utilizing lasar technology.

The estimated annual costs in 1978 dollars, of the development, research and mission programs, when properly phased, suggest that a sustained level of $15 billion annually would eventually be required to establish the basis for an Earth-supported space civilization. The build up to this level would be from about $5 billion in 1980 to about $10 billion in 1990 to about $15 billion in 1995. This final level would include an estimated federal work force of about 75,000 and a directly supported industrial force of about 10 times that figure.

The economic and employment impact on commercial and other non-governmental activities during this period have not yet been estimated. However, a major design philosophy behind this policy is to undertake largely those activities in the World Information and Orbital Civilization decades which would eventually sustain themselves without federal support. It is also assumed that the settlement activities on the Moon, and eventually on Mars, will be in part, if not largely, supported by commercial interests and will be self-sufficient after a decade or less.

For two days in August of 1975, at a unique Caltech conference of Apollo Astronauts, managers and scientists, the past and future of space exploration was debated by those who had given us Mankind's first decade of Solar System exploration. The heady excitement and rivalries of the 1960's were far enough back to soften judgments; the possibilities of the future were far enough away from our generation to lend objectivity. After two days of the most stimulating discussions of our lives, we gradually found ourselves in unanimous agreement on one major conclusion: civilization is moving inexorably into space. The only question left unanswered is whose civilization will dominate that movement and thus dominate the future of mankind. Will it be the civilization of fear, or the civilization of freedom?

By once again doing great things at great risk of failure, but with characteristic confidence in success and their civilization of freedom, Americans led the first wave of activities in space. Now we have fallen behind, not in technology, but in governmental will.

What does it take for Americans to do great things; to go to the Moon, to win wars, to dig canals between oceans, to build a railroad across a continent? In independent thought about this question, Neil Armstrong and I concluded that it takes a coincidence of four conditions or, in Neil's view, the simultaneous peaking of four of the many cycles of American life.

First, a base of technology must exist from which the thing to be done can be done.

Second, a period of national uneasiness about America's place in the scheme of human activities must exist.

Third, some catalytic event must occur that focuses the national attention on the direction to proceed.

Finally, an articulate and wise leader must sense these first three conditions and put forth with words and action the great thing to be accomplished.

The motivation of young Americans to do what needs to be done flows from such a coincidence of conditions.

What of our present situation with respect to doing great new things at the space frontier?

It does not appear that the articulate and wise leader is yet visible.

The catalytic event is unpredictable except that if we do not get moving, that event may come too late for us to catch up.

The period of uneasiness is upon us as a sign that we have become too introspective, too self-centered for the good of America.

The technology base exists for our World Information decade of the '80's. The technology base is being created for our Orbital Civilization decade of the '90's, but it is being created much too slowly. The technology base is wholly inadequate, but accessible, for initiating our second Solar System Exporation decade when we begin the 21st Century.

Thus, the challenge for a space policy that will sustain the movement of the civilization of freedom into space is to create the technology base by which future leadership can move in directions dictated by events. The Tom Jeffersons, the Teddy Roosevelts and the John Kennedys will appear. We must begin to create the tools of leadership which they and their young frontiermen will require to lead us onward and outward.●

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## PRESIDENT COMMENDED FOR VETO OF PUBLIC WORKS APPROPRIATIONS BILL

● Mr. NELSON. Mr. President, for the first time in almost 30 years a President has showed national leadership and courage by vetoing a public works appropriations bill. This afternoon's vote in the House of Representatives sustaining the President's veto is a major victory for common sense and the American taxpayer. One hundred ninety members have agreed with the President to bring the long history of pork-barrel election politics to an end.

The public works appropriations bill is an enormously expensive measure. The total cost of this legislation exceeds $10 billion. Sixty percent of the funding goes to the Department of Energy. However, over 32 percent is specifically earmarked for water projects and water resource development activities. The President in his October 5 veto message carefully states that he does not object to the energy funding portion of the bill. The President is rightly concerned about the wasteful and inefficient spending for water projects. Twenty-seven projects opposed by the President costing $1.2 billion are contained in this legislation. Moreover, six projects stopped last year are restarted by this bill, at an additional Federal cost of $600 million. In my judgment, each and everyone of these projects, both the new starts and the six resurrected projects, fail to meet even minimal economic criteria. Furthermore, many of the projects have severe environmental problems.

President Carter deserves the commendation, support and thanks of every American taxpayer for his courageous leadership on this issue. This was a difficult fight. No one enjoys a battle between the President and the Congress; however, someone has to take the lead on our war against inflation. I am pleased to join the President in this effort.

There are a number of practical reasons why the President is correct for returning this bill to the Senate without his signature:

First, the bill is $1.8 billion over a fully funded budget.

Second, the bill requires the President to hire an additional 2,300 Federal bureaucrats for the Corps of Engineers and Bureau of Reclamation whether they are needed or not at an annual estimated cost of more than $57.5 million.

Third, six water projects stopped last year are funded again by this bill adding $580 to $600 million to the cost of this legislation.

Fourth, 27 new construction starts opposed by the administration are funded by this bill. Eleven of the 27 have not yet met preconstruction legal or contractual requirements. Congressional authorization does not exist for another project. Every one of the new starts have benefit cost ratios calculated using unrealistic discount rates. In my view, if these projects were evaluated at either the opportunity cost of capital, the interest rate business and industry must pay when borrowing large amounts of money, or at the Government's long-term borrowing rate, about 7 percent, not one of these projects would be a sound economic investment.

Fifth, the bill abolishes the Water Resource Council, the multiagency planning and coordinating body that has been charged by the President to develop new guidelines for water policy management. By deleting its $1.3 million operating budget the Congress has said, "If you cannot kill the policy on its merits, then we will kill the organization that will formulate the policy."

However, there is one fundamental question of principle that overshadows the individual importance of any of these practical considerations, the question of developing an economically sound and environmentally compatible water resource development policy. The question put to the Senate in the form of this veto is whether we are going to build water projects that are based on current economic principles and evaluations and that are compatible with the Nation's environmental improvement programs or are we going to continue to resolve today's and tomorrow's problems with the same old answers that we have been using for the past 40 years, answers that are neither cost effective nor environmentally acceptable any longer?

Are we going to continue to rely solely on answers that are highly capital intensive, answers that produce relatively few jobs, answers that cost the Nation a great deal but benefit a select few, answers that needlessly destroy the environment, answers that often ignore

cheaper and more ecologically acceptable alternatives or are we going to establish a new approach.

Over 32 percent of H.R. 12928's $10.1 billion price falls into the water resource development category. This bill was vetoed because it continues outdated policies. It contains bad economics and adverse ecological impacts—the same old answers to the same old problems.

All six restarted projects have benefit-cost ratios below 1.5 to 1. In fact, two of the projects have b/c ratios below unity and all these benefit cost tests are calculated at discount rates of 3¼ percent and 3⅛ percent. Who are we fooling? Who can borrow money at that rate? Not I. Not the chairman of the committee. Not even the Federal Government. Uncle Sam loses money every time he spends money on these projects since the Federal Government must borrow money at least at 7 percent over a 15-year period to pay for these projects.

Of the 27 new starts, 13 projects have discount rates of 3.5 percent or less. Twenty-one projects have b/c ratios of less than 2. to 1. Two projects do not even have the benefits and costs calculated. When is the Congress going to give the average taxpayer a chance to invest in something that makes economic sense in today's market?

TEARS AND TURMOIL

Opponents of the President's veto have created a strawman out of the tears, fears and turmoil of people who have flooding problems, water problems, and recreational needs. They have led the public to believe that if the veto is not overridden Federal relief will not be available. Nothing is further from the truth.

These are the same tired arguments that have been made in water resource development for over 40 years. We must provide relief in flood areas. We must provide water supplies to the West. But the Federal action must be done in the most cost-effective environmentally compatible manner possible. We need new solutions to today's and tomorrow's problems, and this administration is moving in the right direction. For the first time in 4 years a President has recommended new construction starts. The administration's 26 new projects will cost over $640 million. In addition, the President strongly supports continued work on 263 water projects, projects that have a total cost of almost $35 billion. These projects provide new approaches to old problems.

THE KICKAPOO DAM

Let me share with the Senate one example—the Kickapoo River Dam project from Wisconsin. To make a long 18-year history short—a $12 million, 800-acre dam and lake has grown to a $56 million, 9,500 acre project. The dam would have created an 1,800-acre lake that would have violated both Federal and State water quality laws. The Government has invested over $15 million, mostly in land and highway relocations. The Kickapoo Dam was on the President's first hit list. He opposed this project because the benefit cost ratio was only 1.1 to 1 using a 3¼-percent discount rate. As a consequence of building the dam, a 1,800-acre artificial lake would have been created whose water quality would have been so bad that one expert called it "equal to a sewage lagoon."

Several years ago the finance division of the Wisconsin Department of Revenue estimated the value of the land and holdings in the floodway that was going to be protected by the dam. The department of revenue estimated that you could buy up everything and move everyone to higher ground for just about half of the price of the dam.

Well, that seemed like a pretty good idea except that the Corps of Engineers builds dams and was not enthusiastic about alternatives. "We are just following orders" the corps said. The district engineer still wants to create an ecological disaster—to pour $55 million into a relic of a bygone age.

By taking an innovative approach the Federal Government could spend less money and provide a better service for a larger number of people. Under the leadership of the White House, the Federal Government is now working with the State and local communities to develop and implement an alternative to the dam that meets economic and environmental safeguards.

At Prairie du Chien, Wis., one of the 26 new starts supported by the President, another innovative idea is being implemented. Instead of building levees, part of the business district is being moved to higher ground. Similar efforts are underway at Soldiers Grove, Wis.—a community located on the Kickapoo, south of the proposed dam.

Obviously, relocation-evacuation is not a panacea to all problems but it is a viable, cost-effective proven alternative. The President knows options are available that work. The veto says "let us move ahead."

INFLATION

The six restarted projects will cost at least $580 to $600 million to complete; the 27 new starts another $1.2 billion. At a time when inflation is once again nearing double-digit levels, is it too much to ask that the Congress initiate construction for only economically sound projects? I think not.

Water projects are a long-term commitment. They often run, 10, 15, 20 years. Once started, they are almost impossible to stop. Once the dollars begin to flow, the trickle turns into a stream, the stream into a river, and the river into a flood, a flood of tax dollars out of the Treasury and into some old, antiquated plan that was designed for another period of our history.

SUMMATION

The President has set an example every taxpayer can be proud of. The House in sustaining this veto has joined President Carter in a large step toward controlled Federal spending, eliminating waste in the Federal Government, and putting a damper on the fires of inflation. I hope the sustaining of this veto will put an end to monetary waste and ecological destruction through the haphazard building of water projects. As Members of the Congress we have a heavy responsibility to insure that the Federal water resource investment provides the greatest amount of aid to the largest number of people, with as little adverse impact on the environment as possible in the most cost-effective manner.

It is regrettable that the President had to use his veto but it seems to me that Congress did not give him much of a choice. Someone has to speak for the Nation and the President is the only elected official who has the entire Nation as constituents. Someone has to have the courage to try to improve a process that has cried out for reform. Jimmy Carter has taken on a tough battle, a battle that on the merits he deserves to win, a battle other Presidents have chosen to avoid.

We have dammed and leveed and channelized whole river systems. Tens of billions are invested. Tens of billions will continue to be invested in this Nation's abundant water resources; however, the investments must be made in the national interest, not in the political self-interest of Members of Congress. The investment must be made carefully and prudently.

We must have a more rational process and the sustaining of the veto has set a new course for us. We have begun to instill fiscal integrity and sound financial planning to an annual appropriation of approximately $3.2 billion.

I ask that a table listing the water projects opposed by the administration, the project's discount rates, and the project's benefit cost ratios be printed in the RECORD.

The table follows:

TWENTY-SEVEN NEW STARTS OPPOSED BY ADMINISTRATION

Project, discount rate, and BC ratio.

Arcadia Lake, 6⅝ percent, 1.14 to 1.

Big Pine Lake, 3¼ percent, 1.3 to 1.

Big Sandy River, not authorized.

Burlington Dam, 5⅛ percent, 1.4 to 1.

Brazos Island Harbor, 2⅞ percent, 1.3 to 1.

Cattaraugus Harbor, 3¼ percent, 1.6 to 1.

Cedar River Harbor, 3¼ percent, 1.5 to 1.

Clinton Small Boat Harbor, 6⅝ percent, 3.1 to 1.

Dunkirk Harbor, 6⅝ percent, 1.5 to 1.

Elizabeth River, Southern Branch, 6⅝ percent, 2.0 to 1.

Ellicott Creek, 6⅝ percent, 1.6 to 1.

Kaskaskia Island Drainage and Levee District, 3¼ percent, 1.4 to 1.

Little River Inlet, 6⅝ percent, 1.3 to 1.

McGee Creek Drainage and Levee District, 3¼ percent, 1.3 to 1.

Mississippi River, 3¼ percent, 1.9 to 1.

Missouri River, 2⅕ percent, 3.4 to 1.

Mouth of Colorado River, 3¼ percent, 1.4 to 1.

Norfolk Lake-Highway Bridge, not available.

Talkeetna, 6⅝ percent, 2.1 to 1.

Three Rivers, 6⅝ percent, 1.16 to 1.

Vermilion Lock, 6⅝ percent, 1.13 to 1.

Wild Rice River, 3¼ percent, 3.2 to 1.

Animas-La Plata, 3¼ percent, 1.2 to 1.

McGee Creek, 6¼ percent, 1.2 to 1.

San Luis Unit, Closed Basin Division, 4⅞ percent, 1.4 to 1.

Uintah Unit, Central Utah Project, 3¼ percent, 1.1 to 1.

Upalco Unit, Central Utah Project, 3¼ percent, 1.2 to 1.

RESTARTED PROJECTS

Bayou Bodcau and Tributaries, 3¼ percent, 1.3 to 1.

Lukfata Lake, 3¼ percent, 1.3 to 1.

Yatesville Lake, 3¼ percent, 1.2 to 1.

Fruitland Mesa, 3⅛ percent, 0.5 to 1.

Narrows Unit, 3¼ percent, 1.4 to 1.

Savery-Pot Hook, 3⅛ percent, 0.7 to 1.●

## U.S. POLICY TOWARD NICARAGUA

● Mr. KENNEDY. Mr. President, last month I joined with the senior Senator from Idaho (Mr. CHURCH) in sponsoring an amendment to terminate all but humanitarian assistance to Nicaragua. This followed an amendment which we had sponsored in August 1977, to terminate all military support and transactions with that country.

Both of these actions are even more justified in the wake of massive repression and violations of human rights in Nicaragua in the past few weeks. In a wave of violence, the Nicaraguan National Guard has suppressed aimed resistance to the Somoza regime, at least for the time being. But it has also killed thousands of innocent civilians—including murders of women and children—and created many more thousand refugees. This is a tragedy which all Americans must share deeply, not only because of its proportions, but because of the historic role of the United States in bringing the Somozas to power and in training the National Guard of Nicaragua.

I welcome the fact that the administration has come to agree with us that there should be no further military commitments to the Somoza regime. The next logical step should be to withdraw the four-man American military mission in Nicaragua, which links the United States to the repressive forces of the National Guard.

Although congressional conferees did not accept the Senate-adopted amendment against economic assistance, the administration itself should end all but humanitarian disbursements if there is failure to move peacefully to a democratic solution in Nicaragua. Success or failure will soon become apparent in connection with the U.S.-led efforts to mediate between the Somoza government and the Broad Opposition Front of all democratic forces in that nation. Clearly, the United States must continue to make abundantly clear that its commitment is not to President Somoza and his continued repressive rule, but to democracy and human rights in Nicaragua as in all of Latin America.

Last month, UAW president, Douglas Fraser, and Violeta B. deChamorro, the widow of the assassinated Nicaraguan opposition leader, and publisher, Pedro Joaquin Chamorro, appealed to President Carter to end all U.S. support for President Somoza and lend its weight to democratic alternatives in Nicaragua. I submit the text of their appeals for the RECORD at the conclusion of my remarks.

Also last month, the State Department sent letters to me and to the Council on Hemispheric Affairs, describing present administration policy in the light of the civil war in Nicaragua and our moves to end assistance to the Somoza government. I submit these letters also at the end of my remarks. While I welcome the administration's commitment to human rights and "peaceful and democratic order in Nicaragua," I believe it must move much further to help the people of that strife-torn country achieve not only a peaceful, but a democratic and prosperous future. The history of American involvement over the past half-century demands that we do no less.

The material follows:

[Text of Violeta B. de Chamorro letter to President Carter]

HOUSTON, TEX.,
*September 16, 1978.*

DEAR MR. PRESIDENT: As the widow of Pedro Joaquin Chamorro, and as a very concerned Nicaraguan, I appeal to your highest sentiments when I denounce the escalation of repression by the corrupt regime of Anastasio Somoza against the innocent people of Nicaragua. The continuation of diplomatic and military support by your government for Somoza will only prolong the situation of merciless assassinations, press censorship, martial law, ongoing bankruptcy and progressive deterioration of the chances for a democratic solution to our problems. The immediate resignation of Somoza and the establishment of a national government with wide popular support, as postulated by the Frente Amplio de Oposicion (FAO), is the only solution to the ongoing crisis.

VIOLETA B. DE CHAMORRO.

[Text of Douglas A. Fraser letter to President Carter]

WASHINGTON, D.C.,
*September 19, 1978.*

DEAR MR. PRESIDENT: For several weeks now, we have watched as innocent human beings are slaughtered and brutalized in Nicaragua. Their only crime has been to dare to overthrow a forty year-old dictatorship which has plundered and profited from their misery.

As workers, as human beings, the 1.5 million members of the UAW appeal to President Carter not to let our government stand mute to this tragedy.

It is true that the United States cannot—and should not—intervene in uprisings in every area of the world. But we do believe that there are cases in which our government has a special responsibility. Nicaragua is one such case.

Nicaraguan dictator General Anastasio Somoza spent ten years at military academies in the United States learning the very skills with which he now subjugates his people. His abuse of US foreign assistance has allowed him to buy up and control for his own profit almost every sector of the Nicaraguan economy. When his people complained, he used US military aid to keep them in tow.

The key to the uprisings in Nicaragua that we bear witness to today, is that almost every sector of the country—workers and businessmen, peasants, students and clergy, have joined together to overthrow this universally hated dictator. But just when they came close to defeating him in face-to-face confrontation, he bombed them from the air, setting his country in ruins rather than ceding to its rightful owners.

We are horrified by these events. We would like to believe that such brutality, and injustice, and the people that perpetrate them, are throwbacks to a bygone era. But we know they are not.

The United States, acting alone, cannot end such atrocities throughout the world. But acting in consort with our friends in Latin America, we must demonstrate that here, at our doorstep, in a country that we have aided and supported in the past—that here, at the very least, our human rights policy means action, as well as words.

We urgently request President Carter to publicly call on President Somoza to step down. We urge the President to call on our friends in Latin America who have themselves been upholding a human rights policy—such as Venezuela, Costa Rica and Jamaica—to join us in such a call, and to aid Nicaraguan opposition leaders in organizing a transitional government that could prepare the country for elections at a future date.

We also urge the United States to cooperate with the other Latin American nations in providing economic assistance to the transitional government—perhaps through a consortium of international donor agencies and countries under the auspices of the Inter-American Development Bank, World Bank or UN development program.

The ugly events we witness in Nicaragua will not be erased by our closing our eyes to them.

We urge the Administration in the name of human dignity and political responsibility to begin to set a precedent that other nations must look to—and perhaps someday follow.

DOUGLAS A. FRASER.

DEPARTMENT OF STATE,
*Washington, D.C., September 22, 1978.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate*

DEAR SENATOR KENNEDY: You have asked for information regarding our economic and military assistance policies toward Nicaragua in light of the current Senate Appropriations Committee debate on foreign assistance.

Brief summaries of recent and planned economic and military assistance programs for Nicaragua are enclosed. Let me describe to you some of our current policy considerations.

Because of our concern about the Government of Nicaragua's human rights record, we have made no new commitments to supply military equipment or material in the last 12 months, and we have not approved any licenses for the commercial export of any Munitions List item to Nicaragua since July. We have recently halted all military shipments, government and commercial, that might contribute to hostilities.

U.S. economic assistance to Nicaragua is provided to improve the productivity and welfare of the poor majority and is not a sign of support for the government. We provide economic assistance for activities which address the basic human needs of the poor and which permit them to participate in the socio-economic development of the country.

The United States Government is deeply concerned with the violent situation in Nicaragua. We wish to maintain the requested funds for economic assistance in the appropriation bill so that they can be available should the conditions warrant. Because of our awareness of the political sensitivity of any U.S. assistance to Nicaragua, if the requested funds are appropriated all ongoing and new activities will be kept under continuous review.

In its consideration of foreign assistance programs for Nicaragua the Department urges the Senate to preserve the flexibility of the President to determine the mix and level of assistance which will best serve the United States national interest. We believe such flexibility is essential in providing the necessary tools to contribute constructively to peaceful and democratic order in Nicaragua.

Sincerely,

DOUGLAS J. BENNET, Jr.,
*Assistant Secretary for Congressional Relations.*

SUMMARY OF RECENT AND PLANNING ECONOMIC AND MILITARY ASSISTANCE TO NICARAGUA

ECONOMIC ASSISTANCE

The FY 77 A.I.D. program amounted to $1.4 million in grants supporting continuing projects in agriculture, health and population. Final consideration of loan projects for Rural Education Development ($7.5 million) and for Nutrition Improvement ($3.0 million) was deferred to FY 78 pending further assessment of the human rights situation in Nicaragua. The FY 78 program consists of the deferred $10.5 million plus approximately $2.3 million for on-going and new project costs. For FY 79 $5.46 million was requested in the FY 79 Submission to the

Congress. This assistance would continue support for the integrated rural development strategy in Nicaragua and complement prior years efforts to improve the quality of life of the poor population.

MILITARY ASSISTANCE

The FY 77 Military Assistance Program consisted of $2.5 million in FMS credits and $597,000 for military training (IMET). Although we have signed the FMS Agreement with the GON, none of the funds have been obligated and, as was stated at the time of signing any Nicaraguan request to use this credit will be reviewed on a case by case basis in light of the prevailing human rights situation at the time. The funds for IMET have been expended.

For FY 78, $2.5 million was appropriated for FMS credits, but has been reallocated by the Department to other countries and no agreement will be signed with the GON. $400,000 was appropriated and has been obligated for training.

In FY 79 no funds for FMS were requested. $150,000 for training was contained in the President's budget request. Congress has deleted that amount and the Executive is not seeking its restoration.

In discussions to date in the FY 80 budget, the Department has requested neither FMS nor IMET funds for Nicaragua.

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DEPARTMENT OF STATE,
*Washington, D.C., September 25, 1978.*

Mr. LAURENCE R. BIRNS,
*Director, Council on Hemispheric Affairs, Washington, D.C.*

DEAR MR. BIRNS: On behalf of President Carter, I am replying to your letter concerning the current situation in Nicaragua, especially regarding U.S. assistance to that country.

The Department of State signed the last Military Sales Credit Agreement with the Government of Nicaragua in September 1977, which was for fiscal year 1977, providing a $2.5 million line of credit for the purchase of U.S. military equipment. We publicly stated at that time that all requests for credit submitted by the Government of Nicaragua under this agreement would be reviewed on a case-by-case basis in light of the prevailing human rights situation at the time. The Department of State has not approved any such requests under this agreement; however, a shipment of hospital equipment to a National Guard hospital that also serves civilians was approved in May 1978 using credits remaining from the fiscal year 1976 appropriations. The U.S. Congress has authorized an additional $2.5 million line of credit for FY 78. The Department of State, however, has no plans to sign an agreement with the Government of Nicaragua for the use of these credits. There is no provision for military sales credits for Nicaragua in the FY 79 Security Assistance Bill.

We remain concerned about the human rights situation in Nicaragua and have brought these concerns to bear on our decisions regarding military and economic assistance for this country. Our criteria in reviewing the status of our economic assistance programs were and are the humanitarian and developmental impact those programs would have, particularly their effect on the basic human needs of the poor. We believe that our economic assistance programs meet these criteria, that they demonstrably reach the poor through such necessities as housing, potable water, health care, rural education facilities, and nutrition, and that they are worth supporting. They are not intended to imply political support for any governing political party or individual.

Through direct diplomatic representations, through public statements, and through our position in the various international financial lending institutions of supporting only loans or grants that address the basic needs of the poor, we have continued to emphasize to the Government of Nicaragua the importance we attach to improvements in the human rights situation in that country.

We will continue to observe closely the status of human rights in Nicaragua, as we do in all countries, and will use every appropriate occasion to express our views regarding this matter to the Government of Nicaragua. The increased level of violence in that country is of great concern, and within our policy of non-intervention in the domestic politics of other countries, we are urging all sides to reject violence and to seek a peaceful and democratic solution to that nation's problems.

Sincerely,

HODDING CARTER III,
*Assistant Secretary for Public Affairs.*●

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## CHARLOTTE, N.C.—AN URBAN POLICY MODEL

● Mr. MORGAN. Mr. President, at the end of summer, North Carolina National Bank in Charlotte announced a creative new program for the revitalization of Charlotte's historic, but deteriorating inner city fourth ward. The program has been hailed as a dynamic new approach to urban housing problems, one which could profitably serve as a model for the Nation.

Under a ruling earlier this year by the Office of the Comptroller of the Currency, North Carolina National Bank was permitted to create a community development corporation as a nonprofit, public-interest subsidiary to promote inner-city housing and related commercial facilities, the first corporation of its kind authorized for a national bank.

The corporation's initial efforts are concentrated on the city's fourth ward, a 78-acre, 28-block area adjacent to downtown dating from the mid-19th century. A townhouse development is the centerpiece of the corporation's effort to attract people to downtown urban living, thus providing a population base to support the range of urban amenities, such as shops, restaurants, theaters, and art centers which help attract further investment and help make a city truly "livable."

The program is an exciting combination of city incentives, via special zoning and low-interest loans, public enthusiasm and private investment.

Comptroller John Heimann referred to this productive partnership between corporation and community as "the kind of cooperation President Carter is seeking in his announcement of a national urban policy."

Mr. Heimann said:

If the problems of the cities are to be solved, it will be through government's encouragement of private efforts such as that being undertaken in Charlotte, N.C.

He went on to say in remarks at the announcement ceremony:

I hope the corporation's success will serve as a model for other banks in other communities.

It is also my firm hope that our experience in North Carolina can help guide others around the country. Surely, only by Government and industry working together can we fully tap the creative energy of this country and successfully come to grips with the problems of our Nation's cities.

Mr. President, an article from the Preservation News, a publication of the National Trust for Historic Preservation, succinctly tells the story of this dramatic new partnership. I ask that it be printed in the RECORD.

The article follows:

TURNING THE TABLES ON CHARLOTTE'S BLIGHT

(By Philip Hayward)

Charlotte, N.C., banks are pioneering in promoting urban development. Their unique plan is working so far, and they hope other cities will follow suit.

In the interest of turning the tables on urban decay, the North Carolina National Bank (NCNB) is assisting Charlotte's Fourth Ward with an ambitious 78-acre revitalization program. Banking officials say it is the first, non-federal program of its kind in the country and furthermore reflects the trend in halting urban flight.

With the approval of the U.S. Comptroller of the Currency, NCNB formed a nonprofit subsidiary, NCNB Community Development Corporation. The subsidiary was designed to acquire and renovate or develop property in the Fourth Ward, and possibly other inner city areas, and then lease, manage or sell the properties.

Hugh L. McColl, Jr., president of NCNB, explained that one of the prime objectives of the public service corporation is "to promote additional private investment and development in the Fourth Ward that is consistent with the city's urban renewal and historic district plans."

Under terms set down by the comptroller, NCNB cannot make a direct profit from the venture.

Considered one of the busiest of the southern boom towns, practically every section of old Charlotte has been replaced with new construction. As a National Trust Advisor from North Carolina, Edward H. Clement, put it: The city finally woke up to its rapidly disappearing heritage. The few late-Victorian houses that remain may not be highly significant architecturally but they are all the people of Charlotte have left. In June Clement toured the Fourth Ward with Trust President James Biddle and Executive Vice President Douglas P. Wheeler.

MOVING IN

Through the NCNB subsidiary arrangement, the city sought not only to revitalize what was left of the Fourth Ward (50 percent vacant) but also to move approximately 10 houses of 1900–1910 vintage from other areas into the community.

Plans have been under way since the mid-1970s but until the entry of the NCNB in May 1976, the project lacked the clout and the appeal to move along at an efficient rate. With the largest banking firm in the Southeast now involved in the undertaking, redevelopment officials figured other developers would join as the plan proved itself. So far, the project is succeeding, Clement said.

Attorney Dennis Rash lives in the Fourth Ward and recently joined the bank as president of the NCNB Community Development Corporation.

SELF-TAILORED PLAN

He is enthusiastic for the project as a nonprofit, non-federal venture. By doing it this way, he said, the community is better able to tailor its own rehabilitation program.

Rash cites population projections as the core of the challenge facing the city and ultimately the project. He says 45,000 of Charlotte's current population of 340,000 work uptown. By 1977 this figure will jump to 97,000 as the city's population reaches 600,000.

"Right now we have a choice of a livable

city or just a big city," Rash said. "But the stakes are high—if the community thrives so does the bank."

Beyond altruism, this explains the bank's role in a nonprofit venture. NCNB is headquartered in the busiest section of the Charlotte commercial district adjacent to the Fourth Ward. Bank officials and other civil leaders see a healthy middle-class residential neighborhood as the anchor for growing prosperity downtown.

The Fourth Ward set the project in motion in early 1976 when it completed the partial restoration of Berryhill House. The Junior League of Charlotte and the Citizens for Preservation of Charlotte paid $40,000 for the Victorian house and with $12,000 did the partial restoration as an incentive for similar projects. They soon sold it for approximately $54,000 and used the proceeds to set up a preservation revolving fund in the Fourth Ward.

The NCNB subsidiary corporation began with $250,000. It may obtain up to $2 million more in the form of loans from NCNB and other banks for each project with a total limit of approximately $10 million for each investment.●

## A CONTINUING SUCCESS STORY FOR COLLINS RADIO

● Mr. CULVER. Mr. President, more than a year ago I told the Senate about an extraordinarily successful defense program—to provide the Air Force with new and improved tactical air navigation (TACAN) equipment. Today I would like to report on the latest developments in this landmark program.

The new TACAN sets—technically known as the AN/ARN 118—are being produced by Collins Radio of Cedar Rapids, Iowa, one of the world's leading suppliers of communications and navigation equipment. Approximately 5,000 have been delivered and another 6,000 are on order. Nearly all military aircraft are required to have some kind of TACAN on board to give pilots essential navigational information concerning the distance and direction to a known ground station.

Older technology systems were plagued by failures and unreliability on the average of every 50 to 100 hours of flight.

Collins Radio set out to build a much better TACAN and committed itself to a special warranty provision requiring the company to perform all necessary maintenance on malfunctioning equipment for a prescribed time period.

The results to date have exceeded everyone's expectations. In qualification tests, the Collins TACAN achieved a reliability of about 1,000 hours mean time between failure (MTBF), which was double the original specifications.

In field use, according to the most recently available data, the MTBF is more than 1,800 hours—or more than triple the requirement.

Mr. President, greater reliability means better readiness. Fewer failures mean improved combat effectiveness. We need these kinds of improvements, since U.S. military aircraft readiness rates are already low and are projected to decline still further.

As a member of the Senate Armed Services Committee who has long been concerned about our readiness posture. I welcome this dramatic improvement in equipment reliability. As Senator for Iowa, I am pleased that a company in my State has produced such superior equipment.

This story is all the more surprising because avionics systems usually suffer higher failure rates once in operational use. In the case of the Collins TACAN, however, reliability has continued to improve.

In a major article on the program, Aviation Week concluded:

The program demonstrates that the military services can obtain extremely good reliability from avionics equipment when the equipment has had the opportunity to achieve design maturity and is designed and produced by a supplier that has demonstrated its competency in the technology and will accept the potential risk of a reliability improvement warranty type contract.

Mr. President, I ask that the Aviation Week article on this successful program be printed in the RECORD.

The article follows:

AVIONICS—ARN-118 TACAN RELIABILITY TRIPLES GOAL

(By Philip J. Klass)

CEDAR RAPIDS, IOWA.—U.S. Air Force/Collins Avionics-developed AN/ARN-118 microtacan navigation set is demonstrating a field reliability that is more than three times the figure specified in the contract.

Unlike most airborne avionics equipment, where in-use reliability is significantly lower than that achieved during factory qualification tests, the ARN-118 is exhibiting an operational reliability that is almost twice the 1,000-hr. figure obtained in earlier qualification tests.

The most recently available data for the approximately 3,000 units now operational in the field show the reliability figure to be more than 1,800 hr. between failures. This is at least 10 times the reliability of older tacan sets that are being replaced with the ARN-118.

In recognition of the usually poorer reliability obtained in field use, the USAF contract with Collins specified that the operational reliability in the field for the 12-month period from Apr. 17, 1977, to Apr. 16, 1978, was to be 500 hr.

The field reliability figure was to increase to 800 hr. during the 24-month period from Apr. 17, 1979, to Apr. 16, 1981. The Collins hardware already has achieved more than twice this specified figure.

This outstanding performance explains why USAF recently exercised its third and final additional procurement option under the original contract, awarded to Collins on July 16, 1975.

The latest option increases the USAF buy to nearly 8,000 of the ARN-118 microtacans. Collins has sold another 3,000 units to the other military services and to overseas customers. Total Collins orders to date for the ARN-118 now exceed $100 million.

The Navy has encountered so many problems and delays with a new supplier of its older ARN-84 microtacan set, who underbid the original developer-supplier, Hoffman Electronics, that it has begun to switch to the ARN-118.

The Naval Air Systems Command recently purchased about 200 of the Collins McDonnell Douglas A-4M.

Also, McDonnell Douglas was so eager to use the ARN-118 on its new Navy F/A-18 that the company offered to substitute them for government-furnished ARN-84s on the first 20 aircraft at no increased cost to the government if the Navy would supply the Collins units for the balance of the F-18 production run. The Navy agreed to do so.

The ARN-118 was procured under a reliability improvement warranty type of contract, one of the first used by USAF's Electronic Systems Div.

Under this type of contract, all units removed from aircraft are returned to the manufacturer for necessary maintenance for a prescribed period of time (AW & ST) Dec. 8, 1975, p. 51).

This type of contract offers the customer several potential advantages over the more traditional in-house ("organic") maintenance and overhaul procedures:

Fixed-price operating cost. Because the contractor must quote a fixed price for performing whatever maintenance is required, the customer is better able to budget its future operating costs.

Reliability improvement. The contractor's financial commitment to perform all required maintenance at an established price provides strong incentive for the company to improve equipment reliability, so as to maximize its profit or minimize its loss.

*Better feedback.* Because all failed units are returned to the factory, design engineers can learn more quickly of design or component weaknesses and take corrective action. Furthermore, such fixes can be introduced without time-consuming engineering change proposal procedures and need for customer approval.

Under the terms of the USAF contract, Collins is to provide all maintenance and service on the first 1,000 microtacan sets for the first five years after delivery. The first production units were delivered in December, 1975.

Subsequent production units have a shorter warranty period, and all Collins-provided service will terminate on April 1, 1982, for all units regardless of when they were produced.

By then, the Air Force will either take over the maintenance function itself or will have negotiated a follow-on service contract.

For the initial quantity of 1,000 sets, Collins quoted a fixed price of $9,948 plus a maintenance cost of $680 per unit per year. Thus, on the early production units the annual maintenance cost was 7.2% of unit price.

The price of the nearly 2,500 additional units in each of the next two production options drops modestly from $9,948 to $8,504, while the annual maintenance cost figure declines substantially, from 7.2% to 4.12%.

The third and final production option, which begins roughly four years after the contract was awarded, incorporates modest price increases to reflect projected inflation.

At present, Collins has delivered approximately 5,000 of the ARN-118s, of which about 3,000 have been installed and are operational.

The most widely produced version of the ARN-118 is one that is used to replace older tacan sets. It consists of four elements: a basic transmitter-receiver unit; a cockpit control unit; a digital-to-analog adapter, and a shock-mount platform containing the necessary wiring and logic to make the package fully interchangeable with the older tacan sets without any change in airplane wiring.

Thus the 3,000 ARN-118s now in operational use represent a total of nearly 12,000 individual units. Of this total, approximately 900 units have been returned to Collins for repair, according to David L. Hannon, Collins reliability improvement warranty program manager.

Of this number, approximately 180 units were damaged by the user. Most of these were cockpit control units the window glass of which had been broken by being hit by the seat belt or oxygen hardware. The window became more vulnerable after Collins was asked to increase its original size to allow the control to be mounted farther from the pilots direct line of vision.

Collins performs the repair, but charges USAF or other customers for this service. Meanwhile, Collins has introduced a more rugged window into production.

Of the remaining 720 returned units, 140 were found to have no defect, corresponding to 19% of the total.

Analysis of the remaining 580 verified

contractor-responsible failures showed that 60% were in the transmiter-receiver, the most complex by far of the four elements. The analog-digital converter was next, with 25% of the total.

Each of the ARN-118 units has a small white plate on which the flight line maintenance personnel are required to write the installation date as well as the date of removal. Each unit also contains an elapsed-time indicator to show how many hours it has been operated since installation.

Based on these data from units returned for service, USAF and Collins determined the average operating time per day, and this figure then is used to project total ARN-118 population operating hours and overall failure rate, according to Hannon.

Current total operating time for the 3,000 ARN-18s in service is approximately 675,000 hr., according to Hannon.

The equipment has shown a steady increase in reliability since the initial operational test and evaluation when the ARN-118 exhibited a mean-time-between failure of approximately 500 hr.

But Hannon said that this reliability improvement trend may now be tapering off.

The Defense Dept.'s in-plant inspector is the final authority in determining whether a failed unit was damaged by the user and thus outside the warranty. If so, Collins makes the repair but charges the customer for this service.

Because the criteria for making such a determination were well defined in the contract, "We have had virtually no disagreements on this question," Hannon said.

One projected advantage of the reliability improvement warranty program has failed to materialize, but both Collins and the Air Force are quite happy that it has not.

This is the expected ability to spot hardware design and component deficiencies and thereby enable the contractor to take speedy corrective action.

With the exception of the cockpit control unit's window glass, which Collins has taken steps to strengthen, it has not been necessary to alter the basic ARN-118 design or to switch to different components, Hannon said.

This is because the component failures have been essentially random in nature.

Reliability engineers analyze the cause of every malfunction in each returned unit, and approximately 20-30% of the failed components are dissected for an autopsy to determine the basic cause of the problem. Hannon notes that some design and component changes were made early in the program as a result of experience gained from factory qualification and initial field tests.

Additionally, the ARN-118 is a fifth-generation tacan and a second-generation microtacan, so that the design has had the opportunity to mature. Collins earlier designed and produced for airline use a distance measuring equipment (DME), which served as a design proving ground for some techniques later used in the ARN-118.

Thus the record achieved by the ARN-118 cannot be explained solely in terms of the reliability improvement warranty type contract under which it was procured.

The program demonstrates that the military services can obtain extremely good reliability from avionics equipment when the equipment has had the opportunity to achieve design maturity and is designed and produced by a supplier that has demonstrated its competency in the technology and will accept the potential risk of a reliability improvement warranty type contract.●

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## NATIONAL SECURITY AND MILITARY APPLICATIONS PROGRAMS

● Mr. MARK O. HATFIELD. Mr. President, on Saturday, September 30, the Senate passed the fiscal year 1979 authorization bill for the national security and military applications programs of the Department of Energy. Unfortunately, I was unable to be here during the debate and vote on the bill. I only learned that it would be considered at that time Friday evening and I was already in Oregon and had longstanding commitments there. I would, however, like to take this opportunity to state my views with respect to the legislation and, in particular, the authorization for development of enhanced radiation weapons.

Included in this legislation are funds for the continued development of the neutron bomb. In its report on the bill, the Armed Services Committee states:

> Therefore, the Committee recommends that the enhanced radiation (ER) components for the W-70-3 Lance warhead and the W-79 eight-inch artillery projectile be procured and made ready for contingency deployment with funds authorized in this bill and on the same schedule as is contemplated for product on and deployment of the W-70-3 warhead and the W-79 projectile. Thus far, the Executive branch has announced plans to produce the W-70-3 warhead and W-79 projectile "leaving open the option of installing the enhanced radiation element." The Committee recommendation authorizes production of these elements which could be stockpiled in the United States and thus available for installation. This action would eliminate the several years delay that would result if production of these enhanced radiation components is not initiated this year.

Mr. President, as my colleagues are aware, I have serious misgivings about the development of enhanced radiation weapons. I believe that we have moved far too rapidly, with too little thought as to the ultimate consequences, to develop this weaponry. My fear is that these weapons will lower the nuclear threshold, blurring distinctions between conventional and nuclear warfare.

Last April 7, the President decided to forgo production of enhanced radiation weapons in order to encourage the Soviets to show restraint in arms and troop deployments. At the same time, he ordered that the production of new modernized versions of warheads with potential for ER conversion be initiated in such a way as to permit the installation of components which would convert those warheads into enhanced radiation weapons if the Soviets should fail to show meaningful restraint.

In order to implement this strategy, it is essential that there be a clear demarcation between modernization and the final installation of ER components. Such a demarcation would be consistent with the President's April 7 announcement and with the Byrd-Baker amendment to the fiscal year 1978 Public Works Appropriation Act.

Should the Senate version of the authorization bill be enacted, the President could use funds authorized by that act to proceed with production of ER components without installing them. To install the warheads would obviously be inconsistent with congressional policy established in the fiscal year 1978 appropriation bill and with the President's own stated desire to link production of these weapons to the nuclear arms race.

Last July 13, I wrote the President to obtain his views on an appropriate demarcation mechanism, so that any decision to actually deploy ER weapons would be an obvious one, providing clear incentives to the Soviets to make meaningful arms and troop concessions. My hope was to develop a sound policy, with administration support, which would bolster the strategy announced by the President last April 7.

Unfortunately, the administration has chosen not to reply to the substance of my letter. In the nearly 3 months since I sent it, I have been advised only that my letter had been referred to the Secretary of Defense.

Failure of the President and his administration to respond leads me to the conclusion that they have deliberately chosen not to do so prior to congressional action on legislation affecting enhanced radiation weapons. It leads me to wonder whether the President intends to revise his policy on this issue without any form of congressional participation and consultation. Less than 2 weeks ago, my staff was advised by the Department of Defense that a response would be forthcoming in a few days. But still, no word has arrived. It is of paramount importance that we here understand and establish what this year's authorization does and does not do with respect to enhanced radiation weapons. The bill does authorize funds for modernization of the delivery systems and actual production of the enhanced radiation components. It does not explicitly authorize funds for assembly of the modernized systems and ER components into a deliverable, functional weapon and it does not authorize funds for deployment into the delivery systems in the field. It is my strict interpretation of the legislative history of this weapon that the President has a legal obligation to return to Congress for funding of assembly of modernized delivery systems and enhanced radiation weapon components into a deliverable warhead and/or deployment of that warhead into the field. Any other interpretation of the authorization given this weapon by the bill passed on Saturday would be excessive and denigrate explicit congressional control over the authorization and appropriations process.

It is my belief, Mr. President, that the President must, as was specifically directed by Congress in the Byrd-Baker language of last year's bill, share with the Congress his views on an issue with such far-reaching ramifications. I also believe that he should develop his policies with respect to enhanced radiation weapons in a manner which will provide the American public the opportunity to help decide which way we are going. Such a course of providing clear notice of the administration's policy with respect to deployment of enhanced radiation weapons would be consistent with the President's own statements in the past. Let us hope that he has not changed his mind without giving the Congress and the American people an opportunity to share in the decision.

Mr. President, I genuinely hope that the Secretary of Defense will reply to my letter to the President soon. I ask

that my letter be printed in the RECORD.

The letter follows:

JULY 13, 1978.

The PRESIDENT,
*The White House,*
*Washington, D.C.*

DEAR MR. PRESIDENT: Last April 7, you made a difficult, courageous decision to forego production of enhanced radiation (ER) weapons in order to encourage the Soviets to show restraint in arms and troop deployments. At the same time, you ordered that the production of new, modernized versions of warheads with potential for ER conversion be initiated in such a way as to permit the installation of components which would convert those warheads into enhanced radiation weapons if the Soviets should fail to show meaningful restraint.

Opponents of your decision have now seized upon the question of the degree of readiness for later installation of ER components in an attempt to require completion of every state of production and deployment save installation. In the absence of a clear Presidential statement of intention, Congress may impose upon the Administration its own view of the appropriate degree of readiness. This could possibly undermine the apparent central aim of your decision by removing incentives the Soviets have to make meaningful arms and troop concessions.

In order for the approach you announced on April 7 to win concessions from the Soviets, I believe there must be a clear demarcation between modernization and the final installation of ER components. Withholding production of all ER components until a final decision on deployment is made would offer such a demarcation and clearly would be consistent with both the Byrd-Baker amendment to the FY 78 Public Works Appropriation Act and with your April 7 announcement.

Producing but not assembling or producing and assembling but not installing the ER components offers no demarcation: unless our security is far more lax than it should be, Soviet military planners would have no assurance, no matter what the United States decides to do, that we were not producing completed ER weapons. In other words, fine distinctions between producing, assembling and installing the ER components will make it more difficult to persuade the Soviets to adopt arms and troop restraints.

In addition, I believe any production of ER weapons whatsoever would be contrary to the essence of your April 7 decision and, if carried out with FY 78 funds, would violate the strictures of the Byrd-Baker amendment.

Furthermore, making these fine distinctions requires analysis in such detail that any public discussion might disclose classified information. Thus, taking the approach suggested by the Senate Armed Services Committee not only reduces the likelihood of obtaining meaningful concessions from the Soviets, but also virtually eliminates public consideration of decisions about weapons a plurality of Americans oppose, if recent polls are to be believed.

Consequently, I urge you to oppose all production and assembly of ER components until a final decision on deployment on ER weapons is made.

There is, I believe, one other meaningful demarcation that could be established between modernization and the installation of ER components: an explicit requirement that no components be installed until such installation is certified by the President to be in the national interest and approved by the full Congress. This requirement would obviate having to make distinctions between modernization and production and assembly of ER components and would provide the Soviets assurance of timely notification before deployment of ER weapons.

As I intend to seek an amendment to either the FY 79 Department of Energy Weapons Authorization bill or to the FY 79 Public Works Appropriation bill to establish one of the demarcations suggested above, I urge you to make known your views on them.

With highest regards.

Sincerely,

MARK O. HATFIELD,
*U.S. Senator.*●

## H.R. 7843—The OMNIBUS JUDGESHIP BILL

● Mr. STONE. Mr. President, I want to commend the conferees on the omnibus judgeship bill for persevering and, after many months, coming to a resolution of the differences in the House and Senate versions of this legislation. Special praise should go to Senators EASTLAND and KENNEDY and Representatives RODINO and JORDAN for their willingness to explore alternative solutions to the difficult question of the division of the fifth circuit. The compromise on that issue leaves many matters to be resolved, but without this compromise, the future of our Federal judicial system would have been very bleak.

The 117 district and 35 court of appeals judges that are provided by this bill are desperately needed. Our Federal court system in Florida has come close to breaking down completely under the strain of a burgeoning caseload that has far exceeded the capacity of the sitting judges.

Mr. President, I am delighted that the enactment of this legislation appears to be at hand and I hope that most of the new judges can be sworn in early in the next Congress.●

## SCIENCE OF GEOLOGIC DISPOSAL SEEN AS WEAK

● Mr. MARK O. HATFIELD. Mr. President, geologic disposal has long been viewed as the most promising method of getting rid of high-level radioactive wastes. Since 1956, when the National Academy of Sciences first recommended it, bedded salt has been the leading contender for the location of the first such geologic repository. The feasibility of this concept was, over that 20 year period, never called into doubt, and was thought to require only the straightforward application of technology and engineering.

Of late, however, the certainty associated with geologic disposal has been withering away. A series of in-depth papers has put into words the doubts that were previously unacknowledged. These papers are described in a recent Science article which, among other things, reviews some of the conclusions reached in three papers. According to the author of the article, Luther J. Carter, what emerged from the papers is the following:

> Although . . . scientists continue to find the concept of geologic disposal attractive intuitively, some are stating explicitly that the scientific feasibility of the concept remains to be established.

The three papers were released by the U.S. Geological Survey, the Environmental Protection Agency, and the President's Office of Science and Technology Policy.

Although the three papers express confidence in the basic concept of geologic disposal, they also express the view that certain basic questions about the concept remain unanswered. Thus, the USGS paper states that ". . . some key geologic questions are unanswered, and answers are needed before the risk associated with geologic confinement can be confidently evaluated." The EPA report states:

> We are surprised and dismayed to discover how few relevant data are available on most of the candidate rock types even 30 years after wastes began to accumulate from weapons development.

The OSTP paper describes in great detail the gaps in our knowledge as far as geologic disposal is concerned. One cannot help but feel that, after reading the paper, the gaps are quite numerous. The plausibility of the concept per se is not called into question, but the number and size of these knowledge gaps make it clear that geologic disposal has not yet been established as scientifically feasible.

Even the Department of Energy, according to Mr. Carter, is not unduly optimistic. The waste management task force report released last March emphasized that the scientific feasibility of geologic isolation was generally regarded as established; only detailed information about site, geologic medium, and repository design remained to be developed. Mr. Carter writes that John Deutch, the DOE director of energy research and head of the task force which put together the report, feels that much more basic research into the geologic isolation concept is needed before it will be on a firm basis.

The substance of these reports indicates that there are no quick and easy solutions to the problem of radioactive waste disposal, geologic isolation will require a great deal of R. & D. before it becomes reality.

Mr. President, I ask that Mr. Carter's article, from the June 1978 issue of Science, be printed in the RECORD.

The article follows:

### NUCLEAR WASTES: THE SCIENCE OF GEOLOGIC DISPOSAL SEEN AS WEAK

For more than 20 years deep geologic disposal has been regarded as the leading technical option for getting rid of the most dangerous and troublesome forms of nuclear wastes,* with salt formations generally viewed as the most promising of the geologic media considered. Moreover, an assertion often made by government officials, scientists, and engineers associated with the waste management program has been that the feasibility of the geologic disposal concept is not in doubt. For instance, in late 1976 a top official of the Energy Research and Development Administration declared that fulfillment of ERDA's plans to establish six deep geologic repositories, with the first (in salt) to be available by 1985, would require only "straightforward technology and engineering development."

It comes as a surprise, therefore, to discover now that there seems to be an emerging consensus among earth scientists familiar with waste disposal problems that the old sense of certitude was misplaced. Although these scientists continue to find the concept of geologic disposal attractive intuitively, some are stating explicitly that the scientific feasibility of the concept remains to be established. What a number of others are saying, while less direct, seems to add up to pretty much the same thing.

An as yet unofficial paper by the White House Office of Science and Technology Policy (OSTP) staff, prepared in connection with the work of an alternative technology strategies panel of President Carter's recently appointed waste management task force, bears directly on this point. In cautious bureaucratic language it speaks of a "rather general consensus" in the relevant technical community "that the knowledge and technology base available today is not yet sufficient to permit complete confidence in the safety of any particular repository design or the suitability of any particular site."

Accompanying this statement is the observation that there is also a consensus that geologic disposal can ultimately be achieved safely and that, "given sufficient time, investment, and scientific study, the required knowledge can be obtained." Nonetheless, inasmuch as this paper clearly reflects the thinking of investigators at the U.S. Geological Survey (USGS) and of at least some officials at the Department of Energy (DOE), its acknowledgement that a secure scientific foundation for geologic disposal is still lacking points to an important milestone in official deliberations over radioactive waste management.

Indeed, tangible evidence that the concept of geologic disposal is undergoing reappraisal can be found in the USGS, the Environmental Protection Agency (EPA), and in the DOE itself. For example, in their recent circular† on geologic disposal, five USGS scientists observed:

The authors . . . are confident that . . . the ultimate decision on the acceptability of a given site and waste-handling procedure will have a strong scientific and technical foundation. However, some key geologic questions are unanswered, and answers are needed before the risk associated with geologic containment can be confidently evaluated. . . . We consider [in the circular] a variety of possible interactions among the mined opening of the repository, the [heat-generating] waste, the host rock, and any water that the rock may contain. Many of these interactions are not well understood, and this lack of understanding contributes considerable uncertainty to evaluations of the risk of geologic disposal of high-level waste [or spent fuel from power reactors in the absence of reprocessing].

A panel of eminent earth scientists which has made an evaluation for EPA of the state of knowledge relevant to geologic disposal has put the matter much more strongly. In a draft report submitted to the agency in March, the panel, cochaired by Raymond Siever of Harvard University and Bruno J. Giletti of Brown University, said: "We are surprised and dismayed to discover how few relevant data are available on most of the candidate rock types even 30 years after wastes began to accumulate from weapons development. These rocks include granite types, basalts, and shales. Furthermore, we are only just now learning about the problem of water in salt beds, and the need for careful measurements of water in [salt] domes."

Earlier, in discussing salt as a disposal medium, the panel observed that, while salt has seemed suitable partly because of its apparent dryness, close inspection reveals that the crystals contain significant amounts of water in fluid inclusions and "intergranular boundaries." The inclusions can "decrepitate," or burst, upon being heated to comparatively low temperatures, and, according to the panel, this "means that they are reasonably certain to do so in the vicinity of the [waste] canister as the temperature rises following emplacement. It is quite likely that the decrepitation will occur in the general vicinity of 150° C. If we take the wall temperature of the canister to reach 300° C, a significant amount of water might be available. There is a high likelihood that this is so in bedded salts. It becomes imperative to determine if similar amounts of water exist in the salt of salt domes."

[William C. McClain, technical projects manager with the Oak Ridge National Laboratory's Office of Waste Isolation (OWI), says that the existence of water in salt actually has been known since 1958. Moreover, the phenomenon of brine migration toward waste canisters was recognized by scientists at Oak Ridge as early as 1966 but the effects projected were considered too slight to be of concern—an assessment which according to McClain, OWI scientists continue to view as probably correct. What is new is that certain other investigators have now come to believe that the effects of the brine migration could be much greater than the OWI researchers think, and that it therefore may pose a threat to repository integrity. Prominent among these investigators is David B. Stewart, chief of the USGS experimental geochemistry and mineralogy branch.]

The DOE waste management task force report of last March referred to an "independent technical consensus" that high-level waste and spent fuel "can be safely placed in geologic media for ultimate disposal" and indicated that it remained only to develop the "detailed information" necessary to support the "specific choices of geologic medium, site, and repository design." But John M. Deutch, DOE's director of energy research and the official who formed the task force, apparently feels that the research needed to support a sound program of geologic disposal is of a much more demanding and fundamental nature than the above would seem to suggest.

Indeed, in January Deutch asked William C. Luth, a Stanford professor of geochemistry then serving temporarily in DOE's office of basic energy sciences, to prepare a memorandum on the research needed for waste disposal. The paper was forthcoming shortly thereafter and Deutch praised it as "outstanding." Luth was sharp in his criticism of what he regarded as an unseemingly emphasis in the waste management program on demonstrating the technical feasibility of geologic disposal instead of on arriving at a scientifically objective assessment.

"In my judgment," Luth said in a covering letter, "the most important need in the waste disposal program, relative to geologic isolation, is a major change in management (or management philosophy) at the Washington and field level. This is coupled with a vital need to obtain and use the very best scientific input available. If serious efforts are to be made regarding assessment of scientific feasibility of geologic isolation of radioactive waste, then it is essential to get new blood involved in the management and conduct of the research program."

Luth acknowledged that he did not undertake preparation of the report with "clean hands," for he had been critical of the "underlying philosophy and conduct" of the waste management program ever since he attended an ERDA-sponsored conference on high-level waste management in early 1975.

As Luth told Deutch, after attending that conference he wrote a strongly critical letter to Frank K. Pittman, who was then director of ERDA's Division of Waste Management and Transportation (Pittman has since left government). He complained that the majority of the presentations made had had to do with "paper studies" that focused on evaluation of alternatives for decision-making. "As an experimental geochemist reasonably familiar with the available basic data on materials interaction at high pressures and temperatures." Luth said, "I suggest that this data base is totally inadequate for meaningful evaluation of alternatives."

"Why do we not simply get on with the business of obtaining the extensive paper studies?" he added. "I should note that this problem is well recognized by researchers (as contrasted with managers) in the various captive contractor laboratories. However, it is doubtful whether they would be willing to so state in public for rather obvious reasons."

Luth further observed that he had found "very disconcerting" suggestions made at the conference that ERDA should seek to win public acceptance for geologic disposal by carrying out a pilot scale demonstration in bedded salt which would "prove"—not merely test—its feasibility. According to Luth, the general philosophy expressed by ERDA personnel at the meeting could be paraphrased as "let's go with bedded salt, but explore in a casual way other alternatives so we can demonstrate to the public that we have evaluated other methods. . . ."

Luth, who got no reply from Pittman, told Deutch that although funding for waste management had increased dramatically since 1975, he could see no reason to change the conclusion that he had come to at that time. In an interview with Science, Luth, who is now back at Stanford, expressed high confidence in Deutch himself, and said that future DOE research budgets would reflect a significantly greater emphasis on establishing a sound scientific base for geologic disposal. Deutch confirms this and indicates that, even under the current fiscal 1978 budget, the funds earmarked for near- and long-term scientific studies in support of geologic disposal are substantial, amounting to more than 10 percent of the total operating budget of $79 million for the commercial and military waste terminal storage programs. The very fact that Deutch, DOE's director of research, has been designated the senior official for waste management policy suggests that the waste program's scientific side is on the upswing.

The presidential task force on waste management has a mandate to submit recommendations to the White House by 1 October for an Administration policy on the long-term disposal of wastes. In light of the consensus that seems to be emerging that the present waste program lacks a sure scientific footing, some surprising developments may be in the offing. There could, for instance, be some deemphasis of salt as the preferred geologic medium in favor of a broader and deeper investigation of the available alternatives. These might even include an examination of such nonconventional approaches as disposal of wastes in super-deep holes and emplacement in the deep seabed.

## LEGISLATIVE PROGRAM TONIGHT

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes tonight, but the distinguished Senator from Arizona (Mr. DECONCINI) will ask the Chair in a moment to lay before the Senate a message from the House of Representatives on which there is a 20-minute time agreement, to be equally divided and controlled by Mr. DECONCINI and Mr. THURMOND.

Mr. SASSER will call up a conference report on which he and Mr. STEVENS will control the time. The time on that conference report is only 10 minutes.

There may be other conference reports, but there will be no more rollcall votes tonight.

## UNIFORM LAW ON BANKRUPTCIES

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 8200.

The PRESIDING OFFICER laid be-

fore the Senate the amendment of the House of Representatives to H.R. 8200, an act to establish a uniform law on the subject of bankruptcies.

(The amendment of the House is printed in the RECORD of September 28, 1978, beginning at page 32350.

Mr. DECONCINI. Mr. President, I ask unanimous consent that Bob Feidler and Harry Dixon of the staff of the Subcommittee on Judicial Machinery be accorded the privilege of the floor during the consideration of the message from the House on H.R. 8200.

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

Mr. DECONCINI. Mr. President, it is with great pleasure that I support the House amendment to H.R. 8200. Several weeks ago the Senate passed its version of the bankruptcy reform bill which differed significantly from the House version. Since that time the Senate has appointed conferees but the House has rejected the request for conference for parlimentary reasons. Instead, the House has passed an amendment to the Senate amendment. The provisions of the House amendment were arrived at in negotiations between the House and Senate managers of the legislation. I concur in the House amendment and am prepared to accept it with several amendments I shall propose.

Both Houses should take pride in the final compromise product. It represents give and take by both sides and the result should be workable and satisfactory to all reasonable parties. The Senate prevailed in the concept that the new courts will not have article III judges. While the new judges will not have life tenure they will be elevated to a status far above that of the present day referee. The new courts will be adjuncts of the district courts and should provide a respected and highly qualified judicial forum for the handling of bankruptcy cases.

The Senate also generally prevailed in its position that private trustee as opposed to public trustees should continue to play the predominant role in estate administration. However, we did agree that there have been occasions of trustee mishandling of cases and that it would be worth a trial experiment to test the theory and workings of a public trustee. To that end, we accepted the concept of pilot U.S. trustee programs that will be placed in several judicial districts.

In the area of exemptions, it was agreed that a Federal exemption standard will be codified but that the States could at any time reject them in which case the State exemption laws would continue to prevail.

In the business reorganization chapter the Senate succeeded in obtaining special protection for the large cases having great public interest. There will be automatically appointed an examiner in those cases, but not a trustee as in the Senate passed bill. I am convinced that debtor and creditor interests, as well as the public interest, will be preserved and enhanced by these provisions. I want to at this point thank the members and staff of the Security and Exchange Commission for their fine assistance in formulating these public interest provisions.

The Houses were in substantial agreement initially on the handling of chapter 13, so-called wage earner cases. This chapter will be broadened to include small business debtors. Debtors under this chapter will be able to voluntarily pay off their debts while being under the protection of the court. This allows for greater payouts to creditors than would probably occur if the debtor took straight bankruptcy, and it preserves the debtors self-esteem by permitting him to pay his debts using his best efforts without incurring undue hardship.

New subchapters relating to non-SIPC stockbroker and commodity broker liquidations fill a void in present law and will allow future cases in this area to be handled in a fair and orderly fashion.

Other sections of the bill update and revise present law taking into consideration the vast changes necessitated by the adoption of the uniform commercial code, the boom in credit and credit practices since World War II, and changes in public policy since the last major revision of the bankruptcy law in 1938.

Our Nation's bankruptcy courts have performed in a generally exemplary fashion during the past two decades of ever increasing caseloads and complex litigation. Codification of title 11 will give them the tools necessary to grow with and to perform the tasks thrust upon them. I have every expectation that the bankruptcy courts will meet the challenge and provide excellent services for debtors, creditors, and the public. It is also my hope that past misunderstandings that have existed within the judicial branch of Government concerning the role and work of the bankruptcy courts will be set aside and that everybody will make a maximum effort to make the new court system work for the benefit of the country.

I would also like to thank the Chief Justice of the United States for his support throughout the Congress of the numerous items of legislation that have been pending before the Senate Subcommittee on Improvements in Judicial Machinery.

I extend my thanks and appreciation to the ranking minority member of the Improvements Subcommittee, Senator WALLOP, for his time, efforts, and commonsense approach to the problems faced in constructing the act. My thanks are also extended to Congressmen DON EDWARDS and CALDWELL BUTLER for their unceasing efforts over the past several years in laying the groundwork for today's action.

Although many other parties and groups must go unnamed without whom this legislation would not have been possible. I would like to conclude my statement by especially thanking Prof. Frank Kennedy, who served as staff director of the Commission on Bankruptcy Laws of the United States; Bob Fiedler and Harry Dixon of the Senate staff; and Rich Levin and Ken Klee of the House staff for their devotion to passage of the bankruptcy reform legislation.

UP AMENDMENT 1995

I move that the Senate concur in the House amendment with a series of amendments which I send to the desk, asking unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI) proposes certain amendments as unprinted amendment no. 1995.

The PRESIDING OFFICER. without objection, the amendments will be considered en bloc.

The amendments are as follows:

On page 17, line 16, delete the period and after the word 'broker' add the following "except with respect to section 746(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant.".

On page 21, line 9, insert ", 922," immediately after "section 362".

On page 89, line 12, insert "other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C)," immediately before "not".

On page 93, line 17, strike out "510(a) or 510(c)" and insert in lieu thereof "510".

On page 97, line 1, insert "section 523(a)(1) or" immediately before "section 523(a)(5)".

On page 103, line 6, insert "or recovers a setoff" immediately after "transfer".

On page 108, line 1, strike out "becomes" and insert in lieu thereof "became".

On page 122, line 21, strike out "later" and insert in lieu thereof "earlier".

On page 132, line 4, insert "or forward contract merchant" immediately after "commodity broker".

On page 161, line 9, strike out "77a" and insert in lieu thereof "78a".

On page 169, line 17, insert "or" immediately after the semicolon.

On page 169, line 23, strike out "or".

On page 170, line 3, strike out "(iii)" and insert in lieu thereof "III".

On page 170, line 24, strike out "(iii)" and insert in lieu thereof "III".

On page 171, line 20, strike out "(iii)" and insert in lieu thereof "III".

On page 170, line 13, insert "or" immediately after the semicolon.

On page 170, line 19, strike out "or".

On page 170, line 24, strike out "(iii)" and insert in lieu thereof "(3)".

On page 171, line 15, strike out "or".

On page 171, line 20, strike out "(iii)" and insert in lieu thereof "(3)".

On page 178, line 10, insert "or forward contract merchant or is a settlement payment made by a clearing organization" immediately after "broker".

On page 213, line 15, strike out "equity".

On page 213, line 19, strike out "equity".

On page 213, line 20, strike out "equity".

On page 259, in the table of sections for chapter 15, between the item relating to section 15101 and the item relating to section 15103 insert the following:

"15102. Rule of Construction.".

On page 261, between lines 7 and 8, insert the following new section:

"§ 15102. Rule of construction.

"In this title, a reference to a section that is made inapplicable under section 15103(f) of this chapter refers to the section of this chapter that replaces such inapplicable section.".

On page 236, line 11, delete through line 20 of page 237 and insert in lieu thereof the following:

ROLLING STOCK EQUIPMENT

(a) The right of a secured party with a purchase-money equipment security interest in, or of a lessor or conditional vendor of, whether as trustee or otherwise, rolling stock equipment or accessories used on such equip-

ment, including superstructures and racks, that are subject to a purchase-money equipment security interest granted by, leased to, or conditionally sold to, the debtor to take possession of such equipment in compliance with the provisions of a purchase-money equipment security agreement, lease, or conditional sale contract, as the case may be, is not affected by section 362 or 363 of this title or by any power of the court to enjoin such taking of possession, unless—

(1) before 60 days after the date of the commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract, as the case may be; and

(2) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract, as the case may be—

(A) that occurred before such date and is an event of default therewith is cured before the expiration of such 60-day period; and

(B) that occurs or becomes an event of default after such date is cured before the later of—

(i) 30 days after the date of such default or event of default; and

(ii) the expiration of such 60-day period.

(b) The trustee and the secured party, lessor, or conditional vendor, as the case may be, whose right to take possession is protected under subsection (a) of this section, may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1) of this section.

On page 263, on lines 1 and 2, strike out "subsection (a)(2) of this section" and insert in lieu thereof "section 322(a)(2)".

On page 271, line 9, strike out "507(1)" and insert in lieu thereof "507(a)(1)".

On page 286, strike out lines 7 through 12, and insert in lieu thereof the following:

(1) by inserting a comma and "and bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years" immediately before the period at the end of the paragraph beginning with "The term 'court of the United States'"; and

(2) by inserting a comma and "and judge of the bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years" immediately before the period at the end of the paragraph beginning with "The term 'judge of the United States'".

On page 289, between the table of sections for chapter 39 and line 18, insert the following:

"§ 581. United States trustees".

On page 298, line 2, before 'each' and 'based on need.'

On page 298, after line 9, insert "If there is no Clerk the Bankruptcy Judge shall perform the duties of this subsection."

On page 299, strike out lines 11 through 17 and insert in lieu thereof the following: "in open court. The Judicial Conference shall prescribe that the record be taken by electronic sound recording means, by a court reporter appointed or employed by such bankrutcy court to take a verbatim record by shorthand or mechanical means, or by an employee of such court designated by such court to take such a verbatim record.".

On page 306, on line 16 and 17, strike out "section 541, 544(b), or 544(c)" and insert in lieu thereof "section 541 or 544(b)".

On page 310, line 16, strike out "1978" and insert in lieu thereof "1979".

On page 311, line 2, strike out "163(a)" and insert in lieu thereof "160(a)".

On page 311, line 5, strike out "163(a)" and insert in lieu thereof "160(a)".

On page 311, line 12, insert "District Courts and" immediately before "Bankruptcy Courts".

On page 321, line 22, strike out "507(1)" and insert in lieu thereof "507(a)(1)".

On page 341, line 11, insert "314(j)" immediately before "317".

On page 341, line 13, strike out "314(j),".

On page 341, strike out lines 24 and 25, and insert in lieu thereof the following:

(b) Notwithstanding subsection (a) of this section, sections 1165, 1167, 1168, 1169, and 1171".

On page 342, line 21, strike "1979" and insert in lieu thereof "1978".

On page 281, beginning with line 7, strike out all through line 4 on page 286.

On page 337, strike lines 19 through 23 and insert in lieu thereof:

"(O) The annuity of an employee who is a bankruptcy judge is computed with respect to service after March 31, 1979 and before April 1, 1984, as a bankruptcy judge and his military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.".

On page 338, following line 2:

"7 . . . January 1, 1970, to March 31, 1979"

"8 . . . after March 31, 1979"

and insert in lieu thereof:

"7 . . . after January 1, 1970."

On page 272, lines 2 and 3, strike out "circuit court for the circuit in which such district is located" and insert in lieu thereof "district court for such district".

On page 304, in the table of sections relating to chapter 90, in the chapter heading, strike out "COURT OF APPEALS" and insert in lieu thereof "DISTRICT COURTS".

On page 304, line 12, strike out "courts of appeals" and insert in lieu thereof "district courts".

On page 304, line 16, strike out "courts of appeals, the court of appeals" and insert in lieu thereof "district courts, the district courts".

On page 304, line 21, strike out "courts of appeals" and insert in lieu thereof "district courts".

On page 304, line 23, strike out "court of appeals" and insert in lieu thereof "district court".

On page 279, strike out lines 9 through 16 and insert in lieu thereof the following:

(1) in subsection (c), by deleting "or district" and inserting "district or bankruptcy judge"; and

(2) in subsection (d), by striking out "or district judge" and inserting in lieu thereof ", district judge or bankruptcy judge".

On page 279, line 25, strike out "three" and insert in lieu thereof "two".

On page 280, lines 13 and 14, strike out "one year, and one bankruptcy judge to serve for".

On page 350, line 18, insert "the Congress strongly recommends" immediately after the comma.

On page 350, strike out lines 24 and 25, and insert in lieu thereof the following: "court administration, supporting personnel, or bankruptcy court rules shall be chosen from among the United States bankruptcy judges.".

On page 55, line 15, strike out "or" the third time it appears.

On page 55, between lines 15 and 16, insert the following new paragraph:

"(7) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by said Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or".

On page 55, line 16, strike out "(7)" and insert in lieu thereof "(8)".

On page 343, line 14, insert after the word "by" the following:

"the Chief Judge of the Circuit Court after consultation with", and at line 16, insert prior to the word "shall" the following:

"upon the expiration of his appointed term as referee".

On page 272, line 20, add after the word "districts" the following:

"In each instance, the President shall give due consideration to the recommended nominee or nominees of the Judicial Council of the Circuit within which an appointment is to be made."

On page 301, strike out lines 17 through 19 and insert in lieu thereof the following: "judgment, order, or decree of an appellate panel created under section 160 or a district court of the United States, or from a final judgment, order, or decree of a bankruptcy court of the United States if the parties to such appeal agree to a direct appeal to the court of appeals.".

On page 302, line 7, strike out "163(a)" and insert in lieu thereof "160(a)".

Mr. DECONCINI. I ask unanimous consent that the names of Senators THURMOND and WALLOP be added as cosponsors of the amendments that are at the desk at this time.

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

The question is on agreeing to the motion to concur in the amendment of the House of Representatives, with the amendments of the Senate Is time yielded back?

Mr. DECONCINI. No.

Mr. THURMOND. Mr. President, we wanted to speak on that matter.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Mr. President, I yield whatever time he may require to the Senator from Wyoming (Mr. WALLOP).

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, it is with great pleasure that I join in the statement of the distinguished Senator from Arizona. The need for bankruptcy reform has been well established, and the bill we now consider will achieve that goal.

The bill is in the form of a House amendment with amendments we have added to the bill that passed this body earlier in the session. The House amendment is the product of negotiations and meetings between the House and the Senate managers of the bill and other interested parties. I am pleased with the compromises that have been achieved.

The PRESIDING OFFICER. Let there be order in the Senate. The Senate will come to order so that the Senator may be heard.

Mr. WALLOP. Mr. President, I doubt at this moment in time that there are many people in the Chamber who are listening to me. Should there be, I am delighted.

The Senate has prevailed in the most important aspect of the bill, namely the court structure and administration. The concept of the article III, life-time bankruptcy judges as contained in the House-passed bill, is rejected and adjunct

courts similar to the present system will be created instead. No vast bureaucracy called the U.S. Treasury system and located in every judicial district will be established. Instead, a pilot project in a very few districts will be tried. This pilot project will sunset on March 31, 1984. I do not expect it to be renewed or expanded at that time.

The Senate has prevailed on the question of reaffirmations, which would have been absolutely prohibited under the House bill. Instead, all reaffirmations will be permitted. The reaffirmation will be approved by the court after inquiry in individual cases and only in consumer debt instances will the court be empowered to find that a reaffirmation agreed to by the creditor and debtor is not in the debtor's best interest. The recission feature in the Senate bill will be preserved.

In the area of exemptions, we have won an important victory for the rights of States to determine exemptions for the debtors of their States, Reduced Federal exemptions will be provided by the law but States by legislation may elect not to have them apply their debtors. This option is most important since many States, such as mv own, Wyoming, have been responsive to the needs of debtors and have liberalized exemptions frequently in recent years.

The protection against involuntary bankruptcy petitions given farmers and ranchers because of the cyclic nature of their businesses will be preserved.

I want to take this opportunity to thank Romono Romoni, and Bob Feider of Senator DeConcini's staff, Eric Hultman of Senator Thurmond's staff, Pat Hoff of my staff, and Harry Dixon, our subcommittee consultant, for their fine efforts in assisting with this bill.

With these remarks, I join in support of the House amendment and urge its passage.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. De CONCINI. Mr. President, I thank the Senator from South Carolina and his staff member, and the Senator from Wyoming (Mr. Wallop), and his staff member, for the fine assistance they have rendered in the preparation of this legislation for the Senate.

Mr. WALLOP. Mr. President, I, too, thank the distinguished Senator from Arizona. It has been a real pleasure for he and I to work with our respective staffs. I compliment them all.

Mr. DeCONCINI. Mr. President, the House amendment to the Senate amendment to H.R. 8200 resolves many differences between H.R. 8200 as passed by the House of Representatives and the amendment in the nature of a substitute to H.R. 8200, passed by the Senate. This statement is made in my capacity as chairman of the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, in order to explain the House amendment to the Senate amendment to H.R. 8200.

Several provisions of the Senate-passed version of the amendment in the nature of a substitute to H.R. 8200, were adopted by the House. These provisions require no additional explanation. However, other provisions on which the two Houses differed or which are new in the House amendment to the Senate amendment in the nature of a substitute to H.R. 8200 require explanation. Also, I have, where appropriate, explained the effect of the amendments to the House amendment that have been adopted here today. Any conflicting language because these Senate amendments were not in the House amendment should be disregarded.

Title I of H.R. 8200 contains one section, section 101, which codifies and enacts title II of the United States Code, entitled "Bankruptcy." Sections of title II, as proposed to be codified, differ between the House and Senate versions of the bill, and in order to explain these differences in an expeditious fashion, all section symbols in title I of the bill will refer to section numbers in proposed title II.

Section 101(2) defines "affiliate." The House amendment contains a provision that is a compromise between the definition in the House-passed version of H.R. 8200 subparagraphs (A) and (B) are derived from the Senate amendment and subparagraph (D) is taken from the House bill, while subparagraph (C) represents a compromise, taking the House position with respect to a person whose business is operated under a lease or an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and the Senate position on leased property. Thus, the definition of "affiliate" excludes persons substantially all of whose property is operated under a lease agreement by a debtor, such as a small company which owns equipment all of which is leased to a larger nonrelated company.

Section 101(4)(B) represents a modification of the House-passed bill to include the definition of "claim" a right to an equitable remedy for breach of leased to a larger nonrelated company. performance if such breach gives rise to a right to payment. This is intended to cause the liquidation or estimation of contingent rights of payment for which there may be an alternative equitable remedy with the result that the equitable remedy will be susceptible to being discharged in bankruptcy. For example, in some States, a judgment for specific performance may be satisfied by an alternative right to payment, in the event performance is refused; in that event, the creditor entitled to specific performance would have a "claim" for purposes of a proceeding under title II.

On the other hand, rights to an equitable remedy for a breach of performance with respect to which such breach does not give rise to a right to payment are not "claims" and would therefore not be susceptible to discharge in bankruptcy.

In a case under chapter 9 to title II, "claim" does not include a right to payment under an industrial development bond issued by a municipality as a matter of convenience for a third party.

Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954, as amended, to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest, and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims on the tax revenues or other funds of the issuing municipalities. The municipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality that would be affected by the plan.

Section 101(6) defines "community claim" as provided by the Senate amendment in order to indicate that a community claim exists whether or not there is community property in the estate as of the commencement of the case.

Section 101(7) of the House amendment contains a definition of consumer debt identical to the definition in the House bill and Senate amendment. A consumer debt does not include a debt to any extent the debt is secured by real property.

Section 101(9) of the Senate amendment contained a definition of "court." The House amendment deletes the provision as unnecessary in light of the pervasive jurisdiction of a bankruptcy court under all chapters of title 11 as indicated in title II of the House amendment to H.R. 8200.

Section 101(11) defines "debt" to mean liability on a claim, as was contained in the House-passed version of H.R. 8200. The Senate amendment contained language indicating that "debt" does not include a policy loan made by a life insurance company to the debtor. That language is deleted in the House amendment as unnecessary since a life insurance company clearly has no right to have a policy loan repaid by the debtor, although such company does have a right of offset with respect to such policy loan. Clearly, then, a "debt" does not include a policy loan made by a life insurance company. Inclusion of the language contained in the Senate amendment would have required elaboration of other legal relationships not arising by a liability on a claim. Further the language would have required clarification that interest on a policy loan made by a life insurance company is a debt, and that the insurance company does have right to payment to that interest.

Section 101(14) adopts the definition of "entity" contained in the Senate-passed version of H.R. 8200. Since the Senate amendment to H.R. 8200 deleted the U.S. trustee, a corresponding definitional change is made in chapter 15 of

the House amendment for U.S. trustees under the pilot program. Adoption by the House amendment of a pilot program for U.S. trustees under chapter 15 requires insertion of "United States trustee" in many sections. Several provisions in chapter 15 of the House amendment that relate to the U.S. trustee were not contained in the Senate amendment in the nature of a substitute.

Section 101(17) defines "farmer," as in the Senate amendment with an income limitation percentage of 80 percent instead of 75 percent.

Section 101(18) contains a new definition of "farming operation" derived from present law and the definition of "farmer" in the Senate amendment. This definition gives a broad construction to the term "farming operation".

Section 101(20) contains a definition of "foreign representative". It clarifies the House bill and Senate amendment by indicating that a foreign representative must be duly selected in a foreign proceeding.

Section 101(35) defines "security" as contained in the Senate amendment. H.R. 8200 as adopted by the House excluded certain commercial notes from the definition of "security", and that exclusion is deleted.

Section 101(40) defines "transfer" as in the Senate amendment. The definition contained in H.R. 8200 as passed by the House included "setoff" in the definition of "transfer". Inclusion of "setoff" is deleted. The effect is that a "setoff" is not subject to being set aside as a preferential "transfer" but will be subject to special rules.

Section 102 specifies various rules of construction but is not exclusive. Other rules of construction that are not set out in title 11 are nevertheless intended to be followed in construing the bankruptcy code. For example, the phrase "on request of a party in interest" or a similar phrase, is used in connection with an action that the court may take in various sections of the Code. The phrase is intended to restrict the court from acting sua sponte. Rules of bankruptcy procedure or court decisions will determine who is a party in interest for the particular purposes of the provision in question, but the court will not be permitted to act on its own.

Although "property" is not construed in this section, it is used consistently throughout the code in its broadest sense, including cash, all interests in property, such as liens, and every kind of consideration including promises to act or forbear to act as in section 548(d).

Section 102(1) expands on a rule of construction contained in H.R. 8200 as passed by the House and in the Senate amendment. The phrase "after notice and a hearing", or a similar phrase, is intended to be construed according to the particular proceeding to mean after such notice as is appropriate in the particular circumstances, and such opportunity, if any, for a hearing as is appropriate in the particular circumstances. If a provision of title II authorizes an act be taken "after notice and a hearing" this means that if appropriate notice is given and no party to whom such notice is sent timely requests a hearing, then the act sought to be taken may be taken without an actual hearing.

In very limited emergency circumstances, there will be insufficient time for a hearing to be commenced before an action must be taken. The action sought to be taken may be taken if authorized by the court at an ex parte hearing of which a record is made in open court. A full hearing after the fact will be available in such an instance.

In some circumstances, such as under section 1128, the bill requires a hearing and the court may act only after a hearing is held. In those circumstances the judge will receive evidence before ruling. In other circumstances, the court may take action "after notice and a hearing," if no party in interest requests a hearing. In that event a court order authorizing the action to be taken is not necessary as the ultimate action taken by the court implies such an authorization.

Section 102(8) is new. It contains a rule of construction indicating that a definition contained in a section in title II that refers to another section of title II does not, for the purposes of such reference, take the meaning of a term used in the other section. For example, section 522(a)(2) defines "value" for the purposes of section 522. Section 548 (d)(2) defines "value" for purposes of section 548. When section 548 is incorporated by reference in section 522, this rule of construction makes clear that the definition of "value" in section 548 governs its meaning in section 522 notwithstanding a different definition of "value" in section 522(a)(2).

Section 104 represents a compromise between the House bill and the Senate amendment with respect to the adjustment of dollar amounts in title 11. The House amendment authorizes the Judicial Conference of the United States to transmit a recommendation for the uniform percentage of adjustment for each dollar amount in title 11 and in 28 U.S.C. 1930 to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year thereafter. The requirement in the House bill that each such recommendation be based only on any change in the cost-of-living increase during the period immediately preceding the recommendation is deleted.

Section 106(c) relating to sovereign immunity is new. The provision indicates that the use of the term "creditor," "entity," or "governmental unit" in title II applies to governmental units notwithstanding any assertion of sovereign immunity and that an order of the court binds governmental units. The provision is included to comply with the requirement in case law that an express waiver of sovereign immunity is required in order to be effective. Section 106(c) codifies in re Gwilliam, 519 F.2d 407 (9th Cir., 1975), and in re Dolard, 519 F.2d 282 (9th Cir., 1975), permitting the bankruptcy court to determine the amount and dischargeability of tax liabilities owing by the debtor or the estate prior to or during a bankruptcy case whether or not the governmental unit to which such taxes are owed files a proof of claim. Except as provided in sections 106 (a) and (b), subsection (c) is not limited to those issues, but permits the bankruptcy court to bind governmental units on other matters as well. For example, section 106(c) permits a trustee or debtor in possession to assert avoiding powers under title 11 against a governmental unit; contrary language in the House report to H.R. 8200 is thereby overruled.

Section 109(b) of the House amendment adopts a provision contained in H.R. 8200 as passed by the House. Railroad liquidations will occur under chapter 11, not chapter 7.

Section 109(c) contains a provision which tracks the Senate amendment as to when a municipality may be a debtor under chapter 11 of title II. As under the Bankruptcy Act, State law authorization and prepetition negotiation efforts are required.

Section 109(e) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment relating to the dollar amounts restricting eligibility to be a debtor under chapter 13 of title II. The House amendment adheres to the limit of $100,000 placed on unsecured debts in H.R. 8200 as passed by the House. It adopts a midpoint of $350,000 as a limit on secured claims, a compromise between the level of $500,000 in H.R. 8200 as passed by the House and $200,000 as contained in the Senate amendment.

Sections 301, 302, 303, and 304, are all modified in the House amendment to adopt an idea contained in sections 301 and 303 of the Senate amendment requiring a petition commencing a case to be filed with the bankruptcy court. The exception contained in section 301 of the Senate bill relating to cases filed under chapter 9 is deleted. Chapter 9 cases will be handled by a bankruptcy court as are other title 11 cases.

Section 303(b)(1) is modified to make clear that unsecured claims against the debtor must be determined by taking into account liens securing property held by third parties.

Section 303(b)(3) adopts a provision contained in the Senate amendment indicating that an involuntary petition may be commenced against a partnership by fewer than all of the general partners in such partnership. Such action may be taken by fewer than all of the general partners notwithstanding a contrary agreement between the partners or State or local law.

Section 303(h)(1) in the House amendment is a compromise of standards found in H.R. 8200 as passed by the House and the Senate amendment pertaining to the standards that must be met in order to obtain an order for relief in an involuntary case under title II. The language specifies that the court will order such relief only if the debtor is generally not paying debtor's debts as they become due.

Section 303(h)(2) reflects a compromise pertaining to section 543 of title II relating to turnover of property by a custodian. It provides an alternative test to support an order for relief in an involuntary case. If a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than

substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession within 120 days before the date of the filing of the petition, then the court may order relief in the involuntary case. The test under section 303(h)(2) differs from section 3a(5) of the Bankruptcy Act, which requires an involuntary case to be commenced before the earlier of time such custodian was appointed or took possession. The test in section 303(h)(2) authorizes an order for relief to be entered in an involuntary case from the later date on which the custodian was appointed or took possession.

Section 304(b) adopts a provision contained in the Senate amendment with modifications. The provision indicates that if a party in interest does not timely controvert the petition in a case ancillary to a foreign proceeding, or after trial on the merits, the court may take various actions, including enjoining the commencement or continuation of any action against the debtor with respect to property involved in the proceeding, or against the property itself; enjoining the enforcement of any judgment against the debtor or the debtor's property; or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of the debtor or the estate.

Section 304(c) is modified to indicate that the court shall be guided by considerations of comity in addition to the other factors specified therein.

Section 321 indicates that an examiner may not serve as a trustee in the case.

Section 322(a) is modified to include a trustee serving in a railroad reorganization under subchapter IV of chapter 11.

Section 326(a) of the House amendment modifies a provision as contained in H.R. 8200 as passed by the House. The percentage limitation on the fees of a trustee contained in the House bill is retained, but no additional percentage is specified for cases in which a trustee operates the business of the debtor. Section 326(b) of the Senate amendment, is deleted as an unnecessary restatement of the limitation contained in section 326(a) as modified. The provision contained in section 326(a) of the Senate amendment authorizing a trustee to receive a maximum fee of $150 regardless of the availability of assets in the estate is deleted. It will not be necessary in view of the increase in section 326(a) and the doubling of the minimum fee as provided in section 330(b).

Section 326(b) of the House amendment derives from section 326(c) of H.R. 8200 as passed by the House. It is a conforming amendment to indicate a change with respect to the selection of a trustee in a chapter 13 case under section 1302(a) of title II.

Section 327(a) of the House amendment contains a technical amendment indicating that attorneys, and perhaps other officers enumerated therein, represent, rather than assist, the trustee in carrying out the trustee's duties.

Section 327(c) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment. The provision states that former representation of a creditor, whether secured or unsecured, will not automatically disqualify a person from being employed by a trustee, but if such person is employed by the trustee, the person may no longer represent the creditor in connection with the case.

Section 327(f) prevents an examiner from being employed by the trustee.

Section 328(c) adopts a technical amendment contained in the Senate amendment indicating that an attorney for the debtor in possession is not disqualified for compensation for services and reimbursement of expenses simply because of prior representation of the debtor.

Section 330(a) contains the standard of compensation adopted in H.R. 8200 as passed by the House rather than the contrary standard contained in the Senate amendment. Attorneys' fees in bankruptcy cases can be quite large and should be closely examined by the court. However bankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title II at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title II. Contrary language in the Senate report accompanying S. 2266 is rejected, and *Massachusetts Mutual Life Insurance Company* v. *Brock*, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code.

Section 330(a)(2) of the Senate amendment is deleted although the Securities and Exchange Commission retains a right to file an advisory report under section 1109.

Section 330(b) of the Senate amendment is deleted as unnecessary, as the limitations contained therein are covered by section 328(c) of H.R. 8200 as passed by the House and contained in the House amendment.

Section 330(c) of the Senate amendment providing for a trustee to receive a fee of $20 for each estate from the filing fee paid to the clerk is retained as section 330(b) of the House amendment. The section will encourage private trustees to serve in cases under title II and in pilot districts will place less of a burden on the U.S. trustee to serve in no-asset cases.

Section 330(b) of H.R. 8200 as passed by the House is retained by the House amendment as section 330(c).

Section 341(c) of the Senate amendment is deleted and a contrary provision is added indicating that the bankruptcy judge will not preside at or attend the first meeting of creditors or equity security holders but a discharge hearing for all individuals will be held at which the judge will preside.

Section 342 (b) and (c) of the Senate amendment are adopted in principle but moved to section 549(c), in lieu of section 342(b) of H.R. 8200 as passed by the House.

Section 342(c) of H.R. 8200 as passed by the House is deleted as a matter to be left to the Rules of Bankruptcy Procedure.

The House amendment moves section 345(c) of the House bill to chapter 15 as part of the pilot program for the U.S. trustees. The bond required by section 345(b) may be a blanket bond posted by the financial depository sufficient to cover deposits by trustees in several cases, as is done under current law.

Section 346 of the House amendment, together with sections 728 and 1146, represent special tax provisions applicable in bankruptcy. The policy contained in those sections reflects the policy that should be applied in Federal, State, and local taxes in the view of the House Committee on the Judiciary. The House Ways and Means Committee and the Senate Finance Committee did not have time to process a bankruptcy tax bill during the 95th Congress. It is anticipated that early in the 96th Congress, and before the effective date of the bankruptcy code, the tax committees of Congress will have an opportunity to consider action with respect to amendments to the Internal Revenue Code and the special tax provisions in title II. Since the special tax provisions are likely to be amended during the first part of the 96th Congress, it is anticipated that the bench and bar will also study and comment on these special tax provisions prior to their revision.

Section 347(a) of the House amendment adopts a comparable provision contained in the Senate amendment instructing the trustee to stop payment on any check remaining unpaid more than 90 days after the final distribution in a case under Chapter 7 or 13. Technical changes are made in section 347(b) to cover distributions in a railroad reorganization.

The House amendment adopts section 348(b) of the Senate amendment with slight modifications, as more accurately reflecting sections to which this particular effect of conversion should apply.

Section 348(e) of the House amendment is a stylistic revision of similar provisions contained in H.R. 8200 as passed by the House and in the Senate amendment. Termination of services is expanded to cover any examiner serving in the case before conversion, as done in H.R. 8200 as passed by the House.

Section 349(b)(2) of the House amendment adds a cross reference to section 553 to reflect the new right of recovery of setoffs created under that section. Corresponding changes are made throughout the House amendment.

Section 361 of the House amendment represents a compromise between H.R. 8200 as passed by the House and the Senate amendment regarding the issue of "adequate protection" of a secured party. The House amendment deletes the provision found in section 361(3) of H.R. 8200 as passed by the House. It would have permitted adequate protection to be provided by giving the secured party an administrative expense regarding any decrease in the value of such party's collateral. In every case there is the uncertainty that the estate will have

sufficient property to pay administrative expenses in full.

Section 361(4) of H.R. 8200 as passed by the House is modified in section 361 (3) of the House amendment to indicate that the court may grant other forms of adequate protection, other than an administrative expense, which will result in the realization by the secured creditor of the indubitable equivalent of the creditor's interest in property. In the special instance where there is a reserve fund maintained under the security agreement, such as in the typical bondholder case, indubitable equivalent means that the bondholders would be entitled to be protected as to the reserve fund, in addition to the regular payments needed to service the debt. Adequate protection of an interest of an entity in property is intended to protect a creditor's allowed secured claim. To the extent the protection proves to be inadequate after the fact, the creditor is entitled to a first priority administrative expense under section 503(b).

In the special case of a creditor who has elected application of creditor making an election under section 1111(b) (2), that creditor is entitled to adequate protection of the creditor's interest in property to the extent of the value of the collateral not to the extent of the creditor's allowed secured claim, which is inflated to cover a deficiency as a result of such election.

Section 362(a)(1) of the House amendment adopts the provision contained in the Senate amendment enjoining the commencement or continuation of a judicial, administrative, or other proceeding to recover a claim against the (6), which also covers assessment, to prevent harassment of the debtor with debtor that arose before the commencement of the case. The provision is beneficial and interacts with section 362(a) respect to pre-petition claims.

Section 362(a)(7) contains a provision contained in H.R. 8200 as passed by the House. The differing provision in the Senate amendment was rejected. It is not possible that a debt owing to the debtor may be offset against an interest in the debtor.

Section 362(a)(8) is new. The provision stays the commencement or continuation of any proceeding concerning the debtor before the U.S. Tax Court.

Section 362(b)(4) indicates that the stay under section 362(a)(1) does not apply to affect the commencement or continuation of an action or proceeding by a governmental unit to enforce the governmental unit's police or regulatory power. This section is intended to be given a narrow construction in order to permit governmental units to pursue actions to protect the public health and safety and not to apply to actions by a governmental unit to protect a pecuniary interest in property of the debtor or property of the estate.

Section 362(b)(6) of the House amendment adopts a provision contained in the Senate amendment restricting the exception to the automatic stay with respect to setoffs to permit only the setoff of mutual debts and claims. Traditionally, the right of setoff has been limited to mutual debts and claims and the lack of the clarifying term "mutual" in H.R. 8200 as passed by the House created an unintentional ambiguity. Section 362(b)(7) of the House amendment permits the issuance of a notice of tax deficiency. The House amendment rejects section 362(b)(7) in the Senate amendment. It would have permitted a particular governmental unit to obtain a pecuniary advantage without a hearing on the merits contrary to the exceptions contained in sections 362(b) (4) and (5).

Section 362(d) of the House amendment represents a compromise between comparable provisions in the House bill and Senate amendment. Under section 362(d)(1) of the House amendment, the court may terminate, annul, modify, or condition the automatic stay for cause, including lack of adequate protection of an interest in property of a secured party. It is anticipated that the Rules of Bankruptcy Procedure will provide that those hearings will receive priority on the calendar. Under section 362(d)(2) the court may alternatively terminate, annul, modify, or condition the automatic stay for cause including inadequate protection for the creditor. The court shall grant relief from the stay if there is no equity and it is not necessary to an effective reorganization of the debtor.

The latter requirement is contained in section 362(d)(2). This section is intended to solve the problem of real property mortgage foreclosures of property where the bankruptcy petition is filed on the eve of foreclosure. The section is not intended to apply if the business of the debtor is managing or leasing real property, such as a hotel operation, even though the debtor has no equity if the property is necessary to an effective reorganization of the debtor. Similarly, if the debtor does have an equity in the property, there is no requirement that the property be sold under section 363 of title II as would have been required by the Senate amendment.

Section 362(e) of the House amendment represents a modification of provisions in H.R. 8200 as passed by the House and the Senate amendment to make clear that a final hearing must be commenced within 30 days after a preliminary hearing is held to determine whether a creditor will be entitled to relief from the automatic stay. In order to insure that those hearings will in fact occur within such 30-day period, it is anticipated that the rules of bankruptcy procedure provide that such final hearings receive priority on the court calendar.

Section 362(g) places the burden of proof on the issue of the debtor's equity in collateral on the party requesting relief from the automatic stay and the burden on other issues on the debtor.

Section 363(a) of the House amendment defines "cash collateral" as defined in the Senate amendment. The broader definition of "soft collateral" contained in H.R. 8200 as passed by the House is deleted to remove limitations that were placed on the use, lease, or sale of inventory, accounts, contract rights, general intangibles, and chattel paper by the trustee or debtor in possession.

Section 363(c)(2) of the House amendment is derived from the Senate amendment. Similarly, sections 363(c) (3) and (4) are derived from comparable provisions in the Senate amendment in lieu of the contrary procedure contained in section 363(c) as passed by the House. The policy of the House amendment will generally require the court to schedule a preliminary hearing in accordance with the needs of the debtor to authorize the trustee or debtor in possession to use, sell, or lease cash collateral. The trustee or debtor in possession may use, sell, or lease cash collateral in the ordinary course of business only "after notice and a hearing."

Section 363(f) of the House amendment adopts an identical provision contained in the House bill, as opposed to an alternative provision contained in the Senate amendment.

Section 363(h) of the House amendment adopts a new paragraph (4) representing a compromise between the House bill and Senate amendment. The provision adds a limitation indicating that a trustee or debtor in possession sell jointly owned property only if the property is not used in the production, transmission, or distribution for sale, of electric energy or of natural or synthetic gas for heat, light, or power. This limitation is intended to protect public utilities from being deprived of power sources because of the bankruptcy of a joint owner.

Section 363(k) of the House amendment is derived from the third sentence of section 363(e) of the Senate amendment. The provision indicates that a secured creditor may bid in the full amount of the creditor's allowed claim, including the secured portion and any unsecured portion thereof in the event the creditor is undersecured, with respect to property that is subject to a lien that secures the allowed claim of the sale of the property.

Section 364(f) of the House amendment is new. This provision continues the exemption found in section 3(a)(7) of the Securities Act of 1933 for certificates of indebtedness issued by a trustee in bankruptcy. The exemption applies to any debt security issued under section 364 of title II. The section does not intend to change present law which exempts such securities from the Trust Indenture Act, 15 U.S.C. 77aaa, et seq. (1976).

Section 365(b)(3) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment. The provision adopts standards contained in section 365(b)(5) of the Senate amendment to define adequate assurance of future performance of a lease of real property in a shopping center.

Section 365(b)(4) of the House amendment indicates that after default the trustee may not require a lessor to supply services or materials without assumption unless the lessor is compensated as provided in the lease.

Section 365(c) (2) and (3) likewise represent a compromise between H.R. 8200 as passed by the House and the Senate amendment. Section 365(c)(2) is derived from section 365(b)(4) of the Senate amendment but does not apply to a

contract to deliver equipment as provided in the Senate amendment. As contained in the House amendment, the provision prohibits a trustee or debtor in possession from assuming or assigning an executory contract of the debtor to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or the issuance of a security of the debtor.

Section 365(e) is a refinement of comparable provisions contained in the House bill and Senate amendment. Sections 365(e)(1) and (2)(A) restate section 365(e) of H.R. 8200 as passed by the House. Sections 365(e)(2)(B) expands the section to permit termination of an executory contract or unexpired lease of the debtor if such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or for the issuance of a security of the debtor.

Characterization of contracts to make a loan, or extend other debt financing or financial accommodations, is limited to the extension of cash or a line of credit and is not intended to embrace ordinary leases or contracts to provide goods or services with payments to be made over time.

Section 365(f) is derived from H.R. 8200 as passed by the House. Deletion of language in section 365(f)(3) of the Senate amendment is done as a matter of style. Restrictions with respect to assignment of an executory contract or unexpired lease are superfluous since the debtor may assign an executory contract or unexpired lease of the debtor only if such contract is first assumed under section 364(f)(2)(A) of the House amendment.

Section 363(h) of the House amendment represents a modification of section 365(h) of the Senate amendment. The House amendment makes clear that in the case of a bankrupt lessor, a lessee may remain in possession for the balance of the term of a lease and any renewal or extension of the term only to the extent that such renewal or extension may be obtained by the lessee without the permission of the landlord or some third party under applicable nonbankruptcy law.

Section 366 of the House amendment represents a compromise between comparable provisions contained in H.R. 8200 as passed by the House and the Senate amendment. Subsection (a) is modified so that the applicable date is the date of the order for relief rather than the date of the filing of the petition. Subsection (b) contains a similar change but is otherwise derived from section 366(b) of the Senate amendment, with the exception that a time period for continued service of 20 days rather than 10 days is adopted.

The House amendment adopts section 501(b) of the Senate amendment leaving the Rules of Bankruptcy Procedure free to determine where a proof of claim must be filed.

Section 501(c) expands language contained in section 501(c) of the House bill and Senate amendment to permit the debtor to file a proof of claim if a creditor does not timely file a proof of the creditor's claim in a case under title II.

The House amendment deletes section 501(e) of the Senate amendment as a matter to be left to the rules of bankruptcy procedure. It is anticipated that the rules will enable governmental units, like other creditors, to have a reasonable time to file proofs of claim in bankruptcy cases.

For purposes of section 501, a proof of "interest" includes the interest of a general or limited partner in a partnership, the interest of a proprietor in a sole proprietorship, or the interest of a common or preferred stockholder in a corporation.

The House amendment adopts a compromise position in section 502(a) between H.R. 8200, as passed by the House, and the Senate amendment. Section 502(a) has been modified to make clear that a party in interest includes a creditor of a partner in a partnership that is a debtor under chapter 7. Since the trustee of the partnership is given an absolute claim against the estate of each general partner under section 723(c), creditors of the partner must have standing to object to claims against the partnership at the partnership level because no opportunity will be afforded at the partner's level for such objection.

The House amendment contains a provision in section 502(b)(1) that requires disallowance of a claim to the extent that such claim is unenforceable against the debtor and unenforceable against property of the debtor. This is intended to result in the disallowance of any claim for deficiency by an undersecured creditor on a nonrecourse loan or under a State antideficiency law, special provision for which is made in section 1111, since neither the debtor personally, nor the property of the debtor is liable for such a deficiency. Similarly claims for usurious interest or which could be barred by an agreement between the creditor and the debtor would be disallowed.

Section 502(b)(7)(A) represents a compromise between the House bill and the Senate amendment. The House amendment takes the provision in H.R. 8200 as passed by the House of Representatives but increases the percentage from 10 to 15 percent.

As used in section 502(b)(7), the phrase "lease of real property" applies only to a "true" or "bona fide" lease and does not apply to financing leases of real property or interests therein, or to leases of such property which are intended as security.

Historically, the limitation on allowable claims of lessors of real property was based on two considerations. First, the amount of the lessor's damages on breach of a real estate lease was considered contingent and difficult to prove. Partly for this reason, claims of a lessor of real estate were not provable prior to the 1934 amendments, to the Bankruptcy Act. Second, in a true lease of real property, the lessor retains all risks and benefits as to the value of the real estate at the termination of the lease. Historically, it was, therefore, considered equitable to limit the claims of real estate lessor.

However, these considerations are not present in "lease financing" transactions where, in substance, the "lease" involves a sale of the real estate and the rental payments are in substance the payment of principal and interest on a secured loan or sale. In a financing lease the lessor is essentially a secured or unsecured creditor (depending upon whether his interest is perfected or not) of the debtor, and the lessor's claim should not be subject to the 502(b)(7) limitation. Financing "leases" are in substance installment sales or loans. The "lessors" are essentially sellers or lenders and should be treated as such for purposes of the bankruptcy law.

Whether a "lease" is true or bona fide lease or, in the alternative, a financing "lease" or a lease intended as security, depends upon the circumstances of each case. The distinction between a true lease and a financing transaction is based upon the economic substance of the transaction and not, for example, upon the locus of title, the form of the transaction or the fact that the transaction is denominated as a "lease." The fact that the lessee, upon compliance with the terms of the lease, becomes or has the option to become the owner of the leased property for no additional consideration or for nominal consideration indicates that the transaction is a financing lease or lease intended as security. In such cases, the lessor has no substantial interest in the leased property at the expiration of the lease term. In addition, the fact that the lessee assumes and discharges substantially all the risks and obligations ordinarily attributed to the outright ownership of the property is more indicative of a financing transaction than of a true lease. The rental payments in such cases are in substance payments of principal and interest either on a loan secured by the leased real property or on the purchase of the leased real property. See, e.g., Financial Accounting Standards Board Statement No. 13 and SEC Reg. S-X, 17 C.F.R. sec. 210.3-16(q) (1977); *cf. First National Bank of Chicago* v. *Irving Trust Co.*, 74 F. 2d 263 (2nd Cir. 1934); and Albenda and Lief, "Net Lease Financing Transactions Under the Proposed Bankruptcy Act of 1973," 30 Business Lawyer, 713 (1975).

Section 502(c) of the House amendment presents a compromise between similar provisions contained in the House bill and the Senate amendment. The compromise language is consistent with an amendment to the definition of "claim" in section 104(4)(B) of the House amendment and requires estimation of any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. To the extent language in the House and Senate reports indicate otherwise, such language is expressly overruled.

Section 502(e) of the House amendment contains language modifying a similar section in the House bill and Senate amendment. Section 502(e)(1) states the general rule requiring the court to disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on, or that has secured, the claim of a creditor to any extent that the creditor's claim against the estate is disallowed. This

adopts a policy that a surety's claim for reimbursement or contribution is entitled to no better status than the claim of the creditor assured by such surety. Section 502(e)(1)(B) alternatively disallows any claim for reimbursement or contribution by a surety to the extent such claim is contingent as of the time of allowance. Section 502(e)(2) is clear that to the extent a claim for reimbursement or contribution becomes fixed after the commencement of the case that it is to be considered a prepetition claim for purposes of allowance. The combined effect of sections 502(e)(1)(B) and 502(e)(2) is that a surety or codebtor is generally permitted a claim for reimbursement or contribution to the extent the surety or codebtor has paid the assured party at the time of allowance. Section 502(e)(1)(C) alternatively indicates that a claim for reimbursement or contribution of a surety or codebtor is disallowed to the extent the surety or codebtor requests subrogation under section 509 with respect to the rights of the assured party. Thus, the surety or codebtor has a choice; to the extent a claim for contribution or reimbursement would be advantageous, such as in the case where such a claim is secured, a surety or codebtor may opt for reimbursement or contribution under section 502(e). On the other hand, to the extent the claim for such surety or codebtor by way of subrogation is more advantageous, such as where such claim is secured, the surety may elect subrogation under section 509.

The section changes current law by making the election identical in all other respects. To the extent a creditor's claim is satisfied by a surety or codebtor, other creditors should not benefit by the surety's inability to file a claim against the estate merely because such surety or codebtor has failed to pay such creditor's claim in full. On the other hand, to the extent the creditor's claim against the estate is otherwise disallowed, the surety or codebtor should not be entitled to increased rights by way of reimbursement or contribution, to the detriment of competing claims of other unsecured creditors, than would be realized by way of subrogation.

While the foregoing scheme is equitable with respect to other unsecured creditors of the debtor, it is desirable to preserve present law to the extent that a surety or codebtor is not permitted to compete with the creditor he has assured until the assured party's claim has paid in full. Accordingly, section 509(c) of the House amendment subordinates both a claim by way of subrogation or a claim for reimbursement or contribution of a surety or codebtor to the claim of the assured party until the assured party's claim is paid in full.

Section 502(h) of the House amendment expands similar provisions contained in the House bill and the Senate amendment to indicate that any claim arising from the recovery of property under section 522(i), 550, or 553 shall be determined as though it were a prepetition claim.

Section 502(i) of the House amendment adopts a provision contained in section 502(j) of H.R. 8200 as passed by the House but that was not contained in the Senate amendment.

Section 502(i) of H.R. 8200 as passed by the House, but was not included in the Senate amendment, is deleted as a matter to be left to the bankruptcy tax bill next year.

The House amendment deletes section 502(i) of the Senate bill but adopts the policy of that section to a limited extent for confirmation of a plan of reorganization in section 1111(b) of the House amendment.

Section 502(j) of the House amendment is new. The provision codifies section 57k of the Bankruptcy Act.

Section 503(a) of the House amendment represents a compromise between similar provisions in the House bill and the Senate amendment by leaving to the Rules of Bankruptcy Procedure the determination of the location at which a request for payment of an administrative expense may be filed. The preamble to section 503(b) of the House bill makes a similar change with respect to the allowance of administrative expenses.

Section 503(b)(1) adopts the approach taken in the House bill as modified by some provisions contained in the Senate amendment. The preamble to section 503(b) makes clear that none of the paragraphs of section 503(b) apply to claims or expenses of the kind specified in section 502(f) that arise in the ordinary course of the debtor's business or financial affairs and that arise during the gap between the commencement of an involuntary case and the appointment of a trustee or the order for relief, whichever first occurs. The remainder of section 503(b) represents a compromise between H.R. 8200 as passed by the House and the Senate amendments. Section 503(b)(3)(E) codifies present law in cases such as *Randolph* v. *Scruggs*, 190 U.S. 533, which accords administrative expense status to services rendered by a prepetition custodian or other party to the extent such services actually benefit the estate. Section 503(b)(4) of the House amendment conforms to the provision contained in H.R. 8200 as passed by the House and deletes language contained in the Senate amendment providing a different standard of compensation under section 330 of that amendment.

Section 505 of the House amendment adopts a compromise position with respect to the determination of tax liability from the position taken in H.R. 8200 as passed by the House and in the Senate amendment.

Section 506(a) of the House amendment adopts the provision contained in the Senate amendment and rejects a contrary provision as contained in H.R. 8200 as passed by the House. The provision contained in the Senate amendment and adopted by the House amendment recognizes that an amount subject to set-off is sufficient to recognize a secured status in the holder of such right. Additionally a determination of what portion of an allowed claim is secured and what portion is unsecured is binding only for the purpose for which the determination is made. Thus determinations for purposes of adequate protection is not binding for purposes of "cram down" on confirmation in a case under chapter 11.

Section 506(b) of the House amendment adopts language contained in the Senate amendment and rejects language contained in H.R. 8200 as passed by the House. If the security agreement between the parties provides for attorneys' fees, it will be enforceable under title II, notwithstanding contrary law, and is recoverable from the collateral after any recovery under section 506(c).

Section 506(c) of the House amendment was contained in H.R. 8200 as passed by the House and adopted, verbatim, in the Senate amendment. Any time the trustee or debtor in possession expends money to provide for the reasonable and necessary cost and expenses of preserving or disposing of a secured creditor's collateral, the trustee or debtor in possession is entitled to recover such expenses from the secured party or from the property securing an allowed secured claim held by such party.

Section 506(d) of the House amendment is derived from H.R. 8200 as passed by the House and is adopted in lieu of the alternative test provided in section 506(d) of the Senate amendment. For purposes of section 506(d) of the House amendment, the debtor is a party in interest.

Section 507(a)(3) of the House amendment represents a compromise dollar amount and date for the priority between similar provisions contained in H.R. 8200 as passed by the House and the Senate amendments. A similar compromise is contained in section 507(a)(4).

Section 507(a)(5) represents a compromise on amount between the priority as contained in H.R. 8200 as passed by the House and the Senate amendment. The Senate provision for limiting the priority to consumers having less than a fixed gross income is deleted.

Section 507(a)(6) of the House amendment represents a compromise between similar provisions contained in H.R. 8200 as passed by the House and the Senate amendment.

Section 507(b) of the House amendment is new and is derived from the compromise contained in the House amendment with respect to adequate protection under section 361. Subsection (b) provides that to the extent adequate protection of the interest of a holder of a claim proves to be inadequate, then the creditor's claim is given priority over every other allowable claim entitled to distribution under section 507(a). Section 507(b) of the Senate amendment is deleted.

Section 507(c) of the House amendment is new. Section 507(d) of the House amendment prevents subrogation with respect to priority for certain priority claims. Subrogation with respect to priority is intended to be permitted for administrative claims and claims arising during the gap period.

Section 508(b) of the House amendment is new and provides an identical rule with respect to a creditor of a partnership who receives payment from a partner, to that of a creditor of a debtor who receives a payment in a foreign proceeding involving the debtor.

Section 509 of the House amendment

represents a substantial revision of provisions contained in H.R. 8200 as passed by the House and in the Senate amendment. Section 509(a) states a general rule that a surety or co-debtor is subrogated to the rights of a creditor assured by the surety or co-debtor to the extent the surety or co-debtor pays such creditor. Section 509(b) states a general exception indicating that subrogation is not granted to the extent that a claim of a surety or co-debtor for reimbursement or contribution is allowed under section 502 or disallowed other than under section 502(e). Additionally, section 509(b)(1)(C) provides that such claims for subrogation are subordinated to the extent that a claim of the surety or co-debtor for reimbursement or contribution is subordinated under section 510(a)(1) or 510(b). Section 509(b)(2) reiterates the well-known rule that prevents a debtor that is ultimately liable on the debt from recovering from a surety or a co-debtor. Although the language in section 509(b)(2) focuses in terms of receipt of consideration, legislative history appearing elsewhere indicates that an agreement to share liabilities should prevail over an agreement to share profits throughout title II. This is particularly important in the context of co-debtors who are partners. Section 509(c) subordinates the claim of a surety or co-debtor to the claim of an assured creditor until the creditor's claim is paid in full.

Section 510(c)(1) of the House amendment represents a compromise between similar provisions in the House bill and Senate amendment. After notice and a hearing, the court may, under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest. As a matter of equity, it is reasonable that a court subordinate claims to claims and interests to interests. It is intended that the term "principles of equitable subordination" follow existing case law and leave to the courts development of this principle. To date, under existing law, a claim is generally subordinated only if holder of such claim is guilty of inequitable conduct, or the claim itself is of a status susceptible to subordination, such as a penalty or a claim for damages arising from the purchase or sale of a security of the debtor. The fact that such a claim may be secured is of no consequence to the issue of subordination. However, it is inconceivable that the status of a claim as a secured claim could ever be grounds for justifying equitable subordination.

Section 511 of the Senate amendment is deleted. Its substance is adopted in section 502(b)(9) of the House amendment which reflects an identical provision contained in H.R. 8200 as passed by the House.

Section 521 of the House amendment modifies a comparable provision contained in the House bill and Senate amendment. The Rules of Bankruptcy Procedure should provide where the list of creditors is to be filed. In addition, the debtor is required to attend the hearing on discharge under section 524(d).

Section 522 of the House amendment represents a compromise on the issue of exemptions between the position taken in the House bill, and that taken in the Senate amendment. Dollar amounts specified in section 522(d) of the House bill have been reduced from amounts as contained in H.R. 8200 as passed by the House. The States may, by passing a law, determine whether the Federal exemptions will apply as an alternative to State exemptions in bankruptcy cases.

Section 522(c)(1) tracks the House bill and provides that dischargeable tax claims may not be collected out of exempt property.

Section 522(f)(2) is derived from the Senate amendment restricting the debtor to avoidance of nonpossessory, nonpurchase money security interests.

Section 523(a)(1) represents a compromise between the position taken in the House bill and the Senate amendment. Section 523(a)(2) likewise represents a compromise between the position taken in the House bill and the Senate amendment with respect to the false financial statement exception to discharge. In order to clarify that a "renewal of credit" includes a "refinancing of credit", explicit reference to a refinancing of credit is made in the preamble to section 523(a)(2). A renewal of credit or refinancing of credit that was obtained by a false financial statement within the terms of section 523(a)(2) is nondischargeable. However, each of the provisions of section 523(a)(2) must be proved. Thus, under section 523(a)(2)(A) a creditor must prove that the debt was obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition. Subparagraph (A) is intended to codify current case law *e.g., Neal* v. *Clark*, 95 U.S. 704 (1887), which interprets "fraud" to mean actual or positive fraud rather than fraud implied in law. Subparagraph (A) is mutually exclusive from subparagraph (B). Subparagraph (B) pertains to the so-called false financial statement. In order for the debt to be nondischargeable, the creditor must prove that the debt was obtained by the use of a statement in writing (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for obtaining money, property, services, or credit reasonably relied; (iv) that the debtor caused to be made or published with intent to deceive. Section 523(a)(2)(B)(iv) is not intended to change from present law since any statement that the debtor causes to be made or published with the intent to deceive automatically includes a statement that the debtor actually makes or publishes with an intent to deceive. Section 523(a)(2)(B) is explained in the House report. Under section 523(a)(2)(B)(i) a discharge is barred only as to that portion of a loan with respect to which a false financial statement is materially false.

In many cases, a creditor is required by State law to refinance existing credit on which there has been no default. If the creditor does not forfeit remedies or otherwise rely to his detriment on a false financial statement with respect to existing credit, then an extension, renewal, or refinancing of such credit is nondischargeable only to the extent of the new money advanced; on the other hand, if an existing loan is in default or the creditor otherwise reasonably relies to his detriment on a false financial statement with regard to an existing loan, then the entire debt is nondischargeable under section 523(a)(2)(B). This codifies the reasoning expressed by the second circuit in *In re Danns*, 558 F. 2d 114 (2d cir. 1977).

Section 523(a)(3) of the House amendment is derived from the Senate amendment. The provision is intended to overrule *Birkett* v. *Columbia Bank*, 195 U.S. 345 (1904).

Section 523(a)(4) of the House amendment represents a compromise between the House bill and the Senate amendment.

Section 523(a)(5) is a compromise between the House bill and the Senate amendment. The provision excepts from discharge a debt owed to a spouse, former spouse or child of the debtor, in connection with a separation agreement, divorce decree, or property settlement agreement, for alimony to, maintenance for, or support of such spouse or child but not to the extent that the debt is assigned to another entity. If the debtor has assumed an obligation of the debtor's spouse to a third party in connection with a separation agreement, property settlement agreement, or divorce proceeding, such debt is dischargeable to the extent that payment of the debt by the debtor is not actually in the nature of alimony, maintenance, or support of debtor's spouse, former spouse, or child.

Section 523(a)(6) adopts the position taken in the House bill and rejects the alternative suggested in the Senate amendment. The phrase "willful and malicious injury" covers a willful and malicious conversion.

Section 523(a)(7) of the House amendment adopts the position taken in the Senate amendment and rejects the position taken in the House bill. A penalty relating to a tax cannot be nondischargeable unless the tax itself is nondischargeable.

Section 523(a)(8) represents a compromise between the House bill and the Senate amendment regarding educational loans. This provision is broader than current law which is limited to federally insured loans. Only educational loans owing to a governmental unit or a nonprofit institution of higher education are made nondischargeable under this paragraph.

Section 523(b) is new. The section represents a modification of similar provisions contained in the House bill and the Senate amendment.

Section 523(c) of the House amendment adopts the position taken in the Senate amendment.

Section 523(d) represents a compromise between the position taken in the House bill and the Senate amendment on the issue of attorneys' fees in false financial statement complaints to deter-

mine dischargeability. The provision contained in the House bill permitting the court to award damages is eliminated. The court must grant the debtor judgment or a reasonable attorneys' fee unless the granting of judgment would be clearly inequitable.

Section 524(a) of the House amendment represents a compromise between the House bill and the Senate amendment. Section 524(b) of the House amendment is new, and represents standards clarifying the operation of section 524(a)(3) with respect to community property.

Sections 524 (c) and (d) represent a compromise between the House bill and Senate amendment on the issue of reaffirmation of a debt discharged in bankruptcy. Every reaffirmation to be enforceable must be approved by the court, and any debtor may rescind a reaffirmation for 30 days from the time the reaffirmation becomes enforceable. If the debtor is an individual the court must advise the debtor of various effects of reaffirmation at a hearing. In addition, to any extent the debt is a consumer debt that is not secured by real property of the debtor reaffirmation is permitted only if the court approves the reaffirmation agreement, before granting a discharge under section 727, 1141, or 1328, as not imposing a hardship on the debtor or a dependent of the debtor and in the best interest of the debtor; alternatively, the court may approve an agreement entered into in good faith that is in settlement of litigation of a complaint to determine dischargeability or that is entered into in connection with redemption under section 722. The hearing on discharge under section 524(d) will be held whether or not the debtor desires to reaffirm any debts.

Section 541(a)(7) is new. The provision clarifies that any interest in property that the estate acquires after the commencement of the case is property of the estate; for example, if the estate enters into a contract, after the commencement of the case, such a contract would be property of the estate. The addition of this provision by the House amendment merely clarifies that section 541(a) is an all-embracing definition which includes charges on property, such as liens held by the debtor on property of a third party, or beneficial rights and interests that the debtor may have in property of another. However, only the debtor's interest in such property becomes property of the estate. If the debtor holds bare legal title or holds property in trust for another, only those rights which the debtor would have otherwise had emanating from such interest pass to the estate under section 541. Neither this section nor section 545 will affect various statutory provisions that give a creditor a lien that is valid both inside and outside bankruptcy against a bona fide purchaser of property from the debtor, or that creates a trust fund for the benefit of creditors meeting similar criteria. See Packers and Stockyards Act § 206, 7 U.S.C. 196 (1976).

Section 541(c)(2) follows the position taken in the House bill and rejects the position taken in the Senate amendment with respect to income limitations on a spend-thrift trust.

Section 541(d) of the House amendment is derived from section 541(e) of the Senate amendment and reiterates the general principle that where the debtor holds bare legal title without any equitable interest, that the estate acquires bare legal title without any equitable interest in the property. The purpose of section 541(d) as applied to the secondary mortgage market is identical to the purpose of section 541(e) of the Senate amendment and section 541(d) will accomplish the same result as would have been accomplished by section 541(e). Even if a mortgage seller retains for purposes of servicing legal title to mortgages or interests in mortgages sold in the secondary mortgage market, the trustee would be required by section 541(d) to turn over the mortgages or interests in mortgages to the purchaser of those mortgages.

The seller of mortgages in the secondary mortgage market will often retain the original mortgage notes and gage market transactions will not be affected by the terms of the servicing agreement between the mortgage servicer and the purchaser of the mortgages. Under section 541(d), the trustee is required to recognize the purchaser's title to the mortgages or related documents and the seller will not endorse the notes to reflect the sale to the purchaser. Similarly, the purchaser will often not record the purchaser's ownership of the mortgages or interests in mortgages under State recording statutes. These facts are irrelevant and the seller's retention of the mortgage documents and the purchaser's decision not to record do not change the trustee's obligation to turn the mortgages or interests in mortgages over to the purchaser. The application of section 541(d) to secondary mortinterests in mortgages and to turn this property over to the purchaser. It makes no difference whether the servicer and the purchaser characterize their relationship as one of trust, agency, or independent contractor.

The purpose of section 541(d) as applied to the secondary mortgage market is therefore to make certain that secondary mortgage market sales as they are currently structured are not subject to challenge by bankruptcy trustees and that purchasers of mortgages will be able to obtain the mortgages or interests in mortgages which they have purchased from trustees without the trustees asserting that a sale of mortgages is a loan from the purchaser to the seller.

Thus, as section 541(a)(1) clearly states, the estate is comprised of all legal or equitable interests of the debtor in property as of the commencement of the case. To the extent such an interest is limited in the hands of the debtor, it is equally limited in the hands of the estate except to the extent that defenses which are personal against the debtor are not effective against the estate.

Second 542(a) of the House amendment modifies similar provisions contained in the House bill and the Senate amendment treating with turnover of property to the estate. The section makes clear that any entity, other than a custodian, is required to deliver property of the estate to the trustee or debtor in possession whenever such property is acquired by the entity during the case, if the trustee or debtor in possession may use, sell, or lease the property under section 363, or if the debtor may exempt the property under section 522, unless the property is of inconsequential value or benefit to the estate. This section is not intended to require an entity to deliver property to the trustee if such entity has obtained an order of the court authorizing the entity to retain possession, custody, or control of the property.

The House amendment adopts section 542(c) of the House bill in preference to a similar provision contained in section 542(c) of the Senate amendment. Protection afforded by section 542(c) applies only to the transferor or payor and not to a transferee or payee receiving a transfer or payment, as the case may be. Such transferee or payee is treated under section 549 and section 550 of title II.

The extent to which the attorney client privilege is valid against the trustee is unclear under current law and is left to be determined by the courts on a case by case basis.

Section 543(a) is a modification of similar provisions contained in the House bill and the Senate amendment. The provision clarifies that a custodian may always act as is necessary to preserve property of the debtor. Section 543(c)(3) excepts from surcharge a custodian that is an assignee for the benefit of creditors, who was appointed or took possession before 120 days before the date of the filing of the petition, whichever is later. The provision also prevents a custodian from being surcharged in connection with payments made in accordance with applicable law.

Section 544(a)(3) modifies similar provisions contained in the House bill and Senate amendment so as not to require a creditor to perform the impossible in order to perfect his interest. Both the lien creditor test in section 544 (a)(1), and the bona fide purchaser test in section 544(a)(3) should not require a transferee to perfect a transfer against an entity with respect to which applicable law does not permit perfection. The avoiding powers under section 544(a) (1), (2), and (3) are new. In particular, section 544(a)(1) overrules *Pacific Finance Corp.* v. *Edwards*, 309 F.2d 224 (9th Cir. 1962), and *In re Federals, Inc.*, 553 F.2d 509 (6th Cir. 1977), insofar as those cases held that the trustee did not have the status of a creditor who extended credit immediately prior to the commencement of the case.

The House amendment deletes section 544(c) of the House bill.

Section 545 of the House amendment modifies similar provisions contained in the House bill and Senate amendment to make clear that a statutory lien may be avoided under section 545 only to the extent the lien violates the perfection

standards of section 545. Thus a Federal tax lien is invalid under section 545(2) with respect to property specified in sections 6323 (b) and (c) of the Internal Revenue Code of 1954. As a result of this modification, section 545(b) of the Senate amendment is deleted as unnecessary.

Section 546(a) of the House amendment is derived from section 546(c) of the Senate amendment. Section 546(c) of the House amendment is derived from section 546(b) of the Senate amendment. It applies to receipt of goods on credit as well as by cash sales. The section clarifies that a demand for reclamation must be made in writing anytime before 10 days after receipt of the goods by the debtor. The section also permits the court to grant the reclaiming creditor a lien or an administrative expense in lieu of turning over the property.

No limitation is provided for payments to commodity brokers as in section 766 of the Senate amendment other than the amendment to section 548 of title II. Section 547(c)(2) protects most payments.

Section 547(b)(2) of the House amendment adopts a provision contained in the House bill and rejects an alternative contained in the Senate amendment relating to the avoidance of a preferential transfer that is payment of a tax claim owing to a governmental unit. As provided, section 106(c) of the House amendment overrules contrary language in the House report with the result that the Government is subject to avoidance of preferential transfers.

Contrary to language contained in the House report, payment of a debt by means of a check is equivalent to a cash payment, unless the check is dishonored. Payment is considered to be made when the check is delivered for purposes of sections 547(c) (1) and (2).

Section 547(c)(6) of the House bill is deleted and is treated in a different fashion in section 553 of the House amendment.

Section 547(c)(6) represents a modification of a similar provision contained in the House bill and Senate amendment. The exception relating to satisfaction of a statutory lien is deleted. The exception for a lien created under title 11 is deleted since such a lien is a statutory lien that will not be avoidable in a subsequent bankruptcy.

Section 547(e)(1)(B) is adopted from the House bill and Senate amendment without change. It is intended that the simple contract test used in this section will be applied as under section 544 (a)(1) not to require a creditor to perfect against a creditor on a simple contract in the event applicable law makes such perfection impossible. For example, a purchaser from a debtor at an improperly noticed bulk sale may take subject to the rights of a creditor on a simple contract of the debtor for 1 year after the bulk sale. Since the purchaser cannot perfect against such a creditor on a simple contract, he should not be held responsible for failing to do the impossible. In the event the debtor goes into bankruptcy within a short time after the bulk sale, the trustee should not be able to use the avoiding powers under section 544(a)(1) or 547 merely because State law has made some transfers of personal property subject to the rights of a creditor on a simple contract to acquire a judicial lien with no opportunity to perfect against such a creditor.

Section 548(d)(2) is modified to reflect general application of a provision contained in section 766 of the Senate amendment with respect to commodity brokers. In particular, section 548(d)(2)(B) of the House amendment makes clear that a commodity broker who receives a margin payment is considered to receive the margin payment in return for "value" for purposes of section 548.

Section 549 of the House amendment flect general application of a provision rate sections 342 (b) and (c) of the Senate amendment. Those sections have been consolidated and redrafted in section 549(c) of the House amendment. Section 549(d) of the House amendment adopts a provision contained in section 549(c) of the Senate amendment.

Section 550(a)(1) of the House amendment has been modified in order to permit recovery from an entity for whose benefit an avoided transfer is made in addition to a recovery from the initial transferee of the transfer. Section 550(c) would still apply, and the trustee is entitled only to a single satisfaction. The liability of a transferee under section 550(a) applies only "to the extent that a transfer is avoided". This means that liability is not imposed on a transferee to the extent that a transferee is protected under a provision such as section 548(c) which grants a good faith transferee for value of a transfer that is avoided only as a fraudulent transfer, a lien on the property transferred to the extent of value given.

Section 550(b) of the House amendment is modified to indicate that value includes satisfaction or securing of a present antecedent debt. This means that the trustee may not recover under subsection (a)(2) from a subsequent transferee that takes for "value", provided the subsequent transferee also takes in good faith and without knowledge of the transfer avoided.

Section 550(e) of the House amendment is derived from section 550(e) of the Senate amendment.

Section 551 is adopted from the House bill and the alternative in the Senate amendment is rejected. The section is clarified to indicate that a transfer avoided or a lien that is void is preserved for the benefit of the estate, but only with respect to property of the estate. This prevents the trustee from asserting an avoided tax lien against after acquired property of the debtor.

Section 552(a) is derived from the House bill and the alternative provision in the Senate amendment is rejected. Section 552(b) represents a compromise between the House bill and the Senate amendment. Proceeds coverage, but not after acquired property clauses, are valid under title II. The provision allows the court to consider the equities in each case. In the course of such consideration the court may evaluate any expenditures by the estate relating to proceeds and any related improvement in position of the secured party. Although this section grants a secured party a security interest in proceeds, product, offspring, rents, or profits, the section is explicitly subject to other sections of title II. For example, the trustee or debtor in possession may use, sell, or lease proceeds, product, offspring, rents, or profits under section 363.

Section 553 of the House amendment is derived from a similar provision contained in the Senate amendment, but is modified to clarify application of a two-point test with respect to set offs.

Section 554(b) is new and permits a party in interest to request the court to order the trustee to abandon property of the estate that is burdensome to the estate or that is of inconsequential value to the estate.

The House amendment deletes section 701(d) of the Senate amendment. It is anticipated that the Rules of Bankruptcy Procedure will require the appointment of an interim trustee at the earliest practicable moment in commodity broker bankruptcies, but no later than noon of the day after the date of the filing of the petition, due to the volatility of such cases.

The House amendment adopts section 702(a)(2) of the Senate amendment. An insubstantial equity interest does not disqualify a creditor from voting for a candidate for trustee. Section 704(8) of the Senate amendment is deleted in the House amendment. Trustees should give constructive notice of the commencement of the case in the manner specified under section 549(c) of title II.

Section 705(a) of the House amendment adopts a provision contained in the Senate amendment that limits a committee of creditors to not more than 11; the House bill contained no maximum limitation.

Section 706(a) of the House amendment adopts a provision contained in the Senate amendment indicating that a waiver of the right to convert a case under section 706(a) is unenforceable. The explicit reference in title II forbidding the waiver of certain rights is not intended to imply that other rights, such as the right to file a voluntary bankruptcy case under section 301, may be waived.

Section 706 of the House amendment adopts a similar provision contained in H.R. 8200 as passed by the House. Competing proposals contained in section 706(c) and section 706(d) of the Senate amendment are rejected.

Section 707 of the House amendment indicates that the court may dismiss a case only after notice and a hearing.

Section 722 of the House amendment adopts the position taken in H.R. 8200 as passed by the House and rejects the alternative contained in section 722 of the Senate amendment.

Section 723(c) of the House amendment is a compromise between similar provisions contained in the House bill and Senate amendment. The section makes clear that the trustee of a partnership has a claim against each general partner for the full amount of all claims of creditors allowed in the case concerning the partnership. By restricting the trustee's rights to claims of "creditors," the trustee of the partnership will not have a claim against the

general partners for administrative expenses or claims allowed in the case concerning the partnership. As under present law, sections of the Bankruptcy Act applying to codebtors and sureties apply to the relationship of a partner with respect to a partnership debtor. *See* sections 501(b), 502(e), 506(d)(2), 509, 524(d), and 1301 of title II.

Section 724 of the House amendment adopts the provision taken in the House bill and rejects the provision taken in the Senate amendment. In effect, a tax claim secured by a lien is treated as a claim between the fifth and sixth priority in a case under chapter 7 rather than as a secured claim.

Section 725 of the House amendment adopts the substance contained in both the House bill and Senate amendment but transfers an administrative function to the trustee in accordance with the general thrust of this legislation to separate the administrative and the judicial functions where appropriate.

Section 726(a)(4) adopts a provision contained in the Senate amendment subordinating prepetition penalties and penalties arising in the involuntary gap period to the extent the penalties are not compensation for actual pecuniary laws.

The House amendment deletes a provision following section 726(a)(6) of the Senate amendment providing that the term "claim" includes interest due owed before the date of the filing of the petition as unnecessary since a right to payment for interest due is a right to payment which is within the definition of "claim" in section 101(4) of the House amendment.

Sections 727(a) (8) and (9) of the House amendment represent a compromise between provisions contained in section 727(a)(8) of the House bill and Senate amendment. Section 727(a)(8) of the House amendment adopts section 727(a)(8) of the House bill. However, section 727(a)(9) of the House amendment contains a compromise based on section 727(a)(8) of the Senate amendment with respect to the circumstances under which a plan by way of composition under chapter XIII of the Bankruptcy Act or chapter 13 of title II should be a bar to discharge in a subsequent proceeding under title 11. The paragraph provides that a discharge under section 660 or 661 of the Bankruptcy Act or section 1328 of title II in a case commenced within 6 years before the date of the filing of the petition in a subsequent case, operates as a bar to discharge unless, first, payments under the plan totaled at least 100 percent of the allowed unsecured claims in the case; or second, payments under the plan totaled at least 70 percent of the allowed unsecured claims in the case and the plan was proposed by the debtor in good faith and was the debtor's best effort.

It is expected that the Rules of Bankruptcy Procedure will contain a provision permitting the debtor to request a determination of whether a plan is the debtor's "best effort" prior to confirmation of a plan in a case under chapter 13 of title II. In determining whether a plan is the debtor's "best effort" the court will evaluate several factors. Different facts and circumstances in cases under chapter 13 operate to make any rule of thumb of limited usefulness. The court should balance the debtor's assets, including family income, health insurance, retirement benefits, and other wealth, a sum which is generally determinable, against the forseeable necessary living expenses of the debtor and the debtor's dependents, which unfortunately is rarely quantifiable. In determining the expenses of the debtor and the debtor's dependents, the court should consider the stability of the debtor's employment, if any, the age of the debtor, the number of the debtor's dependents and their ages, the condition of equipment and tools necessary to the debtor's employment or to the operation of his business, and other foreseeable expenses that the debtor will be required to pay during the period of the plan, other than payments to be made to creditors under the plan.

Section 727(a)(10) of the House amendment clarifies a provision contained in section 727(a)(9) of the House bill and Senate amendment indicating that a discharge may be barred if the court approves a waiver of discharge executed in writing by the debtor after the order for relief under chapter 7.

Section 727(b) of the House amendment adopts a similar provision contained in the Senate amendment modifying the effect of discharge. The provision makes clear that the debtor is discharged from all debts that arose before the date of the order for relief under chapter 7 in addition to any debt which is determined under section 502 as if it were a prepetition claim. Thus, if a case is converted from chapter 11 or chapter 13 to a case under chapter 7, all debts prior to the time of conversion are discharged, in addition to debts determined after the date of conversion of a kind specified in section 502, that are to be determined as prepetition claims. This modification is particularly important with respect to an individual debtor who files a petition under chapter 11 or chapter 13 of title II if the case is converted to chapter 7. The logical result of the House amendment is to equate the result that obtains whether the case is converted from another chapter to chapter 7, or whether the other chapter proceeding is dismissed and a new case is commenced by filing a petition under chapter 7.

Section 728 of the House amendment adopts a provision contained in the House bill that was deleted by the Senate amendment.

Section 741(6) of the House bill and Senate amendment is deleted by the House amendment since the defined term is used only in section 741(4)(A)(iii). A corresponding change is made in that section.

Section 742 of the House amendment deletes a sentence contained in the Senate amendment requiring the trustee in an interstate stockbrokerage liquidation to comply with the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker. The House amendment expands the requirement to require the SIPC trustee to perform such duties, if the debtor is a commodity broker, under section 7(b) of the Securities Investor Protection Act. The requirement is deleted from section 742 since the trustee of an intrastate stockbroker will be bound by the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker by reason of section 103 of title II.

Subchapter IV of chapter 7 represents a compromise between similar chapters in the House bill and Senate amendment. Section 761(2) of the House amendment defines "clearing organization" to cover an organization that clears commodity contracts on a contract market or a board of trade; the expansion of the definition is intended to include clearing organizations that clear commodity options. Section 761(4) of the House amendment adopts the term "commodity contract" as used in section 761(5) of the Senate amendment but with the more precise substantive definitions contained in section 761(8) of the House bill. The definition is modified to insert "board of trade" to cover commodity options. Section 761(5) of the House amendment adopts the definition contained in section 761(6) of the Senate amendment in preference to the definition contained in section 761(4) of the House bill which erroneously included onions. Section 761(9) of the House amendment represents a compromise between similar provisions contained in section 761(10) of the Senate amendment and section 761(9) of the House bill. The compromise adopts the substance contained in the House bill and adopts the terminology of "commodity contract" in lieu of "contractual commitment" as suggested in the Senate amendment. Section 761(10) of the House amendment represents a compromise between similar sections in the House bill and Senate amendment regarding the definition of "customer property." The definition of "distribution share" contained in section 761(12) of the Senate amendment is deleted as unnecessary. Section 761(12) of the House amendment adopts a definition of "foreign futures commission merchant" similar to the definition contained in section 761(14) of the Senate amendment. The definition is modified to cover either an entity engaged in soliciting orders or the purchase or sale of a foreign future, or an entity that accepts cash, a security, or other property for credit in connection with such a solicitation or acceptance. Section 761(13) of the House amendment adopts a definition of "leverage transaction" identical to the definition contained in section 761(15) of the Senate amendment. Section 761(15) of the House amendment adopts the definition of "margin payment" contained in section 761(17) of the Senate amendment. Section 761(17) of the House amendment adopts a definition of "net equity" derived from section 761(15) of the House bill.

Section 764 of the House amendment is derived from the House bill.

Sections 765 and 766 of the House amendment represent a consolidation and redraft of sections 765, 766, 767, and 768 of the House bill and sections 765, 766, 767, and 768 of the Senate amendment. In particular, section 765(a) of the House amendment is derived from

section 765(a) of the House bill and section 767(a) of the Senate amendment. Under section 765(a) of the House amendment customers are notified of the opportunity to immediately file proofs of claim and to identify specifically identifiable securities, property, or commodity contracts. The customer is also afforded an opportunity to instruct the trustee regarding the customer's desires concerning disposition of the customer's commodity contracts. Section 767(b) makes clear that the trustee must comply with instructions received to the extent practicable, but in the event the trustee has transferred commodity contracts to a commodity broker, such instructions shall be forwarded to the broker.

Section 766(a) of the House amendment is derived from section 768(c) of the House bill and section 767(f) of the Senate amendment. Section 766(b) of the House amendment is derived from section 765(d) of the House bill, and section 767(g) of the Senate amendment. Section 766(c) of the House amendment is derived from section 768(a) of the House bill and section 767(e) of the Senate amendment. Section 766(d) of the House amendment is derived from section 768(b) of the House bill and the second sentence of section 767(e) of the Senate amendment.

Section 766(e) of the House amendment is derived from section 765(c) of the House bill and sections 767 (c) and (d) of the Senate amendment. The provision clarifies that the trustee may liquidate a commodity contract only if the commodity contract cannot be transferred to a commodity broker under section 766(c), cannot be identified to a particular customer, or has been identified with respect to a particular customer, but with respect to which the customer's instructions have not been received.

Section 766(f) of the House amendment is derived from section 766(b) of the House bill and section 767(h) of the Senate amendment. The reference to "securities and other property" is not intended to include a commodity contract. Section 766(g) of the House amendment is derived from section 766(a) of the House bill. Section 766 (h) of the House amendment is derived from section 767(a) of the House bill and section 765(a) of the Senate amendment. In order to induce private trustees to undertake the difficult and risky job of liquidating a commodity broker, the House amendment contains a provision insuring that a pro rata share of administrative claims will be paid. The provision represents a compromise between the position taken in the House bill, subordinating customer property to all expenses of administration, and the position taken in the Senate amendment requiring the distribution of customer property in advance of any expenses of administration. The position in the Senate amendment is rejected since customers, in any event, would have to pay a brokerage commission or fee in the ordinary course of business. The compromise provision requires customers to pay only those administrative expenses that are attributable to the administration of customer property.

Section 766(i) of the House amendment is derived from section 767(b) of the House bill and contains a similar compromise with respect to expenses of administration as the compromise detailed in connection with section 766(h) of the House amendment. Section 766(j) of the House amendment is derived from section 767(c) of the House bill. No counterpart is contained in the Senate amendment. The provision takes account of the rare case where the estate has customer property in excess of customer claims and administrative expenses attributable to those claims. The section also specifies that to the extent a customer is not paid in full out of customer property, that the unpaid claim will be treated the same as any other general unsecured creditor.

Section 768 of the Senate amendment was deleted from the House amendment as unwise. The provision in the Senate amendment would have permitted the trustee to distribute customer property based upon an estimate of value of the customer's account, with no provision for recapture of excessive disbursements. Moreover, the section would have exonerated the trustee from any liability for such an excessive disbursement. Furthermore, the section is unclear with respect to the customer's rights in the event the trustee makes a distribution less than the share to which the customer is entitled. The provision is deleted in the House amendment so that this difficult problem may be handled on a case-by-case basis by the courts as the facts and circumstances of each case require.

Section 769 of the Senate amendment is deleted in the House amendment as unnecessary. The provision was intended to codify *Board of Trade* v. *Johnson*, 264 U.S. 1 (1924). Board of Trade against Johnson is codified in section 363(f) of the House amendment which indicates the only five circumstances in which property may be sold free and clear of an interest in such property of an entity other than the estate.

Section 770 of the Senate amendment is deleted in the House amendment as unnecessary. That section would have permitted commodity brokers to liquidate commodity contracts, notwithstanding any contrary order of the court. It would require an extraordinary circumstance, such as a threat to the national security, to enjoin a commodity broker from liquidating a commodity contract. However, in those circumstances, an injunction must prevail. Failure of the House amendment to incorporate section 770 of the Senate amendment does not imply that the automatic stay prevents liquidation of commodity contracts by commodity brokers. To the contrary, whenever by contract, or otherwise, a commodity broker is entitled to liquidate a position as a result of a condition specified in a contract, other than a condition or default of the kind specified in section 365(b)(2) of title II, the commodity broker may engage in such liquidation. To this extent, the commodity broker's contract with his customer is treated no differently than any other contract under section 365 of title II.

Chapter 9 of the House amendment represents a compromise between chapter 9 of the House bill and 9 of the Senate amendment. In most respect this chapter follows current law with respect to the adjustment of debts of a municipality. Stylistic changes and minor substantive revisions have been made in order to conform this chapter with other new chapters of the bankruptcy code. There are few major differences between the House bill and the Senate amendment on this issue. Section 901 indicates the applicability of other sections of title II in cases under chapter 9. Included are sections providing for creditors' committees under sections 1102 and 1103.

Section 902(2) of the Senate amendment is deleted since the bankruptcy court will have jurisdiction over all cases under chapter 9. The concept of a claim being materially and adversely affected reflected in section 902(1) of the Senate amendment has been deleted and replaced with the new concept of "impairment" set forth in section 1124 of the House amendment and incorporated by reference into chapter 9.

Section 903 of the House amendment represents a stylistic revision of section 903 of the Senate amendment. To the extent section 903 of the House bill would have changed present law, such section is rejected. Section 905 of the Senate amendment is incorporated as section 921(b) of the House amendment with the difference that the chief judge of the circuit embracing the district in which the case is commenced designates a bankruptcy judge to conduct the case in lieu of a district judge as under present law. It is intended that a municipality may commence a case in any district in which the municipality is located, as under present law. Section 906 of the Senate amendment has been adopted in substance in section 109(c) of the House amendment.

Section 923 of the House amendment represents a compromise with respect to the notice provisions contained in comparable provisions of the House bill and Senate amendment. As a general matter, title II leaves most procedural issues to be determined by the Rules of Bankruptcy Procedure. Section 923 of the House amendment contains certain important aspects of procedure that have been retained from present law. It is anticipated that the Rules of Bankruptcy Procedure will adopt rules similar to the present rules for chapter IX of the Bankruptcy Act.

Section 924 of the House amendment is derived from section 924 of the House bill with the location of the filing of the list of creditors to be determined by the rules of bankruptcy procedure. The detailed requirements of section 724 of the Senate bill are anticipated to be incorporated in the rules of bankruptcy procedure.

Section 925 of the Senate amendment regarding venue and fees has been deleted.

Section 926 of the House amendment is derived from section 928 of the Senate bill. The provision enables creditors

to request the court to appoint a trustee to pursue avoiding powers if the debtor refuses to exercise those powers. Section 901 of the House amendment makes a corresponding change to incorporate avoiding powers included in the Senate amendment, but excluded from the House bill.

Section 927(b) of the House amendment is derived from section 927(b) of the Senate bill. The provision requires mandatory dismissal if confirmation of a plan is refused.

The House amendment deletes section 929 of the Senate amendment as unnecessary since the bankruptcy court has original exclusive jurisdiction of all cases under chapter 9.

The House amendment deletes section 930 of the Senate amendment and incorporates section 507(a)(1) by reference.

The House amendment deletes section 942 of the Senate amendment in favor of incorporating section 1125 by cross-reference. Similarly, the House amendment does not incorporate sections 944 or 945 of the Senate amendment since incorporation of several sections in chapter 11 in section 901 is sufficient.

Section 943(a) of the House amendment makes clear that a special taxpayer may object to confirmation of a plan. Section 943(b) of the House amendment is derived from section 943 of the House bill respecting confirmation of a plan under chapter 9. It must be emphasized that these standards of confirmation are in addition to standards in section 1129 that are made applicable to chapter 9 by section 901 of the House amendment. In particular, if the requirements of section 1129(a)(8) are not complied with, then the proponent may request application of section 1129(b). The court will then be required to confirm the plan if it complies with the "fair and equitable" test and is in the best interests of creditors. The best interests of creditors test does not mean liquidation value as under chapter XI of the Bankruptcy Act. In making such a determination, it is expected that the court will be guided by standards set forth in *Kelley* v. *Everglades Drainage District*, 319 U.S. 415 (1943), and *Fano* v. *Newport Heights Irrigation Dist.*, 114 F. 2d 563 (9th Cir. 1940), as under present law, the bankruptcy court should make findings as detailed as possible to support a conclusion that this test has been met. However, it must be emphasized that unlike current law, the fair and equitable test under section 1129(b) will not apply if section 1129(a)(8) has been satisfied in addition to the other confirmation standards specified in section 943 and incorporated by reference in section 901 of the House amendment. To the extent that *American United Mutual Life Insurance Co.* v. *City of Avon Park*, 311 U.S. 138 (1940) and other cases are to the contrary, such cases are overruled to that extent.

The House amendment deletes section 950 of the Senate amendment as unnecessary. The constitutionality of chapter 9 of the House amendment is beyond doubt.

Chapter 11 of the House amendment is derived in large part from chapter 11 as contained in the House bill. Unlike chapter 11 of the Senate amendment, chapter 11 of the House amendment does not represent an extension of chapter X of current law or any other chapter of the Bankruptcy Act. Rather chapter 11 of the House amendment takes a new approach consolidating subjects dealt with under chapter VIII, X, XI, and XII of the Bankruptcy Act. The new consolidated chapter 11 contains no special procedure for companies with public debt or equity security holders. Instead, factors such as the standard to be applied to solicitation of acceptances of a plan of reorganization are left to be determined by the court on a case-by-case basis. In order to insure that adequate investigation of the debtor is conducted to determine fraud or wrongdoing on the part of present management, an examiner is required to be appointed in all cases in which the debtor's fixed, liquidated, and unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5 million. This should adequately represent the needs of public security holders in most cases. However, in addition, section 1109 of the House amendment enables both the Securities and Exchange Commission and any party in interest who is creditor, equity security holder, indenture trustee, or any committee representing creditors or equity security holders to raise and appear and be heard on any issue in a case under chapter 11. This will enable the bankruptcy court to evaluate all sides of a position and to determine the public interest. This approach is sharply contrasted to that under chapter X of present law in which the public interest is often determined only in terms of the interest of public security holders. The advisory role of the Securities and Exchange Commission will enable the court to balance the needs of public security holders against equally important public needs relating to the economy, such as employment and production, and other factors such as the public health and safety of the people or protection of the national interest. In this context, the new chapter 11 deletes archaic rules contained in certain chapters of present law such as the requirement of an approval hearing and the prohibition of prepetition solicitation. Such requirements were written in an age before the enactment of the Trust Indenture Act and the development of securities laws had occurred. The benefits of these provisions have long been outlived but the detriment of the provisions served to frustrate and delay effective reorganization in those chapters of the Bankruptcy Act in which such provisions applied. Chapter 11 thus represents a much needed revision of reorganization laws. A brief discussion of the history of this important achievement is useful to an appreciation of the monumental reform embraced in chapter 11.

Under the existing Bankruptcy Act, debtors seeking reorganization may choose among three reorganization chapters, chapter X, chapter XI, and chapter XII. Individuals and partnerships may file under chapter XI or, if they own property encumbered by mortgage liens, they may file under chapter XII. A corporation may file under either chapters X or chapter XI, but is ineligible to file under chapter XII. Chapter X was designed to facilitate the pervasive reorganization of corporations whose creditors include holders of publicly issued debt securities. Chapter XI, on the other hand, was designed to permit smaller enterprises to negotiate composition or extension plans with their unsecured creditors. The essential differences between chapters X and XI are as follows. Chapter X mandates that, first, an independent trustee be appointed and assume management control from the officers and directors of the debtor corporation; second, the Securities and Exchange Commission must be afforded an opportunity to participate both as an adviser to the court and as a representative of the interests of public security holders; third, the court must approve any proposed plan of reorganization, and prior to such approval, acceptances of creditors and shareholders may not be solicited; fourth, the court must apply the absolute priority rule; and fifth, the court has the power to affect, and grant the debtor a discharge in respect of, all types of claims, whether secured or unsecured and whether arising by reason of fraud or breach of contract.

The Senate amendment consolidates chapters X, XI, and XII, but establishes a separate and distinct reorganization procedure for "public companies." The special provisions applicable to "public companies" are tantamount to the codification of chapter X of the existing Bankruptcy Act and thus result in the creation of a "two-track system." The narrow definition of the term "public company" would require many businesses which could have been rehabilitated under chapter XI to instead use the more cumbersome procedures of chapter X, whether needed or not.

The special provisions of the Senate amendment applicable to a "public company" are as follows:

(a) Section 1101(3) defines a "public company" as a debtor who, within 12 months prior to the filing of the petition, had outstanding $5 million or more in debt and had not less than 1000 security holders;

(b) Section 1104(a) requires the appointment of a disinterested trustee irrespective of whether creditors support such appointment and whether there is cause for such appointment;

(c) Section 1125(f) prohibits the solicitation of acceptances of a plan of reorganization prior to court approval of such plan even though the solicitation complies with all applicable securities laws;

(d) Section 1128(a) requires the court to conduct a hearing on any plan of reorganization proposed by the trustee or any other party;

(e) Section 1128(b) requires the court to refer any plans "worthy of consideration" to the Securities and Exchange Commission for their examination and report, prior to court approval of a plan; and

(f) Section 1128(c) and Section 1130(a)(7) requires the court to approve a plan or plans which are "fair and equitable" and comply with the other provisions of Chapter 11.

The record of the Senate hearings on S. 2266 and the House hearings on H.R. 8200 is replete with evidence of the fail-

ure of the reorganization provisions of the existing Bankruptcy Act to meet the needs of insolvent corporations in today's business environment. Chapter X was designed to impose rigid and formalized procedures upon the reorganization of corporations and, although designed to protect public creditors, has often worked to the detriment of such creditors. As the House report has noted:

The negative results under Chapter X have resulted from the stilted procedures, under which management is always ousted and replaced by an independent trustee, the courts and the Securities and Exchange Commission examine the plan of reorganization in great detail, no matter how long that takes, and the court values the business, a time consuming and inherently uncertain procedure.

The House amendment deletes the "public company" exception, because it would codify the well recognized infirmities of chapter X, because it would extend the chapter X approach to a large number of new cases without regard to whether the rigid and formalized procedures of chapter X are needed, and because it is predicated upon the myth that provisions similar to those contained in chapter X are necessary for the protection of public investors. Bankruptcy practice in large reorganization cases has also changed substantially in the 40 years since the Chandler Act was enacted. This change is, in large part, attributable to the pervasive effect of the Federal securities laws and the extraordinary success of the Securities and Exchange Commission in sensitizing both management and members of the bar to the need for full disclosure and fair dealing in transactions involving publicly held securities.

It is important to note that Congress passed the Chandler Act prior to enactment of the Trust Indenture Act of 1939 and prior to the definition and enforcement of the disclosure requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. The judgments made by the 75th Congress in enacting the Chandler Act are not equally applicable to the financial markets of 1978. First of all, most public debenture holders are neither weak nor unsophisticated investors. In most cases, a significant portion of the holders of publicly issued debentures are sophisticated institutions, acting for their own account or as trustees for investment funds, pension funds, or private trusts. In addition, debenture holders, sophisticated, and unsophisticated alike, are represented by indenture trustees, qualified under section 77ggg of the Trust Indenture Act. Given the high standard of care to which indenture trustees are bound, they are invariably active and sophisticated participants in efforts to rehabilitate corporate debtors in distress.

It is also important to note that in 1938 when the Chandler Act was enacted, public investors commonly held senior, not subordinated, debentures and corporations were very often privately owned. In this environment, the absolute priority rule protected debenture holders from an erosion of their position in favor of equity holders. Today, however, if there are public security holders in a case, they are likely to be holders of subordinated debentures and equity and thus the application of the absolute priority rule under chapter X leads to the exclusion, rather than the protection, of the public.

The primary problem posed by chapter X is delay. The modern corporation is a complex and multifaceted entity. Most corporations do not have a significant market share of the lines of business in which they compete. The success, and even the survival, of a corporation in contemporary markets depends on three elements: First, the ability to attract and hold skilled management; second, the ability to obtain credit; and third, the corporation's ability to project to the public an image of vitality. Over and over again, it is demonstrated that corporations which must avail themselves of the provisions of the Bankruptcy Act suffer appreciable deterioration if they are caught in a chapter X proceeding for any substantial period of time.

There are exceptions to this rule. For example, King Resources filed a chapter X petition in the District of Colorado and it emerged from such proceeding as a solvent corporation. The debtor's new found solvency was not, however, so much attributable to a brilliant rehabilitation program conceived by a trustee, but rather to a substantial appreciation in the value of the debtor's oil and uranium properties during the pendency of the proceedings.

Likewise, Equity Funding is always cited as an example of a successful chapter X case. But it should be noted that in Equity Funding there was no question about retaining existing management. Rather, Equity Funding involved fraud on a grand scale. Under the House amendment with the deletion of the mandatory appointment of a trustee in cases involving "public companies," a bankruptcy judge, in a case like Equity Funding, would presumably have little difficulty in concluding that a trustee should be appointed under section 1104(b).

While I will not undertake to list the chapter X failures, it is important to note a number of cases involving corporations which would be "public companies" under the Senate amendment which have successfully skirted the shoals of chapter X and confirmed plans of arrangement in chapter XI. Among these are Daylin, Inc. ("Daylin") and Colwell Mortgage Investors ("Colwell").

Daylin filed a chapter XI petition on February 26, 1975, and confirmed its plan of arrangement on October 20, 1976. The success of its turnaround is best evidenced by the fact that it had consolidated net income of $6,473,000 for the first three quarters of the 1978 fiscal year.

Perhaps the best example of the contrast between chapter XI and chapter X is the recent case of In Re Colwell Mortgage Investors. Colwell negotiated a recapitalization plan with its institutional creditors, filed a proxy statement with the Securities and Exchange Commission, and solicited consents of its creditors and shareholders prior to filing its chapter XI petition. Thereafter, Colwell confirmed its plan of arrangement 41 days after filing its chapter XI petition. This result would have been impossible under the Senate amendment since Colwell would have been a "public company."

There are a number of other corporations with publicly held debt which have successfully reorganized under chapter XI. Among these are National Mortgage Fund (NMF), which filed a chapter XI petition in the northern district of Ohio on June 30, 1976. Prior to commencement of the chapter XI proceeding, NMF filed a proxy statement with the Securities and Exchange Commission and solicited acceptances to a proposed plan of arrangement. The NMF plan was subsequently confirmed on December 14, 1976. The Securities and Exchange Commission did not file a motion under section 328 of the Bankruptcy Act to transfer the case to chapter X and a transfer motion which was filed by private parties was denied by the court.

While there are other examples of large publicly held companies which have successfully reorganized in chapter XI, including Esgrow, Inc. (C.D. Cal. 73-02510), Sherwood Diversified Services Inc. (S.D.N.Y. 73-B-213), and United Merchants and Manufacturers, Inc. (S.D.N.Y. 77-B-1513), the numerous successful chapter XI cases demonstrate two points: first, the complicated and time-consuming provisions of chapter X are not always necessary for the successful reorganization of a company with publicly held debt, and second, the more flexible provisions in chapter XI permit a debtor to obtain relief under the Bankruptcy Act in significantly less time than is required to confirm a plan of reorganization under chapter X of the Bankruptcy Act.

One cannot overemphasize the advantages of speed and simplicity to both creditors and debtors. Chapter XI allows a debtor to negotiate a plan outside of court and, having reached a settlement with a majority in number and amount of each class of creditors, permits the debtor to bind all unsecured creditors to the terms of the arrangement. From the perspective of creditors, early confirmation of a plan of arrangement: first, generally reduces administrative expenses which have priority over the claims of unsecured creditors; second, permits creditors to receive prompt distributions on their claims with respect to which interest does not accrue after the filing date; and third, increases the ultimate recovery on creditor claims by minimizing the adverse effect on the business which often accompanies efforts to operate an enterprise under the protection of the Bankruptcy Act.

Although chapter XI offers the corporate debtor flexibility and continuity of management, successful rehabilitation under chapter XI is often impossible for a number of reasons. First, chapter XI does not permit a debtor to "affect" secured creditors or shareholders, in the absence of their consent. Second, whereas a debtor corporation in chapter X, upon the consummation of the plan or reorganization, is discharged from all its debts and liabilities, a corporation in

chapter XI may not be able to get a discharge in respect of certain kinds of claims including fraud claims, even in cases where the debtor is being operated under new management. The language of chapter 11 in the House amendment solves these problems and thus increases the utility and flexibility of the new chapter 11, as compared to chapter XI of the existing Bankruptcy Act.

Those who would urge the adoption of a two-track system have two major obstacles to meet. First, the practical experience of those involved in business rehabilitation cases, practitioners, debtors, and bankruptcy judges, has been that the more simple and expeditious procedures of chapter XI are appropriate in the great majority of cases. While attempts have been made to convince the courts that a chapter X proceeding is required in every case where public debt is present, the courts have categorically rejected such arguments. Second, chapter X has been far from a success. Of the 991 chapter X cases filed during the period of January 1, 1967, through December 31, 1977, only 664 have been terminated. Of those cases recorded as "terminated," only 140 resulted in confirmed plans. This 21-percent success rate sugrate suggests one of the reasons for the unpopularity of chapter X.

In summary, it has been the experience of the great majority of those who have testified before the Senate and House subcommittees that a consolidated approach to business rehabilitation is warranted. Such approach is adopted in the House amendment.

Having discussed the general reasons why chapter 11 of the House amendment is sorely needed, a brief discussion of the differences between the House bill, Senate amendment, and House amendment is in order. Since chapter 11 of the House amendment rejects the concept of separate treatment for a public company, sections 1101(3), 1104(a), 1125(f), 1128, and 1130(a)(7) of the Senate amendment have been deleted.

Section 1102(a) of the House amendment adopts a compromise between the House bill and Senate amendment requiring appointment of a committee of creditors holding unsecured claims by the court; the alternative of creditor committee election is rejected.

Section 1102(b) of the House amendment represents a compromise between the House bill and the Senate amendment by preventing the appointment of creditors who are unwilling to serve on a creditors committee.

Section 1104 of the House amendment represents a compromise between the House bill and the Senate amendment concerning the appointment of a trustee or examiner. The method of appointment rather than election, is derived from the House bill; the two alternative standards of appointment are derived with modifications from the Senate amendment, instead of the standard stated in the House bill. For example, if the current management of the debtor gambled away rental income before the filing of the petition, a trustee should be appointed after the petition, whether or not postpetition mismanagement can be shown. However, under no circumstances will cause include the number of security holders of the debtor, or the amount of assets or liabilities of the debtor. The standard also applies to the appointment of an examiner in those circumstances in which mandatory appointment, as previously detailed, is not required.

The House amendment adopts section 1107(b) of the Senate amendment which clarifies a point not covered by the House bill. The House amendment adopts section 1108 of the House bill in preference to the style of an identical substantive provision contained in the Senate amendment. Throughout title II references to a "trustee" is read to include other parties under various sections of the bill. For example, section 1107 applies to give the debtor in possession all the rights and powers of a trustee in a case under chapter 11; this includes the power of the trustee to operate the debtor's business under section 1108.

Section 1109 of the House amendment represents a compromise between comparable provisions in the House bill and Senate amendment. As previously discussed the section gives the Securities and Exchange Commission the right to appear and be heard and to raise any issue in a case under chapter 11; however, the Securities and Exchange Commission is not a party in interest and the Commission may not appeal from any judgment, order, or decree entered in the case. Under section 1109(b) a party in interest, including the debtor, the trustee, creditors committee, equity securities holders committee, a creditor, an equity security holder, or an indentured trustee, may raise and may appear and be heard on any issue in a case under chapter 11. Section 1109(c) of the Senate amendment has been moved to subchapter IV pertaining to Railroad Reorganizations.

Section 1110 of the House amendment adopts an identical provision contained in the House bill without modifications contained in the Senate amendment. This section protects a limited class of financiers of aircraft and vessels and is intended to be narrowly construed to prevent secured parties or lessors from gaining the protection of the section unless the interest of such lessor or secured party is explicitly enumerated therein. It should be emphasized that under section 1110(a) a debtor in possession or trustee is given 60 days after the order for relief in a case under chapter 11, to have an opportunity to comply with the provisions of section 1110(a).

During this time the automatic stay will apply and may not be lifted prior to the expiration of the 60-day period. Under section 1110(b), the debtor and secured party or lessor are given an opportunity to extend the 60-day period, but no right to reduce the period is intended. It should additionally be noted that under section 1110(a) the trustee or debtor in possession is not required to assume the executory contract or unexpired lease under section 1110; rather, if the trustee or debtor in possession complies with the requirements of section 1110(a), the trustee or debtor in possession is entitled to retain the aircraft or vessels subject to the normal requirements of section 365. The discussion regarding aircraft and vessels likewise applies with respect to railroad rolling stock in a railroad reorganization under section 1168.

A discussion of section 1111(b) of the House amendment is best considered in the context of confirmation and will, therefore, be discussed in connection with section 1129.

Section 1112 of the House amendment represents a compromise between the House bill and Senate amendment with respect to the factors constituting cause for conversion of a case to chapter 7 or dismissal. The House amendment combines two separate factors contained in section 1112(b)(1) and section 1112(b)(2) of the Senate amendment. Section 1112(b)(1) of the House amendment permits the court to convert a case to a case under chapter 7 or to dismiss the case if there is both a continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; requiring both factors to be present simultaneously represents a compromise from the House bill which eliminated both factors from the list of causes enumerated.

Section 1112(c) and 1112(d) of the House amendment is derived from the House bill which differs from the Senate amendment only as a matter of style. Section 1121 of the House amendment is derived from section 1121 of the House bill; section 1121(c)(1) will be satisfied automatically in a case under subchapter IV of title 11.

Section 1123 of the House amendment represents a compromise between similar provisions in the House bill and Senate amendment. The section has been clarified to clearly indicate that both secured and unsecured claims, or either of them, may be impaired in a case under title 11. In addition assumption or rejection of an executory contract under a plan must comply with section 365 of title 11. Moreover, section 1123(a)(1) has been substantively modified to permit classification of certain kinds of priority claims. This is important for purposes of confirmation under section 1129(a)(9).

Section 1123(a)(5) of the House amendment is derived from a similar provision in the House bill and Senate amendment but deletes the language pertaining to "fair upset price" as an unnecessary restriction. Section 1123 is also intended to indicate that a plan may provide for any action specified in section 1123 in the case of a corporation without a resolution of the board of directors. If the plan is confirmed, then any action proposed in the plan may be taken notwithstanding any otherwise applicable nonbankruptcy law in accordance with section 1142(a) of title 11.

Section 1124 of the House amendment is derived from a similar provision in the House bill and Senate amendment. The section defines the new concept of "impairment" of claims or interests; the concept differs significantly from the concept of "materially and adversely affected" under the Bankruptcy Act. Section 1124(3) of the House amendment provides that a holder of a claim or in-

terest is not impaired, if the plan provides that the holder will receive the allowed amount of the holder's claim, or in the case of an interest with a fixed liquidation preference or redemption price, the greater of such price. This adopts the position contained in the House bill and rejects the contrary standard contained in the Senate amendment.

Section 1124(3) of the House amendment rejects a provision contained in section 1124(3)(B)(iii) of the House bill which would have considered a class of interest not to be impaired by virtue of the fact that the plan provided cash or property for the value of the holder's interest in the debtor.

The effect of the House amendment is to permit an interest not to be impaired only if the interest has a fixed liquidation preference or redemption price. Therefore, a class of interests such as common stock, must either accept a plan under section 1129(a)(8), or the plan must satisfy the requirements of section 1129(b)(2)(C) in order for a plan to be confirmed.

A compromise reflected in section 1124(2)(C) of the House amendment indicates that a class of claims is not impaired under the circumstances of section 1124(2) if damages are paid to rectify reasonable reliance engaged in by the holder of a claim or interest arising from the prepetition breach of a contractual provision, such as an ipso facto or bankruptcy clause, or law. Where the rights of third parties are concerned, such as in the case of lease premises which have been rerented to a third party, it is not intended that there will be adequate damages to compensate the third party.

Section 1125 of the House amendment is derived from section 1125 of the House bill and Senate amendment except with respect to section 1125(f) of the Senate amendment. It will not be necessary for the court to consider the report of the examiner prior to approval of a disclosure statement. The investigation of the examiner is to proceed on an independent basis from the procedure of the reorganization under chapter 11. In order to insure that the examiner's report will be expeditious and fair, the examiner is precluded from serving as a trustee in the case or from representing a trustee if a trustee is appointed, whether the case remains in chapter 11 or is converted to chapter 7 or 13.

Section 1126 of the House amendment deletes section 1126(e) as contained in the House bill. Section 105 of the bill constitutes sufficient power in the court to designate exclusion of a creditor's claim on the basis of a conflict of interest. Section 1126(f) of the House amendment adopts a provision contained in section 1127(f) of the Senate bill indicating that a class that is not impaired under a plan is deemed to have accepted a plan and solicitation of acceptances from such class is not required.

Section 1127(a) of the House amendment adopts a provision contained in the House bill permitting only the proponent of a plan to modify the plan and rejecting the alternative of open modification contained in the Senate amendment.

Section 1129 of the House amendment relates to confirmation of a plan in a case under chapter 11. Section 1129(a)(3) of the House amendment adopts the position taken in the Senate amendment and section 1129(a)(5) takes the position adopted in the House bill. Section 1129(a)(7) adopts the position taken in the House bill in order to insure that the dissenting members of an accepting class will receive at least what they would otherwise receive under the best interest of creditors test; it also requires that even the members of a class that has rejected the plan be protected by the best interest of creditors test for those rare cramdown cases where a class of creditors would receive more on liquidation than under reorganization of the debtor. Section 1129(a)(7)(C) is discussed in connection with section 1129(b) and section 1111(b). Section 1129(a)(8) of the House amendment adopts the provision taken in the House bill which permits confirmation of a plan as to a particular class without resort to the fair and equitable test if the class has accepted a plan or is unimpaired under the plan.

Section 1129(a)(9) represents a compromise between a similar provision contained in the House bill and the Senate amendment. Under subparagraph (A) claims entitled to priority under section 507(a)(1) or (2) are entitled to receive cash on the effective date of the plan equal to the amount of the claim. Under subparagraph (B) claims entitled to priority under section 507(a)(3), (4), or (5), are entitled to receive deferred cash payments of a present value as of the effective date of the plan equal to the amount of the claims if the class has accepted the plan or cash payments on the effective date of the plan otherwise. Tax claims entitled to priority under section 507(a)(6) of different governmental units may not be contained in one class although all claims of one such unit may be combined and such unit may be required to take deferred cash payments over a period not to exceed 6 years after the date of assessment of the tax with the present value equal to the amount of the claim.

Section 1129(a)(10) is derived from section 1130(a)(12) of the Senate amendment.

Section 1129(b) is new. Together with section 1111(b) and section 1129(a)(7)(C), this section provides when a plan may be confirmed, notwithstanding the failure of an impaired class to accept the plan under section 1129(a)(8). Before discussing section 1129(b) an understanding of section 1111(b) is necessary. Section 1111(b)(1) the general rule that a secured claim is to be treated as a recourse claim in chapter 11 whether or not the claim is nonrecourse by agreement or applicable law. This preferred status for a nonrecourse loan terminates if the property securing the loan is sold under section 363 or is to be sold under the plan.

The preferred status also terminates if the class of which the secured claim is a part elects application of section 1111(b)(2). Section 1111(b)(2) provides that an allowed claim is a secured claim to the full extent the claim is allowed rather to the extent of the collateral as under section 506(a). A class may elect application of paragraph (2) only if the security is not of inconsequential value and, if the creditor is a recourse creditor, the collateral is not sold under section 363 or to be sold under the plan. Sale of property under section 363 or under the plan is excluded from treatment under section 1111(b) because of the secured party's right to bid in the full amount of his allowed claim at any sale of collateral under section 363(k) of the House amendment.

As previously noted, section 1129(b) sets forth a standard by which a plan may be confirmed notwithstanding the failure of an impaired class to accept the plan.

Paragraph (1) makes clear that this alternative confirmation standard, referred to as "cram down," will be called into play only on the request of the proponent of the plan. Under this cram down test, the court must confirm the plan if the plan does not discriminate unfairly, and is "fair and equitable," with respect to each class of claims or interests that is impaired under, and has not accepted, the plan. The requirement of the House bill that a plan not "discriminate unfairly" with respect to a class is included for clarity; the language in the House report interpreting that requirement, in the context of subordinated debentures, applies equally under the requirements of section 1129(b)(1) of the House amendment.

Although many of the factors interpreting "fair and equitable" are specified in paragraph (2), others, which were explicated in the description of section 1129(b) in the House report, were omitted from the House amendment to avoid statutory complexity and because they would undoubtedly be found by a court to be fundamental to "fair and equitable" treatment of a dissenting class. For example, a dissenting class should be assured that no senior class receives more than 100 percent of the amount of its claims. While that requirement was explicitly included in the House bill, the deletion is intended to be one of style and not one of substance.

Paragraph (2) provides guidelines for a court to determine whether a plan is fair and equitable with respect to a dissenting class. It must be emphasized that the fair and equitable requirement applies only with respect to dissenting classes. Therefore, unlike the fair and equitable rule contained in chapter X and section 77 of the Bankruptcy Act under section 1129(b)(2), senior accepting classes are permitted to give up value to junior classes as long as no dissenting intervening class receives less than the amount of its claims in full. If there is no dissenting intervening class and the only dissent is from a class junior to the class to which value have been given up, then the plan may still be fair and equitable with respect to the dissenting class, as long as no class senior to the dissenting class has received more than 100 percent of the amount of its claims.

Paragraph (2) contains three subparagraphs, each of which applies to a particular kind of class of claims or interests that is impaired and has not accepted the plan. Subparagraph (A) ap-

plies when a class of secured claims is impaired and has not accepted the plan. The provision applies whether or not section 1111(b) applies. The plan may be crammed down notwithstanding the dissent of a secured class only if the plan complies with clause (i), (ii), or (iii).

Clause (i) permits cram down if the dissenting class of secured claims will retain its lien on the property whether the property is retained by the debtor or transferred. It should be noted that the lien secures the allowed secured claim held by such holder. The meaning of "allowed secured claim" will vary depending on whether section 1111(b)(2) applies to such class.

If section 1111(b)(2) applies then the "electing" class is entitled to have the entire allowed amount of the debt related to such property secured by a lien even if the value of the collateral is less than the amount of the debt. In addition, the plan must provide for the holder to receive, on account of the allowed secured claims, payments, either present or deferred, of a principal face amount equal to the amount of the debt and of a present value equal to the value of the collateral.

For example, if a creditor loaned $15,000,000 to a debtor secured by real property worth $18,000,000 and the value of the real property had dropped to $12,000,000 by the date when the debtor commenced a proceeding under chapter 11, the plan could be confirmed notwithstanding the dissent of the creditor as long as the lien remains on the collateral to secure a $15,000,000 debt, the face amount of present or extended payments to be made to the creditor under the plan is at least $15,000,000, and the present value of the present or deferred payments is not less than $12,000,000. The House report accompanying the House bill described what is meant by "present value".

Clause (ii) is self explanatory. Clause (iii) requires the court to confirm the plan notwithstanding the dissent of the electing secured class if the plan provides for the realization by the secured class of the indubitable equivalents of the secured claims. The standard of "indubitable equivalents" is taken from *In re Murel Holding Corp.*, 75 F. 2d 941 (2d Cir. 1935) (Learned Hand, Jr.).

Abandonment of the collateral to the creditor would clearly satisfy indubitable equivalence, as would a lien on similar collateral. However, present cash payments less than the secured claim would not satisfy the standard because the creditor is deprived of an opportunity to gain from a future increase in value of the collateral. Unsecured notes as to the secured claim or equity securities of the debtor would not be the indubitable equivalent. With respect to an oversecured creditor, the secured claim will never exeed the allowed claim.

Although the same language applies, a different result pertains with respect to a class of secured claims to which section 1111(b)(2) does not apply. This will apply to all claims secured by a right of setoff. The court must confirm the plan notwithstanding the dissent of such a class of secured claims if any of three alternative requirements is met. Under clause (i) the plan may be confirmed if the class retains a right of setoff or a lien securing the allowed secured claims of the class and the holders will receive payments of a present value equal to the allowed amount of their secured claims. Contrary to electing classes of secured creditors who retain a lien under subparagraph (A)(i)(I) to the extent of the entire claims secured by such lien, nonelecting creditors retain a lien on collateral only to the extent of their allowed secured claims and not to the extent of any deficiency, and such secured creditors must receive present or deferred payments with a present value equal to the allowed secured claim, which in turn is only the equivalent of the value of the collateral under section 506(a).

Any deficiency claim of a nonelecting class of secured claims is treated as an unsecured claim and is not provided for under subparagraph (A). The plan may be confirmed under clause (ii) if the plan proposes to sell the property free and clear of the secured party's lien as long as the lien will attach to the proceeds and will receive treatment under clause (i) or (iii). Clause (iii) permits confirmation if the plan provides for the realization by the dissenting nonelecting class of secured claims of the indubitable equivalent of the secured claims of such class.

Contrary to an "electing" class to which section 1111(b)(2) applies, the nonelecting class need not be protected with respect to any future appreciation in value of the collateral since the secured claim of such a class is never undersecured by reason of section 506(a). Thus the lien secures only the value of interest of such creditor in the collateral. To the extent deferred payments exceed that amount, they represent interest. In the event of a subsequent default, the portion of the face amount of deferred payments representing unaccrued interest will not be secured by the lien.

Subparagraph (B) applies to a dissenting class of unsecured claims. The court must confirm the plan notwithstanding the dissent of a class of impaired unsecured claims if the plan provides for such claims to receive property with a present value equal to the allowed amount of the claims. Unsecured claims may receive any kind of "property," which is used in its broadest sense, as long as the present value of the property given to the holders of unsecured claims is equal to the allowed amount of the claims. Some kinds of property, such as securities, may require difficult valuations by the court; in such circumstances the court need only determine that there is a reasonable likelihood that the property given the dissenting class of impaired unsecured claims equals the present value of such allowed claims.

Alternatively, under clause (ii), the court must confirm the plan if the plan provides that holders of any claims or interests junior to the interests of the dissenting class of impaired unsecured claims will not receive any property under the plan on account of such junior claims or interests. As long as senior creditors have not been paid more than in full, and classes of equal claims are being treated so that the dissenting class of impaired unsecured claims is not being discriminated against unfairly, the plan may be confirmed if the impaired class of unsecured claims receives less than 100 cents on the dollar (or nothing at all) as long as no class junior to the dissenting class receives anything at all. Such an impaired dissenting class may not prevent confirmation of a plan by objection merely because a senior class has elected to give up value to a junior class that is higher in priority than the impaired dissenting class of unsecured claims as long as the above safeguards are met.

Subparagraph (C) applies to a dissenting class of impaired interests. Such interests may include the interests of general or limited partners in a partnership, the interests of a sole proprietor in a proprietorship, or the interest of common or preferred stockholders in a corporation. If the holders of such interests are entitled to a fixed liquidation preference or fixed redemption price on account of such interests then the plan may be confirmed notwithstanding the dissent of such class of interests as long as it provides the holders property of a present value equal to the greatest of the fixed redemption price, or the value of such interests. In the event there is no fixed liquidation preference or redemption price, then the plan may be confirmed as long as it provides the holders of such interests property of a present value equal to the value of such interests. If the interests are "under water" then they will be valueless and the plan may be confirmed notwithstanding the dissent of that class of interests even if the plan provides that the holders of such interests will not receive any property on account of such interests.

Alternatively, under clause (ii), the court must confirm the plan notwithstanding the dissent of a class of interests if the plan provides that holders of any interests junior to the dissenting class of interests will not receive or retain any property on account of such junior interests. Clearly, if there are no junior interests junior to the class of dissenting interests, then the condition of clause (ii) is satisfied. The safeguards that no claim or interest receive more than 100 percent of the allowed amount of such claim or interest and that no class be discriminated against unfairly will insure that the plan is fair and equitable with respect to the dissenting class of interests.

Except to the extent of the treatment of secured claims under subparagraph (A) of this statement, the House report remains an accurate description of confirmation of section 1129(b). Contrary to the example contained in the Senate report, a senior class will not be able to give up value to a junior class over the dissent of an intervening class unless the intervening class receives the full amount, as opposed to value, of its claims or interests.

One last point deserves explanation with respect to the admittedly complex

subject of confirmation. Section 1129(a)(7)(C) in effect exempts secured creditors making an election under section 1111(b)(2) from application of the best interest of creditors test. In the absence of an election the amount such creditors receive in a plan of liquidation would be the value of their collateral plus any amount recovered on the deficiency in the case of a recourse loan. However, under section 1111(b)(2), the creditors are given an allowed secured claim to the full extent the claim is allowed and have no unsecured deficiency. Since section 1129(b)(2)(A) makes clear that an electing class need receive payments of a present value only equal to the value of the collateral, it is conceivable that under such a "cram down" the electing creditors would receive nothing with respect to their deficiency. The advantage to the electing creditors is that they have a lien securing the full amount of the allowed claim so that if the value of the collateral increases after the case is closed, the deferred payments will be secured claims. Thus it is both reasonable and necessary to exempt such electing class from application of section 1129(a)(7) as a logical consequence of permitting election under section 1111(b)(2).

Section 1131 of the Senate amendment is deleted as unnecessary in light of the protection given a secured creditor under section 1129(b) of the House amendment.

Section 1141(d) of the House amendment is derived from a comparable provision contained in the Senate amendment. However, section 1141(d)(2) of the House amendment is derived from the House bill as preferable to the Senate amendment. It is necessary for a corporation or partnership undergoing reorganization to be able to present its creditors with a fixed list of liabilities upon which the creditors or third parties can make intelligent decisions. Retaining an exception for discharge with respect to nondischargeable taxes would leave an undesirable uncertainty surrounding reorganizations that is unacceptable. Section 1141(d)(3) is derived from the Senate amendment. Section 1141(d)(4) is likewise derived from the Senate amendment.

Section 1145 of the House amendment deletes a provision contained in section 1145(a)(1) of the House bill in favor of a more adequate provision contained in section 364(f) of the House amendment. In addition, section 1145(d) has been added to indicate that the Trust Indenture Act does not apply to a commercial note issued under a plan, if the note matures not later than 1 year after the effective date of the plan. Some commercial notes receive such an exemption under 304(a)(4) of the Trust Indenture Act of 1939 (15 U.S.C. § 77ddd(a)(4) and others may receive protection by incorporation by reference into the Trust Indenture Act of securities exempt under section 3a(3), (7), (9), or (10) of the Securities Act of 1933.

In light of the amendments made to the Securities Act of 1933 in title III of the House amendment to H.R. 8200, a specific exemption from the Trust Indenture Act is required in order to create certainty regarding plans of reorganization. Section 1145(d) is not intended to imply that commercial notes issued under a plan that matures more than 1 year after the effective date of the plan are automatically covered by the Trust Indenture Act of 1939 since such notes may fall within another exemption thereto.

One other point with respect to Section 1145 deserves comment. Section 1145(a)(3) grants a debtor in possession or trustee in chapter 11 an extremely narrow portfolio security exemption from section 5 of the Securities Act of 1933 or any comparable State law. The provision was considered by Congress and adopted after much study. The exemption is reasonable and is more restrictive than comparable provisions under the Securities Act relating to the estates of decedents. Subsequent to passage of H.R. 8200 by the House of Representatives, the Securities and Exchange Commission promulgated Rule 148 to treat with this problem under existing law. Members of Congress received opinions from attorneys indicating dissatisfaction with the Commission's rule although the rule has been amended, the ultimate limitation of 1 percent promulgated by the Commission is wholly unacceptable.

The Commission rule would permit a trustee or debtor in possession to distribute securities at the rate of 1 percent every 6 months. Section 1145(a)(3) permits the trustee to distribute 4 percent of the securities during the 2-year period immediately following the date of the filing of the petition. In addition, the security must be of a reporting company under section 13 of the Securities and Exchange Act of 1934, and must be in compliance with all applicable requirements for the continuing of trading in the security on the date that the trustee offers or sells the security.

With these safeguards the trustee or debtor in possession should be able to distribute 4 percent of the securities of a class at any time during the 2-year period immediately following the date of the filing of the petition in the interests of expediting bankruptcy administration. The same rationale that applies in expeditiously terminating decedents' estates applies no less to an estate under title 11.

Section 1146 of the House amendment represents a compromise between the House bill and Senate amendment.

Section 1162 of the House amendment is derived from section 1162(1) of the Senate bill.

Section 1163 of the House amendment represents a compromise between the House bill and Senate amendment with respect to the appointment of a trustee in a railroad reorganization. As soon as practicable after the order for relief, the Secretary of Transportation is required to submit a list of five disinterested persons who are qualified to serve as trustee and the court will then appoint one trustee from the list to serve as trustee in the case.

The House amendment deletes section 1163 of the Senate amendment in order to cover intrastate railroads in a case under subchapter IV of chapter 11. The bill does not confer jurisdiction on the Interstate Commerce Commission with respect to intrastate railroads.

Section 1164 of the Senate amendment is deleted as a matter to be left to the Rules of Bankruptcy Procedure. It is anticipated that the rules will require a petition in a railroad reorganization to be filed with the Interstate Commerce Commission and the Secretary of Transportation in a case concerning an interstate railroad.

Section 1164 of the House amendment is derived from section 1163 of the House bill. The section makes clear that the Interstate Commerce Commission, the Department of Transportation, and any State or local commission having regulatory jurisdiction over the debtor may raise and appear and be heard on any issue in a case under subchapter IV of chapter 11, but may not appeal from any judgment, order, or decree in the case. As under section 1109 of title 11, such intervening parties are not parties in interest.

Section 1165 of the House amendment represents a modification of sections 1165 and 1167 of the Senate amendment requiring the court and the trustee to consider the broad, general public interest in addition to the interests of the debtor, creditors, and equity security holders in applying specific sections of the subchapter.

Section 1166 of the House amendment is derived from sections 1164 and 1165 of the House bill. An alternative proposal contained in section 1168(1) of the Senate bill is rejected as violative of the principle or equal treatment of all creditors under title 11.

Section 1168 of the House amendment incorporates a provision contained in section 1166 of the House bill instead of the provision contained in section 1175 of the Senate amendment for the reasons stated in connection with the discussion of section 1110 of the House amendment.

Section 1169 of the Senate amendment is deleted from the House amendment as unnecessary since 28 U.S.C. 1407 treating with the judicial panel on multidistrict litigation will apply by its terms to cases under title 11.

Section 1171 of the House amendment is derived from section 1170 of the House bill in lieu of section 1173(a)(9) of the Senate amendment.

Section 1172 of the House amendment is derived from section 1171 of the House bill in preference to section 1170 of the Senate amendment with the exception that section 1170(4) of the Senate amendment is incorporated into section 1172(a)(1) of the House amendment.

Section 1172(b) of the House amendment is derived from section 1171(c) of the Senate amendment. The section gives the Interstate Commerce Commission the exclusive power to approve or disapprove the transfer of, or operation of or over, any of the debtor's rail lines over which the Commission has jurisdiction, subject to review under the Administrative Procedures Act. The section does not apply to a transfer of railroad lines to a successor of the debtor under a plan of reorganization by merger or otherwise.

The House amendment deletes section

1171(a) of the Senate amendment as a matter to be determined by the Rules of Bankruptcy Procedure. It is anticipated that the rules will specify the period of time, such as 18 months, within which a trustee must file with the court a proposed plan of reorganization for the debtor or a report why a plan cannot be formulated. Incorporation by reference of section 1121 in section 1161 of title 11 means that a party in interest will also have a right to file a plan of reorganization. This differs from the position taken in the Senate amendment which would have permitted the Interstate Commerce Commission to file a plan of reorganization.

Section 1173 of the House amendment concerns confirmation of a plan of railroad reorganization and is derived from section 1172 of the House bill as modified. In particular, section 1173(a)(3) of the House amendment is derived from section 1170(3) of the Senate amendment. Section 1173(b) is derived from section 1173(a)(8) of the Senate amendment.

Section 1174 of the House amendment represents a compromise between the House bill and Senate amendment on the issue of liquidation of a railroad. The provision permits a party in interest at any time to request liquidation. In addition, if a plan has not been confirmed under section 1173 of the House amendment before 5 years after the date of order for relief, the court must order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of title 11. The approach differs from the conversion to chapter 7 under section 1174 of the Senate bill in order to make special provisions contained in subchapter IV of chapter 11 applicable to liquidation. However, maintaining liquidation in the context of chapter 11 is not intended to delay liquidation of the railroad to a different extent than if the case were converted to chapter 7.

Although the House amendment does not adopt provisions contained in sections 1170(1), (2), (3), or (5), of the Senate amendment such provisions are contained explicitly or implicitly in section 1123 of the House amendment.

Section 1301 of the House amendment is identical with the provision contained in section 1301 of the House bill and adopted by the Senate amendment. Section 1301(c)(1) indicates that a basis for lifting the stay is that the debtor did not receive consideration for the claim by the creditor, or in other words, the debtor is really the "co-debtor." As with other sections in title 11, the standard of receiving consideration is a general rule, but where two co-debtors have agreed to share liabilities in a different manner than profits it is the individual who does not ultimately bear the liability that is protected by the stay under section 1301.

Section 1302 of the House amendment adopts a provision contained in the Senate amendment instead of the position taken in the House bill. Sections 1302 (d) and (e) are modeled on the standing trustee system contained in the House bill with the court assuming supervisory functions in districts not under the pilot program.

Section 1303 of the House amendment specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although section 1323 is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued.

Section 1304(b) of the House amendment adopts the approach taken in the comparable section of the Senate amendment as preferable to the position taken in the House bill.

Section 1305(a)(2) of the House amendment modifies similar provisions contained in the House and Senate bills by restricting application of the paragraph to a consumer debt. Debts of the debtor that are not consumer debts should not be subjected to section 1305(c) or section 1328(d) of the House amendment.

Section 1305(b) of the House amendment represents a technical modification of similar provisions contained in the House bill and Senate amendment.

The House amendment deletes section 1305(d) of the Senate amendment as unnecessary. Section 502(b)(1) is sufficient to disallow any claim to the extent the claim represents the usurious interest or any other charge forbidden by applicable law. It is anticipated that the Rules of Bankruptcy Procedure may require a creditor filing a proof of claim in a case under chapter 13 to include an affirmative statement as contemplated by section 1305(d) of the Senate amendment.

Section 1306(a)(2) adopts a provision contained in the Senate amendment in preference to a similar provision contained in the House bill.

Section 1307(a) is derived from the Senate amendment in preference to a comparable provision contained in the House bill.

Section 1322(b)(2) of the House amendment represents a compromise agreement between similar provisions in the House bill and Senate amendment. Under the House amendment, the plan may modify the rights of holders of secured claims other than a claim secured by a security interest in real property that is the debtor's principal residence. It is intended that a claim secured by the debtor's principal residence may be treated with under section 1322(b)(5) of the House amendment.

Section 1322(c) adopts a 5-year period derived from the House bill in preference to a 4-year period contained in the Senate amendment. A conforming change is made in section 1329(c) adopting the provision in the House bill in preference to a comparable provision in the Senate amendment.

Section 1325(a)(5)(B) of the House amendment modifies the House bill and Senate amendment to significantly protect secured creditors in chapter 13. Unless the secured creditor accepts the plan, the plan must provide that the secured creditor retain the lien securing the creditor's allowed secured claim in addition to receiving value, as of the effective date of the plan of property to be distributed under the plan on account of the claim not less than the allowed amount of the claim. To this extent, a secured creditor in a case under chapter 13 is treated identically with a recourse creditor under section 1111(b)(1) of the House amendment except that the secured creditor in a case under chapter 13 may receive any property of a value as of the effective date of the plan equal to the allowed amount of the creditor's secured claim rather than being restricted to receiving deferred cash payments. Of course, the secured creditors' lien only secures the value of the collateral and to the extent property is distributed of a present value equal to the allowed amount of the creditor's secured claim the creditor's lien will have been satisfied in full. Thus the lien created under section 1325(a)(5)(B)(i) is effective only to secure deferred payments to the extent of the amount of the allowed secured claim. To the extent the deferred payments exceed the value of the allowed amount of the secured claim and the debtor subsequently defaults, the lien will not secure unaccrued interest represented in such deferred payments.

Section 1326(a)(2) of the House amendment adopts a comparable provision contained in the House bill providing for standing trustees.

Section 1328(a) adopts a provision contained in the Senate amendment permitting the court to approve a waiver of discharge by the debtor. It is anticipated that such a waiver must be in writing executed after the order for relief in a case under chapter 13.

Section 1331 of the House bill and Senate amendment is deleted in the House amendment.

As previously noted, provisions in the House bill pertaining to the U.S. Trustee have been moved to chapter 15 with the section numbers in chapter 15 keyed to corresponding sections in chapters 1, 3, 5, 7, 11, and 13 of title 11.

Title II of the House amendment establishes a new bankruptcy court, a pilot program of U.S. trustees, and contains other amendments to title 28 of the United States Code concerning bankruptcy administration. The provisions of title II of the House amendment are much less complicated than those in title I and therefore a less extensive description is necessary.

Section 201 of the House amendment creates in each judicial district a bankruptcy court that is an adjunct to the circuit court of appeals for the district. The amendment does not specify the number of judges to sit on the bankruptcy court, but instead the determination is to be made by Congress after a study during a 5-year transition period between the present system and a new court. Bankruptcy judges on the new court will be appointed by the President with the advice and consent of the Senate, as are all other Federal judges. For each vacancy on the Bankruptcy Court of a District the Judicial Council of the Circuit in which the District is located will be required to send to

the President the names of persons to be considered by the President in filling such vacancy. Bankruptcy judges will serve for a term of 14 years and receive a salary of $50,000 per year. Removal of a bankruptcy judge during a term may be done only for incompetency, misconduct, neglect of duty, or physical or mental disability.

In order to remove a bankruptcy judge a majority of all the judges of the circuit council of the circuit in which the bankruptcy judge serves must concur. The bankruptcy judge must be given a specification of the charges supporting removal and afforded an opportunity to be heard with respect to the charges. The director of the administrative office of the U.S. courts is authorized to transmit any information in his knowledge supporting removal of a bankruptcy judge to the chief judge of the circuit in which the bankruptcy judge serves. Bankruptcy judges are entitled to substantially increased retirement benefits. Under section 212 of the House amendment at age 65 after 14 years of service at 80 percent of salary for which they contribute 5 percent of their salary per year.

An appeal from a decision of a bankruptcy court will be taken to the district court of the district within which the bankruptcy court is located, unless the circuit council of the circuit in which the bankruptcy court is located orders appeals to be taken to a panel of bankruptcy judges comprised of three bankruptcy judges, or both parties by agreement agree to proceed directly to the circuit court of appeals of the circuit in which the bankruptcy court is located. The subject of appeals is dealt with in sections 201, 236, 237, 238, 240, and 241 of title II of the House amendment which in turn create provisions in sections 160, 1293, 1294, 1334, 1408, and 1482 of title 28 implementing the previously described system of appeals.

Section 224 of title II of the House amendment creates chapter 39 of title 28 relating to a pilot program for U.S. trustees in the Department of Justice. The House amendment establishes a 5-year trial pilot program of U.S. trustees to be supervised by an assistant attorney general in the Department of Justice. Ten pilot programs are established in various geographical areas of the country covering 14 judicial districts. During the 5-year transition period the administrative office of U.S. courts will compare bankruptcy case administration under the U.S. trustee system with administration by the court and the administrative office. At the end of the 5-year transition period Congress will decide whether to fully implement the system of U.S. trustees or to terminate the pilot program.

Under present law bankruptcy judges are required to both resolve disputes and supervise the administration of bankruptcy cases. The main purpose of the U.S. trustee is to remove administrative duties from the bankruptcy judge leaving the bankruptcy judge free to resolve disputes untainted by knowledge of matters unnecessary to a judicial determination. The U.S. trustee is responsible for supervising panels of private trustees in the district or districts covered by the pilot program. The U.S. trustee, rather than the court, in a pilot district will appoint trustees, supervise administration of bankruptcy cases, and exercise any other function prescribed by the Attorney General, such as presiding at first meetings of creditors, related to bankruptcy administration. In addition, in no-asset cases where private trustees may be unwilling to serve or in chapter 13 cases under title 11 where no standing trustee may be willing to serve the U.S. trustee is required to serve as a trustee or standing trustee in the case.

Section 224 of title II creates nine sections in chapter 39 of title 28 providing the details of the U.S. trustee system. During the pilot period the Attorney General must appoint a U.S. trustee for each of the 10-pilot programs covering 14 judicial districts. The U.S. trustee is appointed for a term of 7 years, though if the pilot is terminated after 5 years, his appointment would also terminate. The U.S. trustee is subject to removal for cause by the Attorney General. The maximum annual compensation for a U.S. trustee may not exceed the lowest annual rate of basic pay in GS–16 which is currently $39,500. The U.S. trustee system is patterned after the U.S. attorney system regarding civil service benefits.

Section 233 of title II of the House amendment creates a new chapter 50 of title 28 relating to administrative personnel of the bankruptcy courts. Section 771(a) provides for a clerk of the Bankruptcy Court to be appointed based on need. The need for separate Clerks of the Bankruptcy Courts clearly exists at the present time in all judicial districts. Further, Congress has recently addressed the issue and voted unanimously in both bodies of the Congress that separate Clerks of the Bankruptcy Court offices should exist for each Bankruptcy Court. It is further the intent of Congress that this should continue. Where the bankruptcy court is a single bankruptcy judge serving in more than one judicial district, only one Clerk of the Bankruptcy Court may be appointed for all Districts served by that Bankruptcy Judge. In addition the bankruptcy judges may appoint necessary other employees, including law clerks and secretaries, subject to any limitation on the aggregate salaries of the employees imposed by law. Provision is made in the House amendment for bankruptcy court proceedings to be recorded by court reporters or electronic sound recording means or by an employee of the bankruptcy court. Electronic sound recorders means should be the rule. It produces an adequate record and is substantially more economical than a court report or court employee. If the parties agree to bear the cost of a court reporter, it should be permitted. The bill assures similar treatment by the administrative office of the U.S. courts concerning administrative personnel in bankruptcy courts and personnel serving in the U.S. district courts. The Administrative Office should make a study during the transition period regarding the feasibility of the consolidation of the clerk's offices of the Bankruptcy and District Courts. With the addition of the Bankruptcy Judges to the Judicial Conference the Judicial Conference should be better able to evaluate the recommendations contained in such study.

Section 241 of title II establishes a new chapter 90 of title 28 entitled Court of Appeals in bankruptcy courts. This chapter specifies the jurisdiction and venue in bankruptcy cases and specifies various powers of the bankruptcy courts. The chapter grants the courts of appeals original and exclusive jurisdiction of all cases under title 11. That jurisdiction in turn is completely delegated to the bankruptcy court with the sole exception of punishing for contempts by imprisonment and enjoining other courts. The bankruptcy court is thus given pervasive jurisdiction over all proceedings arising in or relating to bankruptcy cases. In addition, the bankruptcy court is given exclusive jurisdiction of the property of the estate in a case under title 11. This represents a major improvement over present law where the distinction between summary and plenary jurisdiction often results in wasteful litigation. Venue provisions pertaining to the new bankruptcy court have been described adequately in the House report accompanying H.R. 8200. It is intended that 28 United States Code 1473 provide alternate venues under subsections (a) and (c) in situations where both paragraphs would apply. Section 250 of title II of the House amendment makes clear that a bankruptcy court may issue a writ of habeas corpus and section 1651 of title 28 applies by its terms to enable a bankruptcy court to issue all other writs; 28 United States Code 1481 rounds out the power of a bankruptcy court by making clear that the court has all the powers of a court of equity, law, or admiralty.

Title II of the House amendment contains a number of miscellaneous provisions relating to bankruptcy judges and bankruptcy courts. As Federal judges, bankruptcy judges are entitled to attend circuit conferences and one bankruptcy judge, is placed on the board of the Federal Judicial Center during transition and thereafter. More importantly, three bankruptcy judges will become members of the Judicial Conference of the United States. In the past, the Judicial Conference of the United States has been unable to respond to the increase in bankruptcy cases and the concomitant strains on bankruptcy judges and courts. Bankruptcy judges have not been members of the committee on bankruptcy of the Judicial Conference or the Judicial Conference itself. The House amendment provides for bankruptcy judge representation on the Judicial Conference in order to make sure that the Conference will be sensitive to the problems and needs of bankruptcy courts and bankruptcy judges. Moreover, such representation will insure input into the allocation of judicial resources that is sorely needed.

In the past, the Judicial Conference and the administrative office of the U.S. courts have treated the bankruptcy court and bankruptcy judges in a less favorable manner than the district courts. Repre-

sentation on the Judicial Conference of the interests of bankruptcy judges in courts will insure that the equitable allocation of judicial resources will be assured.

Finally, title II of the House amendment eliminates the referees' salary and expense fund which was established long ago in an era when the bankruptcy courts were supposed to be self-supporting. The referee salary and expense fund has been running a deficit for several years and deleting it serves to bring the bankruptcy court into line with all other Federal courts.

In order to mitigate the impact on revenues that such a deletion will have, sections 244 and 246 of title II of the House amendment raise filing fees in a manner that treats bankruptcy cases identical with other Federal court cases and comports with dollar values appropriate in 1978 for gaining access to a Federal court.

The last significant change made by title II of the House amendment relates to the Rules of Bankruptcy Procedure currently provided for by 28 United States Code 2075 (1976). Section 247 of title II of the House amendment amends the rulemaking power in order to make clear that rules of bankruptcy procedure may not supersede title 11. Although various sections of title 11 specifically allocate the burden of proof, for example, sections 362(g), 363(e), and 364(d)(2), that allocation is not intended to preclude the Rules of Bankruptcy Procedure from providing the same or a different burden of proof on other issues arising under those sections or otherwise.

I would like to say a few words about a matter of considerable importance—the future of incumbent bankruptcy judges. If we thought that we had the power to do so, we would have required that incumbents be folded into the new positions. This would enable the country to avail itself of the very considerable knowledge and experience of this corps of dedicated people. However, for Congress to do so would probably raise questions of separation of powers. Accordingly, we would, in the strongest terms, urge the President that to the greatest extent possible bankruptcy judges who serve during transition shall be appointed to the new court. This should be done both as a matter of fairness to the incumbents and as a matter of the proper use of a valuable public resource.

Title III of the House amendment contains numerous amendments to other acts related to bankruptcy. On the whole, there are very few differences between the House amendment and provisions contained in the House bill and Senate amendment.

Section 302 of the House amendment represents a compromise between the House bill and Senate amendment on the rulemaking authority of the Commodities Futures Trading Commission.

Section 306 of the House amendment represents a compromise between the House bill and Senate amendment and amends section 3(a)(7) of the Securities Act of 1933 to retain the securities exemption for certificates of indebtedness of a receiver and to cover certificates of indebtedness issued by a trustee or debtor in possession in a case under title 11. This also has the effect of retaining the exemption from the Trust Indenture Act under 15 United States Code 77ddd (a)(4).

Section 308 of the House amendment is new in light of the recent amendments to the Securities Investor Protection Act of 1970. Section 308(e) contains a provision permitting a specific liquidation to be removed to the bankruptcy court upon the issuance of a protective decree and appointment of a trustee in a SIPA case. Section 308(j) indicates that where the debtor is both a stockbroker and a commodity broker, that SIPA is required to perform the duties of a trustee specified in subchapter IV of chapter 7 of title 11, to liquidate the entire business of the stockbroker-commodity broker.

Section 312 of the House amendment contains a technical amendment in light of amendments made to the Consumer Credit Protection Act and represents a compromise between the House bill and Senate amendment in permitting a bankruptcy to antedate a credit report by not more than 10 years in lieu of the 14 years contained in present law, and 7 years contained in the House bill.

Section 313 of the House amendment amends section 201(e) of the Copyright Act to permit a copyright to become property of the estate in an involuntary case.

Section 314(e) of the House amendment takes the approach contained in the House bill in preference to the approach taken in the Senate amendment. Similarly, the House amendment follows the House bill with respect to sections 314(i) and 314(k) as matters of style. Section 314(f) of the House amendment modifies a provision contained in the House bill and Senate amendment.

Section 321 of the House amendment adopts the position taken in the Senate amendment in preference to the position taken in the House bill. Although the Pension Benefit Guarantee Corporation should be free to have a receiver appointed to liquidate a pension plan, this section makes clear that the bankruptcy court retains ultimate power to insure that such liquidation is conducted in accordance with the administration of the bankruptcy case.

Section 327 of the House amendment adopts a comparable provision contained in the House bill consistent with the policy that all nondischargeable debts should be enumerated in section 523 of title 11.

Section 333 of the House amendment adopts a comparable provision contained in the House bill but omitted in the Senate amendment. The provision permits the United States to finance an insolvent railroad on less than a first lien position. Section 333 is not intended to mean that the U.S. Government should bail out insolvent railroads. Rather, in the event the Secretary desires to finance an insolvent railroad in a case in which a first lien would be disasterous to efforts to reorganize the railroad, the Secretary is given discretion to accommodate the public interest.

Section 334 of the House amendment is identical with a provision contained in the House bill and Senate amendment. The bill codifies chapter XIV of the Bankruptcy Act, as amended by the Rules of Bankruptcy Procedure. Prior to adoption of the Rules of Bankruptcy Procedure, the Maritime Administration had a right to repossess vessels notwithstanding any contrary order of the court under section 703 of the Bankruptcy Act. The automatic stay contained in rules such as chapter XI rule 11–44 superseded that provision. Reinstituting an absolute right for an agency of the Government to seize vessels is unwise and unnecessary. The new concept of adequate protection contained in section 361 of the House amendment may be demanded by a creditor as a precondition to use of collateral under section 363(e) of title 11. Moreover, in a case under chapter 11 of title 11, a secured creditor or lessor of a vessel is entitled to repossession after 60 days under section 1110 of title 11, unless the trustee or debtor in possession cures all prior defaults and gives adequate assurance of future performance. Surely it is reasonable for a debtor in possession to be afforded such an opportunity to rehabilitate a business that may have a dramatic impact on the public interest. A governmental agency should not be able to engage in unilateral action to protect pecuniary rights and thereby imperil the public good.

The House amendment adopts provisions contained in sections 335 and 336 of the House bill regarding exercise of the jurisdiction of bankruptcy courts in Guam and the Virgin Islands.

Title IV of the House amendment represents a compromise between the House bill and Senate amendment with respect to transition.

Section 402 of title IV of the House amendment contains the effective dates for the legislation. In general, the substantive law under title I takes effect October 1, 1979. On that date, the repealer of the Bankruptcy Act contained in section 401 of the transition, together with other laws pertaining thereto, also becomes effective. Certain features of the new bankruptcy court are postponed and will not be effective until April 1, 1984; however, the U.S. trustee system and certain powers of the court are made effective October 1, 1979. Although most of the provisions of title III relating to amendments to other laws take effect on October 1, 1979, some of the more important provisions take effect on the date of enactment of this legislation.

Section 403 of title IV of the House amendment states the general rule that on the effective date of the legislation all cases commenced prior to that date are governed by the Bankruptcy Act as if this legislation had never been enacted, both as a matter of substance and as a matter of procedure. Certain provisions of subchapter IV of title 11 will apply in existing railroad reorganizations. All cases commenced on or after October 1, 1979, will be governed by title 11 as contained in title I of the House amendment and the other provisions in titles II and III effective on that date.

Section 404 of the House amendment specifies the status of the court during

transition. Existing bankruptcy judges serving on the date of enactment of the legislation receive an automatic extension of term to March 31, 1984, the effective date of the new court or until a successor is appointed, provided, however if the regular term of a bankruptcy judge would have otherwise expired during transition, a merit screening committee will determine at that time whether a bankruptcy judge should be disqualified from having his term extended during the remainder of the transition period. By March 31, 1984, it is intended that the President will have appointed, subject to the advice and consent of the Senate, bankruptcy judges to serve on the new court. During the transition, U.S. bankruptcy judges are entitled to appoint a clerk, necessary other employees, including law clerks and secretaries, and court reporters the same as the judges of the U.S. Bankruptcy Court that will take effect April 1, 1984. Also, if the Judicial Conference determines the number of bankruptcy judges to be inadequate during the transition period, the Conference may increase, but may not decrease, the number of judges needed. In the unlikely event that a decrease of bankruptcy judges is required, it is expected that natural attrition from retirement and other causes will suffice to reduce the number of bankruptcy judges. The salary of a bankruptcy judge is increased to $50,000 on the date of enactment.

Section 406 of title IV of the House amendment indicates that during transition, the director of the administrative office of U.S. courts will conduct a study and make recommendations concerning the number of bankruptcy judges to serve on the new court after March 31, 1984. The results of this study must be reported to Congress before January 3, 1983.

Section 407 of title IV of the House amendment indicates that during transition, an advisory committee of not fewer than seven bankruptcy judges must be appointed by the director to advise him with respect to matters arising during transition or relevant thereto. Bankruptcy judges are also to be placed on committees of the Judiciary Conference concerned with the administration of bankruptcy during the transition, as indicated in section 407(b) of title IV of the House amendment.

Section 408 of the House amendment establishes a U.S. trustee pilot system to take effect October 1, 1979. Effective on the date of enactment the Attorney General will be responsible for appointing an assistant attorney general to supervise the bankruptcy division of the Department of Justice. The assistant attorney general should immediately begin recruiting U.S. trustees for 10 pilot programs covering 14 districts as enumerated in chapter 15. The Attorney General, with advice from the assistant attorney general for the bankruptcy division, should begin to formulate standards for panels of private trustees and standing trustees as required by title II of this legislation. In districts not covered by the pilot program, the director of the administrative office of the U.S. courts should begin to perform comparable functions effective on the date of enactment so that by October 1, 1979, panels of trustees under the supervision of the director of the administrative office of U.S. courts will be established.

The Attorney General will conduct a study of the U.S. trustee system during the transition and report the results to Congress, among others, no later than January 3, 1980, and annually thereafter during the transition period. In the event Congress is not persuaded to extend the U.S. trustee system, section 408(c) contains a sunset provision abolishing all pilot programs effective April 1, 1984, and abolishing administrative machinery created in the Department of Justice on that date as well.

Having completed a general description of the amendment the provisions of the House amendment which deal directly with, or affect, the payment or collection of taxes in cases under title 11 will be discussed in detail.

Section 108. Extension of time: The House amendment adopts section 108(c)(1) of the Senate amendment which expressly includes any special suspensions of statutes of limitation periods on collection outside bankruptcy when assets are under the authority of a court. For example, section 6503(b) of the Internal Revenue Code suspends collection of tax liabilities while the debtor's assets are in the control or custody of a court, and for 6 months thereafter. By adopting the language of the Senate amendment, the House amendment insures not only that the period for collection of the taxes outside bankruptcy will not expire during the title 11 proceedings, but also that such period will not expire until at least 6 months thereafter, which is the minimum suspension period provided by the Internal Revenue Code.

Section 346. Special tax provisions: State and local rules. This section provides special tax provisions dealing with the treatment, under State or local, but not Federal, tax law, of the method of taxing bankruptcy estates of individuals, partnerships, and corporations; survival and allocation of tax attributes between the bankrupt and the estate; return filing requirements; and the tax treatment of income from discharge of indebtedness. The Senate bill removed these rules pending adoption of Federal rules on these issues in the next Congress. The House amendment returns the State and local tax rules to section 346 so that they may be studied by the bankruptcy and tax bars who may wish to submit comments to Congress.

Withholding rules: Both the House bill and Senate amendment provide that the trustee is required to comply with the normal withholding rules applicable to the payment of wages and other payments. The House amendment retains this rule for State and local taxes only. The treatment of withholding of Federal taxes will be considered in the next Congress.

Section 726 of the Senate amendment provides that the rule requiring pro rata payment of all expenses within a priority category does not apply to the payment of amounts withheld by a bankruptcy trustee. The purpose of this rule was in insure that the trustee pay the full amount of the withheld taxes to the appropriate governmental tax authority. The House amendment deletes this rule as unnecessary because the existing practice conforms essentially to that rule. If the trustee fails to pay over in full amounts that he withheld, it is a violation of his trustee's duties which would permit the taxing authority to sue the trustee on his bond.

When taxes considered "incurred": The Senate amendment contained rules of general application dealing with when a tax is "incurred" for purposes of the various tax collection rules affecting the debtor and the estate. The House amendment adopts the substance of these rules and transfers them to section 507 of title 11.

Penalty for failure to pay tax: The Senate amendment contains a rule which relieves the debtor and the trustee from certain tax penalties for failure to make timely payment of a tax to the extent that the bankruptcy rules prevent the trustee or the debtor from paying the tax on time. Since most of these penalities relate to Federal taxes, the House amendment deletes these rules pending consideration of Federal tax rules affecting bankruptcy in the next Congress. Section 362. Automatic stay: Sections 362(b)(8) and (9) contained in the Senate amendment are largely deleted in the House amendment. Those provisions add to the list of actions not stayed (a) jeopardy assessments, (b) other assessments, and (c) the issuance of deficiency notices. In the House amendment, jeopardy assessments against property which ceases to be property of the estate is already authorized by section 362(c)(1). Other assessments are specifically stayed under section 362(a)(6), while the issuance of a deficiency notice is specifically permitted. Stay of the assessment and the permission to issue a statutory notice of a tax deficiency will permit the debtor to take his personal tax case to the Tax Court, if the bankruptcy judge authorizes him to do so (as explained more fully in the discussion of section 505.)

Section 502. Allowance of Claims or Interests: The House amendment adopts section 502(b)(9) of the House bill which disallows any tax claim resulting from a reduction of the Federal Unemployment Tax Act (FUTA) credit (sec. 3302 of the Internal Revenue Code) on account of a tardy contribution to a State unemployment fund if the contribution is attributable to ways or other compensation paid by the debtor before bankruptcy. The Senate amendment allowed this reduction, but would have subordinated it to other claims in the distribution of the estate's assets by treating it as a punitive (nonpecuniary loss) penalty. The House amendment would also not bar reduction of the FUTA credit on account of a trustee's late payment of a contribution to a State unemployment fund if the contribution was attributable to a trustee's payment of compensation earned from the estate.

Section 505. Determinations of tax liability: Authority of bankruptcy court to

rule on merits of tax claims.—The House amendment authorizes the bankruptcy court to rule on the merits of any tax claim involving an unpaid tax, fine, or penalty relating to a tax, or any addition to a tax, of the debtor or the estate. This authority applies, in general, whether or not the tax, penalty, fine, or addition to tax had been previously assessed or paid. However, the bankruptcy court will not have jurisdiction to rule on the merits of any tax claim which has been previously adjudicated, in a contested proceeding, before a court of competent jurisdiction. For this purpose, a proceeding the U.S. Tax Court is to be considered "contested" if the debtor filed a petition in the Tax Court by the commencement of the case and the Internal Revenue Service had filed an answer to the petition. Therefore, if a petition and answer were filed in the Tax Court before the title II petition was filed, and if the debtor later defaults in the Tax Court, then, under res judicata principles, the bankruptcy court could not then rule on the debtor's or the estate's liability for the same taxes.

The House amendment adopts the rule of the Senate bill that the bankruptcy court can, under certain conditions, determine the amount of tax refund claim by the trustee. Under the House amendment, if the refund results from an offset or counterclaim to a claim or request for payment by the Internal Revenue Service, or other tax authority, the trustee would not first have to file an administrative claim for refund with the tax authority.

However, if the trustee requests a refund in other situations, he would first have to submit an administrative claim for the refund. Under the House amendment, if the Internal Revenue Service, or other tax authority does not rule on the refund claim within 120 days, then the bankruptcy court may rule on the merits of the refund claim.

Under the Internal Revenue Code, a suit for refund of Federal taxes cannot be filed until 6 months after a claim for refund is filed with the Internal Revenue Service (sec. 6532(a)). Because of the bankruptcy aim to close the estate as expeditiously as possible, the House amendment shortens to 120 days the period for the Internal Revenue Service to decide the refund claim.

The House amendment also adopts the substance of the Senate bill rule permitting the bankruptcy court to determine the amount of any penalty, whether punitive or pecuniary in nature, relating to taxes over which it has jurisdiction.

Jurisdiction of the tax court in bankruptcy cases: The Senate amendment provided a detailed series of rules concerning the jurisdiction of the U.S. Tax Court, or similar State or local administrative tribunal to determine personal tax liabilities of an individual debtor. The House amendment deletes these specific rules and relies on procedures to be derived from broad general powers of the bankruptcy court.

Under the House amendment, as under present law, a corporation seeking reorganization under chapter 11 is considered to be personally before the bankruptcy court for purposes of giving that court jurisdiction over the debtor's personal liability for a nondischargeable tax.

The rules are more complex where the debtor is an individual under chapter 7, 11, or 13. An individual debtor or the tax authority can, as under section 17c of the present Bankruptcy Act, file a request that the bankruptcy court determine the debtor's personal liability for the balance of any nondischargeable tax not satisfied from assets of the estate. The House amendment intends to retain these procedures and also adds a rule staying commencement or continuation of any proceeding in the Tax Court after the bankruptcy petition is filed, unless and until that stay is lifted by the bankruptcy judge under section 362(a)(8). The House amendment also stays assessment as well as collection of a prepetition claim against the debtor (sec. 362 (a)(6)). A tax authority would not, however, be stayed from issuing a deficiency notice during the bankruptcy case (sec. (b)(7)). The Senate amendment repealed the existing authority of the Internal Revenue Service to make an immediate assessment of taxes upon bankruptcy (sec. 6871(a) of the code). See section 321 of the Senate bill. As indicated, the substance of that provision, also affecting State and local taxes, is contained in section 362(a)(6) of the House amendment. The statute of limitations is tolled under the House amendment while the bankruptcy case is pending.

Where no proceeding in the Tax Court is pending at the commencement of the bankruptcy case, the tax authority can, under the House amendment, file a claim against the estate for a prepetition tax liability and may also file a request that the bankruptcy court hear arguments and decide the merits of an individual debtor's personal liability for the balance of any nondischargeable tax liability not satisfied from assets of the estate. Bankruptcy terminology refers to the latter type of request as a creditor's complaint to determine the dischargeability of a debt. Where such a complaint is filed, the bankruptcy court will have personal jurisdiction over an individual debtor, and the debtor himself would have no access to the Tax Court, or to any other court, to determine his personal liability for nondischargeable taxes.

If a tax authority decides not to file a claim for taxes which would typically occur where there are few, if any, assets in the estate, normally the tax authority would also not request the bankruptcy court to rule on the debtor's personal liability for a nondischargeable tax. Under the House amendment, the tax authority would then have to follow normal procedures in order to collect a nondischargeable tax. For example, in the case of nondischargeable Federal income taxes, the Internal Revenue Service would be required to issue a deficiency notice to an individual debtor, and the debtor could then file a petition in the Tax Court—or a refund suit in a district court—as the forum in which to litigate his personal liability for a nondischargeable tax.

Under the House amendment, as under present law, an individual debtor can also file a complaint to determine dischargeability. Consequently, where the tax authority does not file a claim or a request that the bankruptcy court determine dischargeability of a specific tax liability, the debtor could file such a request on his own behalf, so that the bankruptcy court would then determine both the validity of the claim against assets in the estate and also the personal liability of the debtor for any nondischargeable tax.

Where a proceeding is pending in the Tax Court at the commencement of the bankruptcy case, the commencement of the bankruptcy case automatically stays further action in the Tax Court case unless and until the stay is lifted by the bankruptcy court. The Senate amendment repealed a provision of the Internal Revenue case barring a debtor from filing a petition in the Tax Court after commencement of a bankruptcy case (sec. 6871(b) of the code). See section 321 of the Senate bill. As indicated earlier, the equivalent of the code amendment is embodied in section 362 (a)(8) of the House amendment, which automatically stays commencement or continuation of any proceeding in the Tax Court until the stay is lifted or the case is terminated. The stay will permit sufficient time for the bankruptcy trustee to determine if he desires to join the Tax Court proceeding on behalf of the estate. Where the trustee chooses to join the Tax Court proceeding, it is expected that he will seek permission to intervene in the Tax Court case and then request that the stay on the Tax Court proceeding be lifted. In such a case, the merits of the tax liability will be determined by the Tax Court, and its decision will bind both the individual debtor as to any taxes which are nondischargeable and the trustee as to the tax claim against the estate.

Where the trustee does not want to intervene in the Tax Court, but an individual debtor wants to have the Tax Court determine the amount of his personal liability for nondischargeable taxes, the debtor can request the bankruptcy court to lift the automatic stay on existing Tax Court proceedings. If the stay is lifted and the Tax Court reaches its decision before the bankruptcy court's decision on the tax claim against the estate, the decision of the Tax Court would bind the bankruptcy court under principles of res judicata because the decision of the Tax Court affected the personal liability of the debtor. If the trustee does not wish to subject the estate to the decision of the Tax Court if the latter court decides the issues before the bankruptcy court rules, the trustee could resist the lifting of the stay on the existing Tax Court proceeding. If the Internal Revenue Service had issued a deficiency notice to the debtor before the bankruptcy case began, but as of the filing of the bankruptcy petition the 90-day period for filing in the Tax Court was still running, the debtor would be automatically stayed from filing a petition in the Tax Court. If either the debtor or the Internal Revenue Service then files a complaint to determine dis-

chargeability in the bankruptcy court, the decision of the bankruptcy court would bind both the debtor and the Internal Revenue Service.

The bankruptcy judge could, however, lift the stay on the debtor to allow him to petition the Tax Court, while reserving the right to rule on the tax authority's claim against assets of the estate. The bankruptcy court could also, upon request by the trustee, authorize the trustee to intervene in the Tax Court for purposes of having the estate also governed by the decision of the Tax Court.

In essence, under the House amendment, the bankruptcy judge will have authority to determine which court will determine the merits of the tax claim both as to claims against the estate and claims against the debtor concerning his personal liability for nondischargeable taxes. Thus, if the Internal Revenue Service, or a State or local tax authority, files a petition to determine dischargeability, the bankruptcy judge can either rule on the merits of the claim and continue the stay on any pending Tax Court proceeding or lift the stay on the Tax Court and hold the dischargeability complaint in abeyance. If he rules on the merits of the complaint before the decision of the Tax Court is reached, the bankruptcy court's decision would bind the debtor as to nondischargeable taxes and the Tax Court would be governed by that decision under principles of res judicata. If the bankruptcy judge does not rule on the merits of the complaint before the decision of the Tax Court is reached, the bankruptcy court will be bound by the decision of the Tax Court as it affects the amount of any claim against the debtor's estate.

If the Internal Revenue Service does not file a complaint to determine dischargeability and the automatic stay on a pending Tax Court proceeding is not lifted, the bankruptcy court could determine the merits of any tax claim against the estate. That decision will not bind the debtor personally because he would not have been personally before the bankruptcy court unless the debtor himself asks the bankruptcy court to rule on his personal liability. In any such situation where no party filed a dischargeability petition, the debtor would have access to the Tax Court to determine his personal liability for a nondischargeable tax debt. While the Tax Court in such a situation could take into account the ruling of the bankruptcy court on claims against the estate in deciding the debtor's personal liability, the bankruptcy court's ruling would not bind the Tax Court under principles of res judicata, because the debtor, in that situation, would not have been personally before the bankruptcy court.

If neither the debtor nor the Internal Revenue Service files a claim against the estate or a request to rule on the debtor's personal liability, any pending tax court proceeding would be stayed until the closing of the bankruptcy case, at which time the stay on the tax court would cease and the tax court case could continue for purposes of deciding the merits of the debtor's personal liability for nondischargeable taxes.

Audit of trustee's returns: Under both bills, the bankruptcy court could determine the amount of any administrative period taxes. The Senate amendment, however, provided for an expedited audit procedure, which was mandatory in some cases. The House amendment (sec. 505(b)), adopts the provision of the House bill allowing the trustee discretion in all cases whether to ask the Internal Revenue Service, or State or local tax authority for a prompt audit of his returns on behalf of the estate. The House amendment, however, adopts the provision of the Senate bill permitting a prompt audit only on the basis of tax returns filed by the trustee for completed taxable periods. Procedures for a prompt audit set forth in the Senate bill are also adopted in modified form.

Under the procedure, before the case can be closed, the trustee may request a tax audit by the local, State or Federal tax authority of all tax returns filed by the trustee. The taxing authority would have to notify the trustee and the bankrupty court within 60 days whether it accepts returns or desires to audit the returns more fully. If an audit is conducted, the taxing authority would have to notify the trustee of tax deficiency within 180 days after the original and it request, subject to extensions of time if the bankruptcy court approves. If the trustee does not agree with the results of the audit, the trustee could ask the bankruptcy court to resolve the dispute. Once the trustee's tax liability for administration period taxes has thus been determined, the legal effect in a case under chapter 7 or 11 would be to discharge the trustee and any predecessor of the trustee, and also the debtor, from any further liability for these taxes.

The prompt audit procedure would not be available with respect to any tax liability as to which any return required to be filed on behalf of the estate is not filed with the proper tax authority. The House amendment also specifies that a discharge of the trustee or the debtor which would otherwise occur will not be granted, or will be void if the return filed on behalf of the estate reflects fraud or material representation of facts.

For purposes of the above prompt audit procedures, it is intended that the tax authority with which the request for audit is to be filed is, as to Federal taxes, the office of the District Director in the district where the bankruptcy case is pending.

Under the House amendment, if the trustee does not request a prompt audit, the debtor would not be discharged from possible transferee liability if any assets are returned to the debtor.

Assessment after decision: As indicated above, the commencement of a bankruptcy case automatically stays assessment of any tax (sec. 362(a)(6)). However, the House amendment provides (sec. 505(c)) that if the bankruptcy court renders a final judgment with regard to any tax (under the rules discussed above), the tax authority may then make an assessment (if permitted to do so under otherwise applicable tax law) without waiting for termination of the case or confirmation of a reorganization plan.

Trustee's authority to appeal tax cases: The equivalent provision in the House bill (sec. 505(b)) and in the Senate bill (sec. 362(h)) authorizing the trustee to prosecute an appeal or review of a tax case are deleted as unnecessary. Section 541(a) of the House amendment provides that property of the estate is to include all legal or equitable interests of the debtor. These interests include the debtor's causes of action, so that the specific provisions of the House and Senate bills are not needed.

Section 506. Determination of Secured Status: The House amendment deletes section 506(d)(3) of the Senate amendment, which insures that a tax lien securing a nondischargeable tax claim is not voided because a tax authority with notice or knowledge of the bankruptcy case fails to file a claim for the liability (as it may elect not to do, if it is clear there are insufficient assets to pay the liability). Since the House amendment retains section 506(d) of the House bill that a lien is not voided unless a party in interest has requested that the court determine and allow or disallow the claim, provision of the Senate amendment is not necessary.

Sec. 507. Priorities: Under the House amendment, taxes receive priority as follows:

First. Administration expenses: The amendment generally follows the Senate amendment in providing expressly that taxes incurred during the administration of the estate share the first priority given to administrative expenses generally. Among the taxes which receives first priority, as defined in section 503, are the employees' and the employer's shares of employment taxes on wages earned and paid after the petition is filed. Section 503(b)(1) also includes in administration expenses a tax liability arising from an excessive allowance by a tax authority of a "quickie refund" to the estate. (In the case of Federal taxes, such refunds are allowed under special rules based on net operating loss carrybacks (sec. 6411 of the Internal Revenue Code)).

An exception is made to first priority treatment for taxes incurred by the estate with regard to the employer's share of employment taxes on wages earned from the debtor before the petition but paid from the estate after the petition has been filed. In this situation, the employer's tax receives either sixth priority or general claim treatment.

The House amendment also adopts the provisions of the Senate amendment which include in the definition of administrative expenses under section 503 any fine, penalty (including "additions to tax" under applicable tax laws) or reduction in credit imposed on the estate.

Seond. "Involuntary gap" claims: "Involuntary gap" creditors are granted second priority by paragraph (2) of section 507(a). This priority includes tax claims arising in the ordinary course of the debtor's business or financial affairs after he has been placed involuntarily in bankruptcy but before a trustee is appointed or before the order for relief.

Third. Certain taxes on prepetition

wages: Wage claims entitled to third priority are for compensation which does not exceed $2,000 and was earned during the 90 days before the filing of the bankruptcy petition or the cessation of the debtor's business. Certain employment taxes receive third priority in payment from the estate along with the payment of wages to which the taxes relate. In the case of wages earned before the filing of the petition, but paid by the trustee (rather than by the debtor) after the filing of the petition, claims or the employees' share of the employment taxes filing of the petition, claims for the employees' share of the social security or railroad retirement tax) receive third priority to the extent the wage claims themselves are entitled to this priority.

In the case of wages earned from and paid by the debtor before the filing of the petition, the employer's share of the employment taxes on these wages paid by the debtor receives sixth priority or, if not entitled to that priority, are treated only as general claims. Under the House amendment, the employer's share of employment taxes on wages earned by employees of the debtor, but paid by the trustee after the filing of the bankruptcy petition, will also receive sixth priority to the extent that claims for the wages receive third priority. To the extent the claims for wages do not receive third priority, but instead are treated only as general claims, claims for the employer's share of the employment taxes attributable to those wages will also be treated as general claims. In calculating the amounts payable as general wage claims, the trustee must pay the employer's share of employment taxes on such wages.

Sixth priority. The House amendment modifies the provisions of both the House bill and Senate amendment in the case of sixth priority taxes. Under the amendment, the following Federal, State and local taxes are included in the sixth priority:

First. Income and gross receipts taxes incurred before the date of the petition for which the last due date of the return, including all extensions of time granted to file the return, occurred within 3 years before the date on which the petition was filed, or after the petition date. Under this rule, the due date of the return, rather than the date on which the taxes were assessed, determines the priority.

Second. Income and gross receipts taxes assessed at any time within 240 days before the petition date. Under this rule, the date on which the governmental unit assesses the tax, rather than the due date of the return, determines the priority.

If, following assessment of a tax, the debtor submits an offer in compromise to the governmental unit, the House amendment provides that the 240-day period is to be suspended for the duration of the offer and will resume running after the offer is withdrawn or rejected by the governmental unit, but the tax liability will receive priority if the title 11 petition is filed during the balance of the 240-day period or during a minimum of 30 days after the offer is withdrawn or rejected. This rule modifies a provision of the Senate amendment dealing specifically with offers in compromise. Under the modified rule, if, after the assessment, an offer in compromise is submitted by the debtor and is still pending (without having been accepted or rejected) at the date on which a title 11 petition is filed, the underlying liability will receive sixth priority. However, if an assessment of a tax liability is made but the tax is not collected within 240 days, the tax will not receive priority under section 507(a)(6)(A)(i) and the debtor cannot revive a priority for that tax by submitting an offer in compromise.

Third. Income and gross receipts taxes not assessed before the petition date but still permitted, under otherwise applicable tax laws, to be assessed. Thus, for example, a prepetition tax liability is to receive sixth priority under this rule if, under the applicable statute of limitations, the tax liability can still be assessed by the tax authority. This rule also covers situations referred to in section 507(a)(6)(B)(ii) of the Senate amendment where the assessment or collection of a tax was prohibited before the petition pending exhaustion of judicial or administrative remedies, except that the House amendment eliminates the 300-day limitation of the Senate bill. So, for example, if before the petition a debtor was engaged in litigation in the Tax Court, during which the Internal Revenue Code bars the Internal Revenue Service from assessing or collecting the tax, and if the tax court decision is made in favor of the Service before the petition under title 11 is filed, thereby lifting the restrictions on assessment and collection, the tax liability will receive sixth priority even if the tax authority does not make an assessment within 300 days before the petition (provided, of course, that the statute of limitations on assessment has not expired by the petition date).

In light of the above categories of the sixth priority, and tax liability of the debtor (under the Internal Revenue Code or State or local law) as a transferee of property from another person will receive sixth priority without the limitations contained in the Senate amendment so long as the transferee liability had not been assessed by the tax authority by the petition date but could still have been assessed by that date under the applicable tax statute of limitations or, if the transferee liability had been assessed before the petition, the assessment was made no more than 240 days before the petition date.

Also in light of the above categories, the treatment of prepetition tax liabilities arising from an excessive allowance to the debtor of a tentative carryback adjustment, such as a "quickie refund" under section 6411 of the Internal Revenue Code, is revised as follows: If the tax authority has assessed the additional tax before the petition, the tax liability will receive priority if the date of assessment was within 240 days before the petition date. If the tax authority had not assessed the additional tax by the petition, the tax liability will still receive priority so long as, on the petition date, assessment of the liability is not barred by the statute of limitations.

Fourth. Any property tax assessed before the commencement of the case and last payable without penalty within 1 year before the petition, or thereafter.

Fifth. Taxes which the debtor was required by law to withhold or collect from others and for which he is liable in any capacity, regardless of the age of the tax claims. This category covers the so-called "trust fund" taxes, that is, income taxes which an employer is required to withhold from the pay of his employees, and the employees' share of social security taxes.

In addition, this category includes the liability of a responsible officer under the Internal Revenue Code (sec. 6672) for income taxes or for the employees' share of social security taxes which that officer was responsible for withholding from the wages of employees and paying to the Treasury, although he was not himself the employer. This priority will operate when a person found to be a responsible officer has himself filed in title 11, and the priority will cover the debtor's responsible officer liability regardless of the age of the tax year to which the tax relates. The U.S. Supreme Court has interpreted present law to require the same result as will be reached under this rule. *U.S.* v. *Sotelo*, 436 U.S. — (1978).

This category also includes the liability under section 3505 of the Internal Revenue Code of a taxpayer who loans money for the payment of wages or other compensation.

Sixth, the employer's share of employment taxes on wages paid before the petition and on third-priority wages paid postpetition by the estate. The priority rules under the House amendment governing employment taxes can thus be summarized as follows: Claims for the employees' shares of employment taxes attributable to wages both earned and paid before the filing of the petition are to receive sixth priority. In the case of employee wages earned, but not paid, before the filing of the bankruptcy petition, claims for the employees' share of employment taxes receive third priority to the extent the wages themselves receive third priority. Claims which relate to wages earned before the petition, but not paid before the petition (and which are not entitled to the third priority under the rule set out above), will be paid as general claims. Since the related wages will receive no priority, the related employment taxes would also be paid as nonpriority general claims.

The employer's share of the employment taxes on wages earned and paid before the bankruptcy petition will receive sixth priority to the extent the return for these taxes was last due (including extensions of time) within 3 years before the filing of the petition, or was due after the petition was filed). Older tax claims of this nature will be payable as general claims. In the case of wages earned by employees before the petition, but actually paid by the trustee (as claims against the estate) after the title 11 case commenced, the employer's share of the employment taxes on third

priority wages will be payable as sixth priority claims and the employer's taxes on prepetition wages which are treated only as general claims will be payable only as general claims. In calculating the amounts payable as general wage claims, the trustee must pay the employer's share of employment taxes on such wages. The House amendment thus deletes the provision of the Senate amendment that certain employer taxes receive third priority and are to be paid immediately after payment of third priority wages and the employees' shares of employment taxes on those wages.

In the case of employment taxes relating to wages earned and paid after the petition, both the employees' shares and the employer's share will receive first priority as administration expenses of the estate.

Seventh. Excise taxes on transactions for which a return, if required, is last due, under otherwise applicable law or under any extension of time to file the return, within 3 years before the petition was filed, or thereafter. If a return is not required with regard to a particular excise tax, priority is given if the transaction or event itself occurred within 3 years before the date on which the title 11 petition was filed. All Federal, State or local taxes generally considered or expressly treated as excises are covered by this category, including sales taxes, estate and gift taxes, gasoline and special fuel taxes, and wagering and truck taxes.

Eighth. Certain unpaid customs duties. The House amendment covers in this category duties on imports entered for consumption within 1 year before the filing of the petition, but which are still unliquidated on the petition date; duties covered by an entry liquidated or reliquidated within 1 year before the petition date; and any duty on merchandise entered for consumption within 4 years before the petition but not liquidated on the petition date, if the Secretary of the Treasury or his delegate certifies that duties were not liquidated because of possible assessment of antidumping or countervailing duties or fraud penalties.

For purposes of the above priority rules, the House amendment adopts the provision of the Senate bill that any tax liability which, under otherwise applicable tax law, is collectible in the form of a "penalty," is to be treated in the same manner as a tax liability. In bankruptcy terminology, such tax liabilities are referred to as pecuniary loss penalties. Thus, any tax liability which under the Internal Revenue Code or State or local tax law is payable as a "penalty," in addition to the liability of a responsible person under secton 6672 of the Internal Revenue Code, will be entitled to the priority which the liability would receive if it were expressly labeled as a "tax" under the applicable tax law. However, a tax penalty which is punitive in nature is given subordinated treatment under section 726(a)(4).

The House amendment also adopts the provision of the Senate amendment that a claim arising from an erroneous refund or credit of tax, other than a "quickie refund," is to receive the same priority as the tax to which the refund or credit relates.

The House amendment deletes the express provision of the Senate amendment that a tax liability is to receive sixth priority if it satisfies any one of the subparagraphs of section 507(a)(6) even if the liability fails to satisfy the terms of one or more other subparagraphs. No change of substance is intended by the deletion, however, in light of section 102(5) of the House amendment, providing a rule of construction that the word "or" is not intended to be exclusive.

The House amendment deletes from the express priority categories of the Senate amendment the priority for a debtor's liability as a third party for failing to surrender property or to pay an obligation in response to a levy for taxes of another, and the priority for amounts provided for under deferred payment agreements between a debtor and the tax authority.

The House amendment also adopts the substance of the definition in section 346 (a) the Senate amendment of when taxes are to be considered "incurred" except that the House amendment applies these definitions solely for purposes of determining which category of section 507 tests the priority of a particular tax liability. Thus, for example, the House amendment contains a special rule for the treatment of taxes under the 45-day exception to the preference rules under section 547 and the definitions of when a tax is incurred for priority purposes are not to apply to such preference rules. Under the House amendment, for purposes of the priority rules, a tax on income for a particular period is to be considered "incurred" on the last day of the period. A tax on or measured by some event, such as the payment of wages or a transfer by reason of death or gift, or an excise tax on a sale or other transaction, is to be considered "incurred" on the date of the transaction or event.

Section 510. Subordination: Since the House amendment authorizes subordination of claims only under principles of equitable subordination, and thus incorporates principles of existing case law, a tax claim would rarely be subordinated under this provision of the bill.

Section 522. Exemptions: Section 522 (c)(1) of the House amendment adopts a provision contained in the House bill that dischargeable taxes cannot be collected from exempt assets. This changes present law, which allows collection of dischargeable taxes from exempt property, a rule followed in the Senate amendment. Nondischargeable taxes, however, will continue to the collectable out of exempt property. It is anticipated that in the next session Congress will reveiw the exemptions from levy currently contained in the Internal Revenue Code with a view to increasing the exemptions to more realistic levels.

Section 523. Nondischargeable debts: The House amendment retains the basic categories of nondischargeable tax liabilities contained in both bills, but restricts the time limits on certain nondischargeable taxes. Under the amendment, nondischargeable taxes cover taxes entitled to priority under section 507(a)(6) of title 11 and, in the case of individual debtors under chapters 7, 11, or 13, tax liabilities with respect to which no required return had been filed or as to which a late return had been filed if the return became last due, including extensions, within 2 years before the date of the petition or became due after the petition, or as to which the debtor made a fraudulent return, entry or invoice or fraudulently attempted to evade or defeat the tax.

In the case of individuals in liquidation under chapter 7 or in reorganization under chapter 11 if title 11, section 1141(d)(2) incorporates by reference the exceptions to discharge continued in section 523. Different rules concerning the discharge of taxes where a partnership or corporation reorganizes under chapter 11, apply under section 1141.

The House amendment also deletes the reduction rule contained in section 523 (e) of the Senate amendment. Under that rule, the amount of an otherwise nondischargeable tax liability would be reduced by the amount which a governmental tax authority could have collected from the debtor's estate if it had filed a timely claim against the estate but which it did not collect because no such claim was filed. This provision is deleted in order not to effectively compel a tax authority to file claim against the estate in "no asset" cases, along with a dischargeability petition. In no-asset cases, therefore, if the tax authority is not potentially penalized by failing to file a claim, the debtor in such cases will have a better opportunity to choose the prepayment forum, bankruptcy court or the Tax Court, in which to litigate his personal liability for a nondischargeable tax.

The House amendment also adopts the Senate amendment provision limiting the nondischargeability of punitive tax penalties, that is, penalties other than those which represent collection of a principal amount of tax liability through the form of a "penalty." Under the House amendment, tax penalties which are basically punitive in nature are to be nondischargeable only if the penalty is computed by reference to a related tax libility which is nondischargeable or, if the amount of the penalty is not computed by reference to a tax liability, the transaction or event giving rise to the penalty occurred during the 3-year period ending on the date of the petition.

Section 541. Property of the estate: The Senate amendment provided that property of the estate does not include amounts held by the debtor as trustee and any taxes withheld or collected from others before the commencement of the case. The House amendment removes these two provisions. As to property held by the debtor as a trustee, the House amendment provides that property of the estate will include whatever interest the debtor held in the property at the commencement of the case. Thus, where the debtor held only legal title to the property and the beneficial interest in that property belongs to another, such as exists in the case of property held in trust, the property of the estate includes the legal title, but not the beneficial interest in the property.

As to withheld taxes, the House amendment deletes the rule in the Senate bill as unnecessary since property of

the estate does not include the beneficial interest in property held by the debtor as a trustee. Under the Internal Revenue Code of 1954 (section 7501), the amounts of withheld taxes are held to be a special fund in trust for the United States. Where the Internal Revenue Service can demonstrate that the amounts of taxes withheld are still in the possession of the debtor at the commencement of the case, then if a trust is created, those amounts are not property of the estate. *Compare In re Shakesteers Coffee Shops*, 546 F.2d 821 (9th Cir. 1976) *with In re Glynn Wholesale Building Materials, Inc.* (S.D. Ga. 1978) and *In re Progress Tech Colleges, Inc.*, 42 Aftr 2d 78-5573 (S.D. Ohio 1977).

Where it is not possible for the Internal Revenue Service to demonstrate that the amounts of taxes withheld are still in the possession of the debtor at the commencement of the case, present law generally includes amounts of withheld taxes as property of the estate. *See, e.g., United States* v. *Randall*, 401 U.S. 513 (1973) and *In re Tamasha Town and Country Club*, 483 F.2d 1377 (9th Cir. 1973). Nonetheless, a serious problem exists where "trust fund taxes" withheld from others are held to be property of the estate where the withheld amounts are commingled with other assets of the debtor. The courts should permit the use of reasonable assumptions under which the Internal Revenue Service, and other tax authorities, can demonstrate that amounts of withheld taxes are still in the possession of the debtor at the commencement of the case. For example, where the debtor had commingled that amount of withheld taxes in his general checking account, it might be reasonable to assume that any remaining amounts in that account on the commencement of the case are the withheld taxes. In addition, Congress may consider future amendments to the Internal Revenue Code making clear that amounts of withheld taxes are held by the debtor in a trust relationship and, consequently, that such amounts are not property of the estate.

Section 545. Statutory liens: The House amendment retains the provision of section 545(2) of the House bill giving the trustee in a bankruptcy case the same power which a bona fide purchaser has to take over certain kinds of personal property despite the existence of a tax lien covering that property. The amendment thus retains present law, and deletes section 545(b) of the Senate amendment which would have no longer allowed the trustee to step into the shoes of a bona fide purchaser for this purpose.

Section 547. Preferences: The House amendment deletes from the category of transfers on account of antecedent debts which may be avoided under the preference rules, section 547(b)(2), the exception in the Senate amendment for taxes owed to governmental authorities. However, for purposes of the "ordinary course" exception to the preference rules contained in section 547(c)(2), the House amendment specifies that the 45-day period referred to in section 547(c)(2)(B) is to begin running, in the case of taxes from the last due date, including extensions, of the return with respect to which the tax payment was made.

Section 724. Treatment of certain liens: The House amendment modifies present law by requiring the subordination of tax liens on both real and personal property to the payment of claims having a priority above the sixth priority. This means that assets are to be distributed from the debtor's estate to pay higher priority claims before the tax claims are paid, even though the tax claims are properly secured. Under present law and the Senate amendment only tax liens on personal property, but not on real property, are subordinated to the payment of claims having a priority above the priority for tax claims.

Section 728. Special tax provisions: Liquidations: The House bill contained special tax provisions concerning the treatment of liquidations cases for State and local tax laws. These provisions deal with the taxable years of an individual debtor, return-filing requirements, and rules allocating State and local tax liabilities and refunds between a bankrupt partner and the partnership of which he is a member. The Senate amendment deleted these rules pending consideration of the Federal tax treatment of bankruptcy in the next Congress. The House amendment returns these provisions to the bill in order that they may be studied by the bankruptcy and tax bars who may wish to submit comments to Congress in connection with its consideration of these provisions in the next Congress.

Sections 1129, 1141. Payment of taxes in reorganizations: Under the provisions of section 1141 as revised by the House amendment, an individual in reorganization under chapter 11 will not be discharged from any debt, including prepetition tax liabilities, which are nondischargeable under section 523. Thus, an individual debtor whose plan of reorganization is confirmed under chapter 11 will remain liable for prepetition priority taxes, as defined in section 507, and for tax liabilities which receive no priority but are nondischargeable under section 523, including no return, late return, and fraud liabilities.

In the case of a partnership or a corporation in reorganization under chapter 11 of title 11, section 1141(d)(1) of the House amendment adopts a provision limiting the taxes that must be provided for in a plan before a plan can be confirmed to taxes which receive priority under section 507. In addition, the House amendment makes dischargeable, in effect, tax liabilities attributable to no return, late return, or fraud situations. The amendment thus does not adopt a shareholder continuity test such as was contained in section 1141(d)(2)(A)(iii) of the Senate amendment. However, the House amendment amends section 1106, relating to duties of the trustee, to require the trustee to furnish, on request of a tax authority and without personal liability, information available to the trustee concerning potential prepetition tax liabilities for unfiled returns of the debtor. Depending on the condition of the debtor's books and records, this information may include schedules and files available to the business. The House amendment also does not prohibit a tax authority from disallowing any tax benefit claimed after the reorganization if the item originated in a deduction, credit, or other item improperly reported before the reorganization occurred. It may also be appropriate for the Congress to consider in the future imposing civil or criminal liability on corporate officers for preparing a false or fraudulent tax return. The House amendment also contemplates that the Internal Revenue Service will monitor the relief from liabilities under this provision and advise the Congress if, and to the extent, any significant tax abuse may be resulting from the provision.

Medium of payment of taxes: Federal, State, and local taxes incurred during the administration period of the estate, and during the "gap" period in an involuntary case, are to be paid solely in cash. Taxes relating to third priority wages are to be paid, under the general rules, in cash on the effective date of the plan, if the class has not accepted the plan, in an amount equal to the allowed amount of the claim. If the class has accepted the plan, the taxes must be paid in cash but the payments must be made at the time the wages are paid which may be paid in deferred periodic installments having a value, on the effective date of the plan, equal to the allowed amount of the tax claims. Prepetition taxes entitled to sixth priority under section 507(a)(6) also must be paid in cash, but the plan may also permit the debtor whether a corporation, partnership, or an individual, to pay the allowed taxes in installments over a period not to exceed 6 years following the date on which the tax authority assesses the tax liability, provided the value of the deferred payments representing principal and interest, as of the effective date of the plan, equals the allowed amount of the tax claim.

The House amendment also modifies the provisions of both bills dealing with the time when tax liabilities of a debtor in reorganization may be assessed by the tax authority. The House amendment follows the Senate amendment in deleting the limitation in present law under which a priority tax assessed after a reorganization plan is confirmed must be assessed within 1 year after the date of the filing of the petition. The House amendment specifies broadly that after the bankruptcy court determines the liability of the estate for a prepetition tax or for an administration period tax, the governmental unit may thereafter assess the tax against the estate, debtor, or successor to the debtor. The party to be assessed will, of course, depend on whether the case is under chapter 7, 11, or 13, whether the debtor is an individual, partnership, or a corporation, and whether the court is determining an in-

dividual debtor's personal liability for a nondischargeable tax. Assessment of the tax may only be made, however, within the limits of otherwise applicable law, such as the statute of limitations under the tax law.

Tax avoidance purpose: The House bill provided that no reorganization plan may be approved if the principal purpose of the plan is the avoidance of taxes. The Senate amendment modified the rule so that the bankruptcy court need make a determination of tax avoidance purpose only if it is asked to do so by the appropriate tax authority. Under the Senate amendment, if the tax authority does not request the bankruptcy court to rule on the purpose of the plan, the tax authority would not be barred from later asserting a tax avoidance motive with respect to allowance of a deduction or other tax benefit claimed after the reorganization. The House amendment adopts the substance of the Senate amendment, but does not provide a basis by which a tax authority may collaterally attack confirmation of a plan of reorganization other than under section 1144.

Section 1146. Special tax provisions: reorganization: The House bill provided rules on the effect of bankruptcy on the taxable year of the debtor and on tax return filing requirements for State and local taxes only. The House bill also exempted from State or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. The House bill also authorized the bankruptcy court to declare the tax effects of a reorganization plan after the proponent of the plan had requested a ruling from State or local tax authority and either had received an unfavorable ruling or the tax authority had not issued a ruling within 270 days.

The Senate amendment deleted the rules concerning the taxable years of the debtor and tax return filing requirements since the Federal rules were to be considered in the next Congress. It broadened the rule exempting transfers of securities to include Federal stamp or similar taxes, if any. In addition, the Senate amendment deleted the provision which permitted the bankruptcy court to determine the tax effects of a plan.

The House amendment retains the State and local rules in the House bill with one modification. Under the House amendment, the power of the bankruptcy court to declare the tax effects of the plan is limited to issues of law and not to questions of fact such as the allowance of specific deductions. Thus, the bankruptcy court could declare whether the reorganization qualified for taxfree status under State or local tax rules, but it could not declare the dollar amount of any tax attributes that survive the reorganization.

Section 1322. Tax payments in wage earner plans: The House bill provided that a wage earner plan had to provide that all priority claims would be paid in full. The Senate amendment contained a special rule in section 1325(c) requiring that Federal tax claims must be paid in cash, but that such tax claims can be paid in deferred cash installments under the general rules applicable to the payment of debts in a wage earner plan, unless the Internal Revenue Service negotiates with the debtor for some different medium or time for payment of the tax liability.

The House bill adopts the substance of the Senate amendment rule under section 1322(a)(2) of the House amendment. A wage earner plan must provide for full payment in deferred cash payments, of all priority claims, unless the holder of a particular claim agrees with a different treatment of such claim.

Section 1331. Special tax provision: Section 1331 of title 11 of the House bill and the comparable provisions in sections 1322 and 1327(d) of the Senate amendment, pertaining to assessment and collection of taxes in wage-earner plans, are deleted, and the governing rule is placed in section 505(c) of the House amendment. The provisions of both bills allowing assessment and collection of taxes after confirmation of the wage-earner plan are modified to allow assessment and collection after the court fixes the fact and amount of a tax liability, including administrative period taxes, regardless of whether this occurs before or after confirmation of the plan. The provision of the House bill limiting the collection of taxes to those assessed before one year after the filing of the petition is eliminated, thereby leaving the period of limitations on assessment of these nondischargeable tax liabilities the usual period provided by the Internal Revenue Code.

Finally, one word about the tax provisions contained in the amendment. The tax-related bankruptcy provisions, and the substantive tax provisions in this bill represent hard work by our subcommittee and the Ways and Means and Finance Committee in solving the competing policies in the tax and bankruptcy areas. Much has been left to next year, however, when we hope that the Ways and Means Committee will complete work on a major bankruptcy/tax bill. The Judiciary Committee deleted many tax provisions from this bill so that the Ways and Means Committee could take a deeper look at them. We hope that next year, when it does complete its work, we too will have an opportunity to review their proposals to insure that the important goals of the bankruptcy laws are protected.

● Mr. MATHIAS. Mr. President, I have four questions regarding subchapter IV of chapter 7 of title I of the bill, which deals with commodity related bankruptcies. I note that the bill now before the Senate deletes section 766 (b) and (c) of the bill as originally passed by the Senate, S. 2266. I also note, however, that the distinguished Senator's floor statement indicates that the protections previously sought to be provided under section 766 (b) and (c) to commodity brokers, forward contract merchants and clearing organizations are now intended to be covered under section 764 (c) and section 548(d)(2) of the bill now before us. Is that correct?

Mr. DECONCINI. Yes.

Mr. MATHIAS. Am I correct in my understanding of the Senator's statement that the intent of section 764 and section 548(d)(2) is to provide that margin payments and settlement payments previously made by a bankrupt to a commodity broker, forward contract merchant and by or to a clearing organization are nonvoidable transfers by the bankrupt's trustee? And is it also true that margin payments will not be considered voidable preferences because they constitute transfers made as contemporaneous exchanges for new value as used in section 547(c)?

Mr. DECONCINI. Yes.

Mr. MATHIAS. I thank the Senator for his assurance that it is the intention of section 764(c) and section 548 (d)(2) to protect all margin payments in the customer-broker-clearinghouse chain. This vital protection substantially reduces the likelihood that the bankruptcy of one customer or broker will lead to the bankruptcy of another broker or clearinghouse.

Is it the distinguished Senator's understanding that the provisions of section 362(b)(6) of the bill before us will protect the right of a commodity broker, forward contract merchant, or clearing organization to liquidate or transfer an open commodity contract held or carried for a bankrupt pursuant to existing contractual rights and that such right will not be subject to any stay sought to be imposed under this act, State law or court order?

Mr. DECONCINI. Yes.

Mr. MATHIAS. I have one final question of the distinguished Senator. My understanding of section 764(b) which makes nonvoidable certain transfers or liquidations of commodity contracts made within 5 days of filing is that the Commission will not be engaged in approving transfers in each bankruptcy occurrence. Rather, the transfers will be made by the exchanges or clearing organizations under the existing rules of the Commission requiring that trades which are noncompetitive or expit transfers be so identified to the Commission by the affected exchange or clearing organization. Is this a correct interpretation?

Mr. DECONCINI. Yes.

Mr. MATHIAS. I thank the Senator for these important protections to these dynamic markets which are vital to our Nation's economy.●

Mr. LEAHY. Mr. President, I have a question on subchapter 4 of title I of H.R. 8200. As chairman of the subcommittee that has jurisdiction over the legislation

that regulates the commodity futures industry, I desire that the language of the compromise bill treat cases of bankrupt futures commission merchants in a manner that will not be disruptive of the markets. In fact, the Senate bill to reauthorize the Commodity Futures Trading Commission, S. 2391, contained a provision regarding the transfer of segregated customer funds of a bankrupt futures commission merchant. The Senate conferees agreed to delete this provision because this matter was quite properly dealt with in the bankruptcy legislation that was passed by the House and the Senate.

I understand that, although the substitute bill now before the Senate does deal with all the issues that are of concern to the commodity futures industry, there may be some ambiguities and technical problems that may need to be dealt with at a later date. It is further my understanding that a technical corrections bill will have to be considered next year because there are always technical corrections that are necessary when a bill of this complexity is enacted. My question is, will the distinguished Senator from Arizona be willing to cooperate in securing adoption of any technical amendments that are subsequently found to be desirable in the treatment of bankruptcies in the commodity futures industry?

Mr. DECONCINI. Yes.

Mr. President, I yield such time as he may desire to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of H.R. 8200, the Bankruptcy Reform Act of 1978, as amended today in the Senate.

I could not support the version of this legislation sent over from the House last Thursday, September 28. When I was advised of some of the features of that amended bill, I expressed immediately my concerns to the leadership and asked that the measure be held up so that Senators could be informed of the changes made by the House amendments.

Mr. President, although I supported the Senate version of this legislation, S. 2266, and I continue to support the overall substantive provisions of H.R. 8200, I was greatly concerned about certain features of the House-passed bill of last week.

First, there was a major departure from the Senate position on the appointment of bankruptcy judges. The Senate bill provided for bankruptcy judges to be appointed by the judicial councils of the circuit courts of appeals and the bankruptcy judges to then serve as adjuncts of the district courts. I supported that position because I felt it was a modest, but reasonable approach to elevating the status of bankruptcy judges. The House amendments went too far, however, by making bankruptcy judges subject to Presidential appointment and to serve as adjuncts of the circuit courts of appeals.

Mr. President, I could not support the appointment process in that form. I am supporting, however, a modified version that is a compromise between the original House and Senate versions. Under the compromise, bankruptcy judges would be appointed by the President after the names have been submitted to him by the judicial councils of the respective circuit courts of appeals. The bankruptcy judges would then serve 14-year terms as adjuncts of the district court.

In addition, the compromise version before us today would return the retirement system for bankruptcy judges to the position of the Senate bill. Bankruptcy judges would receive 2½ percent retirement per year with contributions, much like the retirement plan for the Congress. This approach is a reasonable one that achieves economic savings over the compromise plan in the House version while at the same time, gives bankruptcy judges an improved retirement plan over what they now have.

Mr. President, this compromise will not affect the status of bankruptcy judges that are currently serving. The transition period through 1984 is retained, which gives job protection to sitting judges until the expiration of the transition period. The President could not remove these judges during that period, he could only appoint judges to replace those who leave office voluntarily or for other reasons. Sitting judges would only be subject to removal on the grounds of incompetence, misconduct, neglect of duty, or disability as determined by the judicial council of the circuit. I think this approach adequately protects sitting judges and is the same as the provisions of the Senate-passed bill.

Mr. President, I think this overall compromise is reasonable and fair. It would give the bankruptcy judges the improved status they are seeking, while at the same time keeping the costs to the Government down. I want to see bankruptcy reform in this session of Congress, but I was unwilling to accept legislation that would lead to excessive cost to the Government and an unreasonable expansion of the Federal bureaucracy.

Mr. President, I appreciate the courtesies extended to me by Senator DECONCINI and Senator WALLOP during these past few days while this agreement was worked out. They were most considerate and helpful and I am grateful to them for helping to get this matter resolved.

Mr. President, I urge adoption of these amendments.

I would like to inquire of the distinguished Senator from Arizona if he concurs in the accuracy of the statement I have just made.

Mr. DECONCINI. Mr. President, I certainly do concur in the statement of the distinguished Senator from South Carolina. I want to compliment the Senator for his care about the taxpayers' money and bringing to our attention certain changes which certainly will assist in the very expeditious handling of bankruptcy cases with a minimum amount of expense to the taxpayers and yet providing for this separate court.

I thank the Senator from South Carolina for his time and interest in this matter.

Mr. WALLOP. Mr. President, I am prepared to yield back the remainder of my time.

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

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the motion to concur in the House amendments with an amendment.

The motion was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DECONCINI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ORDER TO RECESS TODAY UNTIL 8:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stands in recess until 8:30 a.m. tomorrow.

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

## SPECIAL ORDER FOR TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, in addition to the four Senators for whom 15-minute orders have been secured already, Mr. THURMOND be recognized then for not to exceed 10 minutes, which would be at 8:50 a.m.

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

## FEDERAL INFORMATION CENTERS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 3259.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 3259) entitled "An Act to authorize the permanent establishment of a system of Federal information centers", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Federal Information Centers Act".

SEC. 2 (a) Title I of the Federal Property and Administrative Services Act of 1949 is amended by adding at the end thereof the following new section:

"FEDERAL INFORMATION CENTERS

"SEC. 112. (a) The Administrator is authorized to establish within the General Services Administration a nationwide network of Federal information centers for the purpose of providing the public with information about the programs and procedures of the Federal Government and for other appropriate and related purposes.

"(b) The Administrator is authorized to prescribe such rules and regulations as may be necessary to the functioning of the Federal information centers.

"(c) There is hereby authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1980, and such sums as may be necessary for each succeeding fiscal year for carrying out the purposes of this section.".

(b)(1) The table of contents of the Federal Property and Administrative Services Act of 1949 is amended by inserting immediately after the item pertaining to section 109 the following new items:

"Sec. 110. Federal telecommunications fund.
"Sec. 111. Automatic data processing equipment.
"Sec. 112. Federal information centers.".

(2) Title I of the Federal Property and Administrative Services Act is further amended by inserting immediately before section 110 the following heading:

"FEDERAL TELECOMMUNICATION FUND".

Amend the title so as to read: "An Act to authorize the permanent establishment of a system of Federal information centers.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate concur in the House amendments en bloc.

The motion was agreed to.

## INCORPORATION OF THE U.S. CAPITOL HISTORICAL SOCIETY

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House on H.R. 11035, to incorporate the U.S. Capitol Historical Society.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 11035) to incorporate the United States Capitol Historical Society.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second times and that the Senate proceed to its immediate consideration.

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

The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was read the third time and passed.

Mr. ROBERT C. BYRD. I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

## OIL POLLUTION LIABILITY AND COMPENSATION ACT OF 1978

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1047.

Mr. BAKER. Reserving the right to object, and I shall not object, we have no objection to proceeding to the consideration of this measure, which is cleared on our calendar.

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

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2083) to establish a uniform and comprehensive legal regime governing liability and compensation for damages and cleanup costs caused by oil pollution, and for other purposes.

The Senate proceeded to consider the bill (S. 2083) which had been reported from the Committee on Environment and Public Works with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Oil Pollution Liability and Compensation Act of 1978".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the term "oil", "discharge", "vessel", "public vessel", "United States", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility", "barrel", and "hazardous substance" shall have the meaning provided in section 311(a) of the Federal Water Pollution Control Act;

(2) the terms "State", "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act;

(3) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional inevitable, and irresistable character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil or a hazardous substance;

(5) the term "claimant" means any person who presents a claim for compensation under this Act;

(6) the term "damages" means damages for economic loss or the loss of natural resources as specified in section 3(a)(2) of this Act;

(7) the term "Fund" means the Oil Spill Liability Fund established under section 4 of this Act;

(8) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Federal Water Pollution Control Act;

(9) the term "natural resources" includes land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(10) the term "refinery" means a terminal which receives oil for the purpose of refinement; and

(11) the term "terminal" means any permanently situated onshore or offshore facility which receives oil in bulk directly from any vessel, offshore production facility, offshore port facility, or any pipeline including the pipeline constructed under the Trans-Alaska Pipeline Authorization Act.

LIABILITY FOR DAMAGES AND REMOVAL COSTS

SEC. 3. (a) Except where an owner or operator of a vessel or an onshore or offshore facility can prove that a discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) negligence on the part of the United States Government, or (iv) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, and notwithstanding any other provision or rule of law, such owner or operator of a vessel or an onshore or offshore facility from which oil or a hazardous substance is discharged in violation of section 311(b)(3) of the Federal Water Pollution Control Act shall be jointly, severally, and strictly liable for—

(1)(A) all costs of removal incurred by the United States Government or a State under subsection (c), (d), (e), (b)(2)(B)(v), or (f)(4) of section 311 of the Federal Water Pollution Control Act or under the Intervention on the High Seas Act or section 18 of the Deepwater Port Act of 1974, and

(B) any other costs or expenses incurred by any person to remove oil or a hazardous substance as the terms "remove" or "removal" are defined in section 311(a)(8) of the Federal Water Pollution Control Act; and

(2) all damages for economic loss or loss of natural resources resulting from such a discharge, including:

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources; and

(F) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such

damages shall not be limited by the sums which can be used to restore or replace such resources.

(c)(1) The liability of an owner or operator of a vessel or an onshore or offshore facility for damages and removal costs under this section, and inclusive of the limits of liability established under section 311(f) of the Federal Water Pollution Control Act, for each discharge or incident shall not exceed—

(A) $300 per gross ton or $500,000, whichever is greater, of any vessel carrying oil or hazardous substances in bulk or in commercial quantities as cargo;

(B) $300 per gross ton of any other vessel;

(C) the total of all costs of removal under subsection (a)(1) of this section plus $50,000,000 for any offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act;

(D) $50,000,000 for any deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $50,000,000 exceeds $300 per gross ton of such vessel); or

(E) $50,000,000 for any other onshore or offshore facility.

(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel or an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs not offset by any removal costs incurred on behalf of such owner or operator, if (A) the discharge of oil or a hazardous substance was the result of willful misconduct or gross negligence within the privity and knowledge of the owner or operator or of a gross or willful violation (within the privity and knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations; of (B) the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities under the contingency plan established under section 311(c) of the Federal Water Pollution Control Act.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the exceptions or defenses of subsection (a) of this section, all costs of removal incurred by the United States Government or any State or local official or agency in connection with a discharge of oil from any offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act or a vessel carrying oil as cargo from such a facility shall be borne by the owners and operator of the offshore facility or vessel from which the discharge occurred.

(d) In any case where the owner or operator of a vessel or an onshore or offshore facility can prove that a discharge was caused solely by an act or omission of a third party (or solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government), such third party shall be liable under this section as if such third party were the owner or operator of a vessel or onshore or offshore facility from which the discharge actually occurred. Where the owner or operator of a vessel carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk or commercial quantities, from which oil or a hazardous substance is discharged, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall promptly pay to the United States Government, and any other claimant, the costs of removal or damages claimed and shall be entitled by subrogation to all rights of the United States Government or other claimant to recover such costs of removal or damages from such third party under this subsection.

(e) The President is authorized to establish by regulation, with respect to any class or category of onshore or offshore facility subject to subsection (c)(1)(E) of this section, a maximum limit of liability under this section of less than $50,000,000 but not less than $8,000,000.

(f) A discharge of oil or a hazardous substance in or on the territorial sea, internal waters, or adjacent shoreline of a foreign nation shall be deemed to be a discharge in violation of section 311(b)(3) of the Federal Water Pollution Control Act for purposes of this section, and claims for compensation for damages and removal costs may be made under this Act by any citizen of a foreign nation or by any foreign nation, if such damages or removal costs, resulted from a discharge of oil, or threat of a discharge of oil, from—

(1) a facility located in the United States or subject to the jurisdiction of the United States;

(2) a vessel incident occurring in the navigable waters of the United States; or

(3) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States.

(g) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Federal Water Pollution Control Act and as provided under section 7 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

LIABILITY FUND ESTABLISHMENT

SEC. 4. (a)(1) There is hereby established in the Treasury of the United States an Oil Spill Liability Fund, not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b) (2) and (3) of this section being paid into such Fund. The Fund shall be administered by the President and the Secretary of the Treasury, as specified in this section. The Fund may sue and be sued in its own name.

(2) There is hereby established in the Treasury of the United States a Hazardous Substances Liability Fund. After the completion of the study required under subsection (f) of this section and the effective date of any fee on hazardous substances established by the Congress to be placed in such fund, such fund shall repay to the Oil Spill Liability Fund all sums expended out of the Fund pursuant to section 5 of this Act in connection with discharges of hazardous substances, together with interest at a rate equal to that paid on notes or obligations issued under subsection (e) of this section.

(b) The Fund shall be constituted from—

(1) all fees collected pursuant to subsection (c);

(2) all moneys recovered on behalf of the Fund under section 5;

(3) all moneys recovered or collected under section 311(b)(2)(B) of the Federal Water Pollution Control Act.

(c)(1) Beginning ninety days after the enactment of this Act, the Secretary of the Treasury shall collect from the owners of refineries receiving crude oil, and from the owners of terminals receiving any oil for export from or entry into the United States whether for import or transfer to a foreign country, a fee, not to exceed 3 cents per barrel of oil received. Oil upon which a fee has been levied under this paragraph shall not be subject to subsequent levy hereunder. The person who owns such oil shall be responsible for assuring the payment of such fee and shall be obligated to reimburse the owner of such refinery or terminal, as the case may be, the full amount of the fee levied on the oil of that person and paid by the owner of the refinery or terminal.

(2) The Secretary of the Treasury, after consulting with appropriate Federal agencies, may promulgate rules and regulations relating to the collection of the fees authorized by paragraph (1) and, from time to time, the modification thereof. Modifications shall become effective on the date specified therein, but no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register. Any modification of the fee shall be designed to assure that the Fund is maintained at a level not less than $150,000,000 and not more than $200,000,000. No regulation that modifies fees, nor any modification of such a regulation, whether or not in effect, may be stayed by any court pending completion of judicial review of that regulation or modification.

(3)(A) Any person who fails to collect or pay fees as required by the regulations promulgated under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid and the interest on these fees at the rate the fees would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (d)(2). Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General shall, at the request of the Secretary of the Treasury bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(d)(1) The President shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) If at any time the moneys available in the fund are insufficient to meet the obligations of the Fund, the President shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the President from moneys in the Fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any note or other obligations issued hereunder and, for that purpose, is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, pur-

chases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States. The authortiy of the President to issue notes or other obligations under this subsection shall be subject to such amounts as are provided in appropriation acts.

(f) The President shall establish an interagency task force to investigate all appropriate aspects of requiring a fee on hazardous substances to be collected and placed in the Hazardous Substance Liability Fund established by subsection (a)(2) of this section and the appropriate level at which such fund shall be maintained. Such task force shall also consider whether liability of a discharger or compensation from the Fund ought to be provided for personal injury resulting from discharges of oil or hazardous substances. The report of such investigation, together with legislative recommendations, shall be submitted to the Congress not later than eighteen months after the enactment of this Act.

(g) The Administrator of the Environmental Protection Agency, the Commandant of the Coast Guard, and the Comptroller General shall undertake a study of possible incentives to safer operation of vessels and facilities to reduce the potential of discharges of oil or hazardous substances, and generally of measures to prevent or avoid the occurrence of such discharges. Such study shall address (1) the feasibility of a variable fee for replenishment of the Fund under subsection (c) of this section which takes into account the likelihood of a discharge and the operational experience of individuals or classes, and (2) whether current practices in the insurance and banking industries provide any incentives or disincentives to reducing the potential for discharges of oil or hazardous substances. Such study shall be conducted in consultation with other appropriate Federal and State agencies, the affected industries, and other interested parties. A first report of such study, together with legislative recommendations, if any, shall be submitted to the Congress not later than July 1, 1979, and as appropriate thereafter.

USE OF LIABILITY FUND

SEC. 5. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of any claim for costs of removal or damages in excess of the amount for which the owner or operator of the vessel or onshore or offshore facility from which oil or a hazardous substance is discharged is liable under section 3 of this Act;

(2) payment of any claim for costs of removal of damages where the source of the discharge of oil or a hazardous substance is not known or cannot be identified;

(3) payment of any claim for costs of removal or damages in any case where the claim has not been satisfied in accordance with subsection (b) of this section;

(4) all removal costs or expenses or other costs of carrying out the national contingency plan established under section 311(c) of the Federal Water Pollution Control Act, including removal costs incurred by any person and approved under such national contingency plan;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under such national contingency plan;

(6) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil or a hazardous substance;

(7) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil or a hazardous substance;

(8) reimbursement to any State for the payment of any claims for costs of removal or damages payable under this Act which such State has paid with funds under the control of such State pursuant to the national contingency plan or to a delegation under subsection (b) of this section;

(9) subject to such amounts as are provided in appropriation Acts, not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act, to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration, as directed by the ocean pollution research coordinating committee established under the Environmental Research, Development, and Demonstration Act of 1978. Such research shall include, but not limited to (A) development and refinement of protocols to determine the type and extent of short and long term injury or loss of natural resources, (B) development and refinement of the best available procedures to identify the value of injured or lost resources, (C) laboratory or field research on the effects of oil and hazardous substances on living and nonliving resources that will provide additional scientific basis for damage assessments, and (D) research on minimizing the damage caused by spill control, dispersal and removal operations. Responsibility under the preceding sentence shall be assigned in accordance with the assessment responsibilities established under subsection (e)(2) of this section and officials responsible for such assessments shall be consulted before proposal of any research plan or appropriation request under the preceding sentence; and

(10) subject to such amounts as are provided in appropriation Acts, the administrative and personnel costs of administering the Fund and this Act.

(b)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for costs of removal or damages resulting from the discharge of oil or a hazardous substance under this Act.

(B) Whenever the President receives information from any person alleging they have incurred costs of removal or damages resulting from the discharge of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under section 3 of this Act, he shall notify the owner, operator, and guarantor of such vessel or onshore or offshore facility of such allegation. Such owner or operator or guarantor, may, within five days after receiving such notification or presentation of any claim by a claimant, deny such allegations, or deny liability for damages for any of the reasons set forth in subsection (a) of section 3 of this Act.

(C) The owner and operator of any vessel or onshore or offshore facility from which oil or a hazardous substance has been discharged shall provide notice to all potential injured parties.

(D) All claims shall be presented in the first instance to the owner, operator, or guarantor of the vessel, or onshore or offshore facility from which oil or a hazardous substance has been discharged. In any case where the claim has not been satisfied in accordance with this paragraph, the claimant may elect to commence an action in court against such owner, operator, or guarantor or to present the claim for payment from the Fund under this section.

(E) No claim may be presented nor may an action be commenced for damages under this Act unless that claim is presented or action commenced within six years from the date of the discharge or the date of the discovery of the loss, whichever is later.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the costs of removal or damages from the person responsible for such discharge.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs of removal resulting from a discharge of oil or a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal such claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the fund to any claimant pursuant to this Act, and, without regard to the limitation of liability provided for in section 3(c), all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs of removal for which the compensation was paid.

(d) The Fund shall not be available to pay any claim for costs of removal or damages to the extent the discharge or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(e)(1)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a hazardous substance, for the purpose of section 3(a)(2) (C) and (D) of this Act, section 5(a)(7) of this Act, and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge of affected area, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement

value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(2) In accordance with such regulations, damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a hazardous substance, for the purposes of section 3(a)(2) (C) and (D) and section 5(a)(7) of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in the marine environment beyond the baseline of the territorial sea, and (C) the Administrator of the Environmental Protection Agency for all other natural resources. Such officials shall act for the President as trustee under section 3(b) of this Act and section 311(f)(5) of the Federal Water Pollution Control Act.

Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of section 3(a)(2) (C) and (D) and section 5(a)(7) of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 3(b) of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(f) The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(g) The Comptroller General, in consultation with the Administrator of the Environmental Protection Agency, shall investigate the necessity for providing assistance in emergencies caused by the release into the environment of any pollutant or other contaminant which presents or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare, and shall report to the Congress not later than April 1, 1979, on the results of such investigation together with a recommendation on the appropriate level and source of funding for section 504(b) of the Federal Water Pollution Control Act.

FINANCIAL RESPONSIBILITY

SEC. 6. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry oil or hazardous substances as cargo or fuel) using any port or place in the United States or the navigable waters of any offshore facility shall establish and maintain in accordance with section 311(p) of the Federal Water Pollution Control Act evidence of financial responsibility sufficient to meet the liability to which the owner or operator of such vessel could be subjected under section 3(c)(1) of this Act. The provisions of paragraphs (3), (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This subsection shall take effect October 1, 1978.

(2) Any vessel subject to the requirements of this subsection which is found in the navigable waters without necessary evidence of financial responsibility shall be subject to seizure by the United States of any oil or hazardous substances carried as cargo.

(b)(1) The owner or operator of any offshore facility shall establish and maintain evidence of financial responsibility sufficient to meet the liability to which the owner or operator of such facility could be subject under section 3(c)(1) of this Act of $50,000,000, whichever is less. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Federal Water Pollution Control Act. This subsection shall take effect one hundred and eighty days after enactment of this Act.

(2) The owner or operator of any offshore facility subject to this subsection who fails to comply with this subsection or the regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

STATE LAWS AND PROGRAMS

SEC. 7. Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of oil or hazardous substances within such State.

CONFORMING AMENDMENTS

SEC. 8. (a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) Section 204(b) of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence—

(A) by inserting after the words "any area" the words "in the State of Alaska";

(B) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline"; and

(C) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability Fund and Compensation Act of 1978".

(2)(A) Section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653 (c)) is hereby repealed. The Trans-Alaska Pipeline Liability Fund is hereby abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Oil Spill Liability Fund established by section 4 of this Act. The Oil Spill Liability Fund shall assume any and all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)).

(B) The Secretary of the Interior shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (A) is made. If the Secretary finds that—

(i) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to subparagraph (D) of this paragraph the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the fee due under section 4(c) of this Act on barrels of oil, and the Secretary may remit such fee until such time as the total amount of the fees so remitted equals the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified; or

(ii) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary of the Treasury shall increase by 2 cents per barrel the fee imposed under section 4 on barrels of oil until such time as the total amounts of the 2-cents-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(C) In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary of the Treasury directly to the operator of the Trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil and at the time it was loaded on the vessel.

(D) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under subparagraph (B)(i) of this paragraph for the collection or payment of fees established under section 4(c) of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees remitted. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. Such owner shall make such payment to the State of Alaska during such time the collection of payment of fees under section 4(c) of this Act is remitted.

(E) For purposes of paragraph (B), the term "barrels of oil" means only barrels of oil which would, but for the repeal made by this paragraph, be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act. The term "Secretary" means the Secretary of the Treasury.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The Fund established under section 4 of the Oil Soill Liability Fund and Compensation Act of 1978 shall be available to the Secretary for actions taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 4 of the Oil Spill Liability Fund and Compensation Act of 1978, as appropriate.".

(2) Subsection (f) is amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against any guarantor of an owner's or operator's liability under the Oil Spill Liability and Compensation Fund Act of 1978,".

(3) Subsection (g) is amended, by inserting in the last sentence, after the word "party" the words "or against any guarantor of an owner's or operator's liability under the Oil Spill Liability and Compensation Fund Act of 1978".

(4) Any sums appropriated prior to the enactment of this Act under subsection (k) of such section 311 shall be transferred to the Fund established under section 4 of this Act.

(d) DEEPWATER PORT ACT.—The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1) strike "section 18(1) of this Act;" and insert in lieu thereof "section 6 of the Oil Spill Liability and Compensation Fund Act of 1978,".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and clause (1) of subsection (m) of section 18 are deleted.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section.", and inserting in

lieu thereof "fund established under section 4 of the Oil Spill Liability and Compensation Fund Act of 1978".

(4) Subsection (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively, and clauses (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed.

(f) Any expenditure under section 5(a) of this Act, other than those (1) under the authority of section 311(c) of the Federal Water Pollution Control Act involving the balance of the contingency fund established under section 311(K) of such Act and transferred to the Fund under section 8(c)(4) of this Act, or (2) involving the balance of the Trans-Alaska Pipeline Liability Fund transferred to the Fund under section 8(a)(2) of this Act, shall be made after October 1, 1978, for any claim arising before such date and after the date of enactment of this Act.

UP AMENDMENT 1996

Mr. HOLLINGS. Mr. President, I send an unprinted amendment to the desk in behalf of Mr. WALLOP.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS), on behalf of the Senator from Wyoming (Mr. WALLOP), proposes an unprinted amendment numbered 1996:

On page 56, line 21, add a new paragraph as follows:

(4) If the President determines that a level of liability established by paragraph (1) above or a level of financial responsibility required by section 6 of this Act will have either a significant adverse impact on small business enterprises or a significant anti-competitive impact, the President may adjust such levels of liability or financial responsibility by rule or regulation as follows:

(A) The limit of liability or financial responsibility for facilities subject to subparagraph 3(c)(1)(D), to no less than $35,000,000;

(B) The level of liability for facilities subject to subparagraph 3(c)(1)(C) to the total of all removal costs under subsection 3(a)(1) and an amount for all damages to no less than $35,000,000, or, the level of financial responsibility for such facilities to no less than $35,000,000.

Before publishing said proposed rule or regulation the President shall notify the Committee on Environment and Public Works and the Committee on Commerce, Science and Transportation of the United States Senate and the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation of the United States House of Representatives of his intention to propose said rule or regulation. The notice shall state with particularity the President's justification for said rule or regulation and shall include a statement of the views of the Federal Trade Commission on whether the liability or financial responsibility limit sought to be changed has significant anti-competitive or small business impacts.

UP AMENDMENT NO. 1996

● Mr. WALLOP. Mr. President, as I participated in the hearings and committee debate on this bill, I have become increasingly concerned with the uncertainties which we face as to the effects of this legislation on small- and mid-size business, who must constantly compete with the larger self-insured giants of the energy and transportation industries. I wonder in enacting legislation if we are not franchising the major oil and transportation companies alone for these endeavors.

The often-given answer is that requirements for financial responsibility such as those which this bill demands, are already required by various other acts. But are they in every case? If so, should we be perpetuating them here, if in fact the effects are anticompetitive, discriminatory, and worse, unnecessary.

General provisions of Federal law since 1851 limited the liability of the owner of any vessel to the value of the owners interest in the vessel and her freight. The Supreme Court has interpreted this provision to mean the value of the owner's interest in the vessel and cargo after the collision, assuming there is something left after the collision. More recent Federal acts of general applicability, including the Oil Pollution Act of 1966, the Water Quality Improvement Act of 1970, and finally the Federal Water Pollution Control Act established the spiller is liable only for expenses incurred in removing spilled oil. The upper limit of liability to the Federal Government was set at the lesser of $100 per gross ton of the vessel or $14 million.

In establishing these limits of liability, it was the intent of Congress to encourage and protect American commerce. Congress had to determine upon whose shoulders the economic burden should fall. In the past Congress has decided that innocent parties should bear any overthreshold costs of oil pollution damage. More recently, Congress has decided to shift that economic responsibility to those who directly benefit from the carriage of oil by vessel; the shipowner, the oil industry, and the oil consumer. This is entirely justified, however, it is only justified insofar as it is necessary for the protection of the innocent third parties and the promotion of safe oil handling. We should not abandon sight of our continued goal of promoting commerce, and in this case, of promoting diversified energy exploration, production, and transportation.

On September 18 of this year, the President signed into law the Outer Continental Shelf Lands Act Amendment of 1978. It provides a third party damage and cleanup fund to insure that innocent third parties and the environment would be protected. It also limited the liability of OCS operators to $35 million plus total removal and cleanup costs. The bill before us. S. 2083, increases that liability to $50 million plus total removal costs. I am concerned with the incidental increase in liability by $15 million, for no apparent reason other than it is a neat round figure. In establishing limits of liability, we have a difficult task. There is no doubt a threshold point at which we stop protecting the public at large, and start imposing burdens upon it through restrictions on competition and higher consumer costs. The burden ultimately imposed on small businesses or on any business, must be one that it can bear.

In this case, that burden is manifest in two ways. First, it is a requirement that offshore facilities provide proof of financial responsibility to meet the liability limits. For the large self-insured giants of the energy industry, this is no problem. Those operators with more than one OCS facility need only provide proof of financial responsibility equal to the limits of liability imposed upon any one facility. This alone is a competitive advantage to the larger operators.

We should be encouraging the broadest possible competition for OCS activity, even if it be in the form of joint ventures. Therefore it is important that we not impose additional burdens upon entry into the field unless there are compelling reasons for doing so. If experience proves that a higher liability, and thus financial responsibility limit is required, then Congress will have ample opportunity to raise the limit. But in the meantime, it is unnecessary to substantially increase the cost of insurance coverage for OCS operations. If the insurance industry fails to insure OCS operations at the $50 million level, we have in one fell swoop, excluded all but self-insured companies from OCS operations, a prospect which is not in the national interest.

The liability limit itself may also stifle competition should a catastrophic spill actually occur. Liability limits should be established at levels which reflect a deterrent to unsafe operations and which place a reasonable burden for cleanup and third party compensation on the commercial risk taker. However, the establishment of this superfund insures that spills will in fact be cleaned up and damage to third parties will in fact be compensated. We should not set the liability limit at a level which will discourage competition, and effectively insure that the fund will never be used for just the purpose for which it was established.

If the percentage of small businesses involved is small, all the more reason to adequately assess the impacts of this bill upon their involvement in the industry. It disturbs me that we continually ignore or fail to have adequate information on the consequences of congressional actions on smaller enterprises that exist in our country.

The bill as now written authorizes the President to establish by regulation maximum limits of liability for onshore and offshore facilities other than OCS and deep water ports facilities of less than $50 million but not less than $8 million. Mr. President, my amendment would provide the same opportunity for facilities operated under the authority of the Outer Continental Shelf Lands Act and the Deep Water Port Act of 1974, as well it would not mandate a reduction in liability or financial responsibility requirements. Rather, if the President determines that the level of liability or of financial responsibility has either a significant adverse impact on small business enterprises or a significant anticompetitive impact, he may reduce those liability limits to no less than $35 million in the case of OCS facilities or deep water port facilities, it protects against the possibility that we are unwittingly creating an impossible anticompetitive situation which we cannot quickly correct. Given the precipitous increases in liability limits

for these classes of facilities and vessels which this bill seeks to impose, it is reasonable to allow the same flexibility that we would give other classes of facilities.

Mr. HOLLINGS. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HOLLINGS. One of the serious concerns that I have with S. 2083, the Oil Spill Liability and Compensation Act, is how it may affect the American trucking industry. The bill, as reported by the Environment and Public Works Committee, has defined an "on shore facility" so as to encompass all rolling stock. Tank trucks are included in this bill with the same maximum limit of liability as multi-million-gallon tank storage facilities, even though the capacity of a cargo tank is at most 10,000 gallons. As I understand the House bill, rolling stock is also covered, but there are some very significant differences which need to be stressed. First of all, the liability for a spill from a tank truck under the Senate bill can never be less than $8 million. This figure bears absolutely no relationship to the competitiveness between land and water transportation, or the relative potential threat of pollution, nor does it recognize the disparate financial burden this places on the trucking industry. The House bill allows the Secretary of Transportation to set the liability limit for truckers by regulation with the understanding that tank trucks would be dealt with separately and more rationally.

Second, the House bill provides that tank trucks, which do not handle more than 1,000 barrels of oil at any one time, are not required to procure evidence of financial responsibility sufficient to satisfy the maximum amount of liability possible under this act. This is a reasonable approach.

Finally, and perhaps most importantly, is that the Senate bill provides that the negligence of a third party is no defense to the liability of an oil carrier unless the carrier can prove that the spill "was caused solely" by a third party. On the other hand, the House bill, and the Senate Commerce Committee version of the bill, provide that a carrier is not liable "to the extent that the incident is caused" by a third party. This approach seems to me to be imminently more equitable. Whatever the merits of the Senate version's strict liability as it applies to maritime traffic and commerce—which I am not convinced of—there is no clear reason to apply it to highway traffic. It would be virtually impossible for a tank truck operator to prove that another party was solely at fault for a discharge.

I do not believe that these provisions in the Senate bill have been adequately or equitably assessed. I realize that the time remaining in this Congress is very short, and I will not stand in the way of this bill going to conference with the House. However, I do want to emphasize my commitment to see these issues resolved in conference in such a way that will not penalize the trucking industry or treat that industry in a manner that is unreasonable or inequitable. Because of the shortage of time remaining, a conference with the House is probably the best way to resolve these problems, but it is imperative that they be effectively dealt with at that time.

Mr. CHAFEE. Mr. President, as the Senator from the Ocean State of Rhode Island and a member of the Environmental Pollution Subcommittee, I am indeed pleased to see S. 2083 come before us today.

I joined Senator MUSKIE and Senator STAFFORD in cosponsoring comprehensive oil spill legislation and found their experience on this issue to be of great value as we proceeded on the legislation in committee. And of course the guidance of our esteemed chairman, Senator RANDOLPH, is always valuable.

The people of my State know full well what disastrous effects can come from a spill, be it an *Argo Merchant* situation, or a lesser, but still damaging spill. The dangers are too great to let another winter go by without comprehensive legislation. The Environment and Public Works Committee has built upon the currently existing section 311 of the Clean Water Act and expanded that structure to provide a network of damage assessment and compensation for oil and hazardous substance spills.

Mr. President, there are several important items in the legislation that I could comment on. But, most importantly, I feel that the damage assessment and research provisions of S. 2083 should be noted. It is within the context of spill effects on natural resources that I should like to continue my remarks.

The demand for energy in this Nation has over the last few years necessitated a tremendous increase in the amount of petroleum and petroleum based products that must be transported in or near the waters of the United States. The spillage of substances which occurs incidental to this large transport business has, as we all know, become a serious problem. Damage to natural resources from oil pollution is a serious side effect, costing society uncounted millions of dollars each year.

Over the past few years we all have been made aware of spectacular spills such as this years *Amoco Cadiz*, the *Torrey Canyon* in 1967 and the *Argo Merchant* in 1976. Each of these spills have cost the environment dearly.

Beyond these large spills there have in the United States from 1972 through 1976, been reported by the Coast Guard an average of 12,291 oil spills per year, 2,588 of which were "mystery spills" with no reported volume.

From these figures it becomes apparent that a system for mitigation and assessment of damages from all types of spills is urgently needed. For obvious reasons of practicality, visibility and economics of scale, a large spill is more susceptible to mitigation and cleanup efforts than is a small one. But it is also clear that the cumulative impacts to natural resources of the small and medium spills is as great or greater than that of the larger spills.

Damages to natural resources from spills come in many forms. A recent report of the National Academy of Sciences outlined five particularly worrisome ecological effects of oil and hazardous substance pollution:

First, the human health hazard from eating contaminated seafood;

Second, the decrease in fisheries resources or damage to other wildlife such as birds and mammals;

Third, the decrease of aesthetic values due to unsightly slicks or oiled beaches;

Fourth, modification of the aquatic ecosystem with resulting decreases in diversity and productivity.

Fifth, modification of habitats which delays or prevents the reestablishment of marine organisms.

In the past our legal system has been largely ineffective in dealing with those who were injured when oil and hazardous substances pollution damaged the environment. Trying to recover claims concerning damages to natural resources through litigation under common law or present statutory authority has been slow, overly complex, and inequitable.

Recognizing much of what has been said, the Congress in 1974 required the Department of Justice to come up with a proposal for a uniform law to provide compensation for cleanup costs and damages from oilspills. The Justice Department report was the precursor of a number of bills on this subject including the bill before us today, The Oil Pollution Liability and Compensation Act of 1978, the superfund bill. The Committee intends loss or damage to natural resources in this legislation assures rapid recovery by injured parties, to insure that the spiller eventually pays to the limits of his statutory liability.

Mr. President, I would also note that while the bulk of our experience with spills is with oil, the committee is of the opinion that damages to natural resources caused by spills of hazardous substances are sufficiently parallel to damages caused by oil spills to warrant the inclusion of hazardous substances in the committee bill's scheme for damage assessment. Therefore, the damage assessment procedure for natural resources applies, under S. 2083, to both oil and hazardous substances spills.

Section 5(c) of the reported bill establishes procedures to be employed in damage assessment. The rulemaking process in the damage assessment scheme is to be carried out jointly by the Environmental Protection Agency, the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. This rulemaking should establish by regulation simplified assessments procedures to be used in assessing natural resource damage in minor spills. It should also standardize the procedures and protocols for carrying out an assessment in larger more extensive spills.

Mr. President, the committee realized that the state of the art of damage assessment is constantly developing. In response to this situation the committee did two things:

First, they allowed 2 years for the issuance of the regulations required in this section and provided that the regulations be reviewed and updated when necessary every 2 years.

Second, the bill also includes requirements for directed research that will provide information needed to carry out more reliable and credible natural resource damage assessment. The commit-

tee believes that over time the required review of the natural resource damage assessment regulations coupled with new information developed through this directed research program will result in a damage assessment capability that employs the most current scientific techniques for damage assessment.

Mr. President, there is one part of the oil spill legislation to which I would like to devote further attention—namely the preemption issue. The question is whether and to what extent State laws dealing with oil and hazardous substance spills should prevail or be preempted.

Section 7 of the committee bill preserves the power of any State to impose any additional requirements or liability with respect to discharges of oil or hazardous substances within the State. In other words, there is no preemption. This means that a State can collect a fee for and maintain separate cleanup and compensation funds. States could also have separate and higher or unlimited liability statutes.

As might be expected, the preemption issue generated immense interest among the States and the industries affected by this legislation. Indeed, the original bill, introduced in committee, S. 2900, actually contained a minimum preemption provision.

There are several preemption options which could have been selected by the committee. We could have preempted State funds for compensation for damages from spills into navigable waters. Or we could have told the States that they cannot maintain either cleanup or damage compensation funds. Finally, there is the option to preempt all State liability statutes, as well as State funds.

Of course, there are pros and cons to each of these options. The committee provided for no preemption at all. But the preemption of State damage compensation funds does appear to have merit. Under this option, States could maintain funds for containment and cleanup of spills, thus allowing them to respond quickly to these spills. This is extremely important since the majority of spills are small and difficult to get to. Since cleanup costs are often less than overall damages, the size of the State cleanup funds should not be prohibitive. Under this option, the Federal superfund would be the source for damage compensation. This would prevent the burdensome arrangement of shippers and industries having to pay fees into a multitude of State compensation funds, as well as the Federal fund. Since S. 2083 provides for direct access to the superfund, the absence of State damage funds should not cripple the opportunities for recovery.

Mr. President, I have had discussions with representatives from several States, some of which already have oil spill schemes. Their positions are mixed, but several said they could see the merit in a certain amount of preemption, at least in the separate funds area. On the other hand, the State liability statutes issue is very controversial and will be a major point of discussion in conference.

Mr. President, I support S. 2083. I mention the above debate on the preemption issue as background regarding what at least one Member thought about during the bill's development. I know that other Members have studied the issue also.

We have before us today a strong scheme for dealing with oil and hazardous substance spills. It is time to move forward, so that we can resolve our differences with the House. It is time to give this country a comprehensive program that can be counted on to compensate for spill damages to our citizens and our natural resources.

● Mr. STAFFORD. Mr. President, I am pleased that the Senate has chosen to act on S. 2083 so that we can proceed promptly to negotiations with the other House. So much has been said and written about this bill that nearly any comment I make here will be redundant. Nevertheless, two provisions are so important they should be underscored.

S. 2083, as reported from the Committee on Environment and Public Works, differs from other versions in two particulars. First, it provides liability and compensation for discharges of hazardous substances, not just oil. Second, it permits the various States to enact their own legislation in this field.

Frankly, our committee has been criticized for including these two provisions. Some have said that by imposing liability and compensation for discharges of hazardous substances rather than just oil, we were breaking new ground and establishing new precedent. Overlooked is the simple fact that the only Federal legislation on the books which deals with the general problem of spills into waters of the United States—the Federal Water Pollution Control Act—was written by our committee and deals not just with oil, but with both oil and hazardous substances. What other persons have sought to do is abandon the course charted by our committee and by the Congress years ago. Those who seek to establish a new precedent and break with tradition are the advocates of special treatment for the spillers of oil.

In point of fact, discharges of hazardous substances may present a much more serious threat to the environment of this country than discharges of oil. Since the reporting of hazardous substance discharges is still voluntary the spill data collected by the Coast Guard is incomplete. Nevertheless, this sketchy data indicates that there are a large number of hazardous substance spills than of oil. Certainly, the potential for harm is much greater with hazardous substances than with oil. Hazardous substances spread through the environment more easily, as evidenced by the statewide distribution of PBB's in Michigan, where the damage is estimated at $75 million; and, they are much more difficult to remove, as illustrated by the PCB contamination of the Hudson River and Kepone contamination in the James River, where dredging in either case would cost millions or tens of millions of dollars; and, they are much more insidious and harmful as illustrated by the Love Canal incident in New York, where the substances may have caused birth defects, premature deaths, and a variety of other serious personal injuries.

Our committee was urged to eliminate coverage of hazardous substances. We refused, not only because it would have broken with precedent, but because we would have been turning our backs on the public.

The committee also was urged to break with precedent in another area. Instead of permitting States to enact their own legislation in this field, as we have done in past environmental legislation, we were asked to preempt State laws. Again, we chose to adhere to the course set years ago: Federal law establishes only a minimum standard. States wishing to maintain a more stringent standard are free to do so.

The most outspoken opponents of preemption in the committee and subcommittee were the distinguished Senator from Maine, Mr. MUSKIE, and myself. Although I cannot speak for Senator MUSKIE, I can say for myself that I will do all I can to maintain the Senate's version of preemption during a conference on this bill. As a former Governor, I have witnessed too many cases where the Federal Government in the exercise of misguided benevolence has coerced States into accepting weakened safeguards for the sake of unwanted benefits. If the people of a State choose to maintain a pristine environment they have that right, even if the other 49 States and the Federal Government choose otherwise.

There are many other important provisions in this bill, but these two stand above all others as vital to the public interest. I believe the bill reported by the Committee on Environment and Public Works is a sound, responsible piece of legislation.●

● Mr. GRAVEL. Mr. President, for some time this Nation has been concerned about the threats to our shorelines posed by the transportation and storage of oil and hazardous substances. Inestimable quantities of these commodities travel our rivers and oceans and great lakes, in most instances without incident. Then an *Argo Merchant* will run aground or a spill of carbon tetrachloride will occur in a tributary of the Ohio River. It is at that time that we become concerned about our ability to compensate for clean up of spills, and for damages resulting from such spills.

I noticed in the newspapers recently that lawsuits totaling some $300 million have been filed as a result of the *Amoco Cadiz* spill in France. There is no indication that further suits will not be filed as damage assessment continues. In the meantime, those fishermen and homeowners, small businessmen, and others damaged by the incident have no immediate monetary recourse. If that incident had occurred in the United States under current law, our citizens would be in the same situation as the citizens of France. It is to protect our citizens that I endorse the bill reported by the Committee on the Environment and Public Works, and hope that this Congress will resolve once and for all the issues surrounding the establishment of compensation funds for both oil and hazardous substances.

Mr. President, my State of Alaska has more than half of the total U.S. coastline. I think it is necessary that we have a compensation fund that will protect my fellow Alaskans as well as the citizens

of Hawaii and the Lower 48. I think it is necessary that there be a uniform compensation mechanism whereby fishermen whose gear is damaged by spills of oil or whose catch is destroyed by spills of hazardous substances may be immediately recompensated, without having to resort to lengthy and expensive litigation. Property owners along the shoreline are entitled to the same protection, whether they be homeowners or small businessmen. This means that in instances in which the originator of the spill is unknown, or the originator of the spill delays in satisfying a claim, or the limits or liability of the spiller are exceeded in a specific incident, the fund will provide prompt compensation.

Mr. President, this bill does another important thing in providing for a compensation fund for damages resulting from hazardous substances spills. In committee I presented a compromise proposal which the committee adopted in order to resolve the deadlock raised by many legitimate concerns about the entire hazardous substances issue, and the many difficulties and differences that occur with that issue. Basically, my proposal adopted by the committee assures that there be a hazardous substances compensation fund established now, with an 18-month study to be conducted on the important aspects of that fund to make it operational. Establishment of a separate fund with a separate funding mechanism attuned to the peculiarities of hazardous substances will assure that victims of spills of hazardous substances will be compensated, but that hazardous substances, in a word, will pay their share of the compensation costs. Coverage of hazardous spills will be assured once the current litigation over section 311 of the Clean Water Act is resolved.

The hazardous fund would be established immediately under this legislation. While funding for an oil spill fund will be set at 3 cents per barrel, the hazardous fund would not receive any moneys from a fee on hazardous substances until completion of a study to determine such things as the appropriate level of the fund and an appropriate fee mechanism. The study period will not exceed 18 months. Once current litigation over the hazardous substances issue is finally resolved and, therefore, hazardous substances and quantities are adequately identified, and the hazardous substances funding level and fee mechanism are established by virtue of the completion of the hazardous substances study, then funds for compensation for damages from hazardous substances spills can begin to come from the separate hazardous substances fund. In the event the study has not been completed at such time as the litigation over the hazardous substances issue is resolved, then funds for compensation for damages resulting from hazardous spills will be available from the separate oil spill fund. If any moneys are drawn on the oil spill fund, those sums will be repaid with interest at such time as the hazardous fund becomes fully funded in accordance with the study.

The bill also resolves the matter of duplication of coverage of the "superfund" and the trans-Alaskan pipeline liability fund. I offered a provision which was adopted by the committee for inclusion in the bill. In 1973, Congress enacted the Trans-Alaska Pipeline Authorization Act. The TAPS Act established a nonprofit corporation (the Trans-Alaska Pipeline Liability Fund) to provide compensation for damages sustained by persons or entities as the result of discharges of oil from vessels carrying oil transported through the TAPS line. A fee of 5 cents per barrel was fixed, payable by the owner of the oil at the time that the oil was loaded on vessels at the pipeline terminal. To date, some $13 million exists in the TAPS fund, whose funding ceiling is $100 million.

Creation of the superfund now eliminates the necessity of retaining a duplicative TAPS fund. Termination of the TAPS fund means that the nonprofit corporation will be dissolved. A necessary part of this action is distribution of the assets of the corporation.

Various alternatives for distribution of the assets of the fund were explored. The committee finally adopted a method which provided equity to all parties involved. The committee resolution of the matter involved three stages. First, provision was made for full compensation of any outstanding claims against the TAPS fund. Any claims pending or initiated prior to enactment of the superfund will be satisfied from the proceeds of the TAPS fund.

Second, all moneys in excess of those necessary to satisfy claims will be placed in the Treasury as an advance payment against the collection of the fee from the owners of North Slope oil under the superfund, until such time as the amount of money collected from the owners of North Slope oil under the superfund is equal to the excess moneys. In adopting the "advance payment" method the committee agreed that the purposes of the TAPS fund had been met in that North Slope oil had borne the costs of protecting waters through which that oil was transported. Further, the committee agreed that failure to distribute the assets to the owners of the assets would not serve the purposes of equity, and could create some untoward legal situation.

Third, the committee agreed that the State of Alaska should receive in the form of repayment from the owners of the assets of the fund those sums equivalent to the royalty and State of Alaska production (or severance) tax receipts that would have been made absent the requisite payment to the TAPS fund. The State of Alaska owns one-eighth of the oil at Prudhoe Bay (as a royalty share) and in addition sets a production (or severance) tax on the extraction of oil. However, the State of Alaska has not delivered oil across the dock at the pipeline terminal, but rather has taken payment for its oil in cash, after contributing its appropriate share of the costs of transportation of the oil and associated costs.

Under present oil pricing practices, the TAPS fee (similarly, transportation costs) is treated as an offset against the value of the oil at the wellhead (at Prudhoe Bay), where royalty value and production (or severance) tax are determined. Because of the price of North Slope oil is restricted to the world price of oil at the refinery level under existing oil pricing policies, additional costs borne by the producers and owners of the oil (such costs as the TAPS fund fee) cannot be added to the sales price for that oil. Thus, the owners of the oil, and the State of Alaska, have absorbed the cost of the 5 cent per barrel fee. In agreeing to the redistribution of the proceeds through the "advance payment" mechanism, the committee agreed that the State of Alaska was entitled to its share of the assets of the fund in the form of royalty and production (or severance) tax it would otherwise have been able to collect.

Mr. President, this is a very important piece of legislation, and is an important addition to our legislation recently passed and known generically as tanker safety legislation. Until we can assure safe construction and operation of vessels and cleanup and compensation in the event of spills of both oil and hazardous substances we are not doing all we need to do to protect our waters. I look forward to favorable action by the Senate and satisfactory resolution of any outstanding issues with the House in conference.

Mr. President, I would like to have printed in the RECORD an excellent informative article by Michael Harwood, appearing in the September 1978 issue of Harper's. This article, entitled "Assessing the Impact of Tanker Spills," should be of significance to my colleagues.

The material follows:

ASSESSING THE IMPACT OF TANKER SPILLS

OIL AND WATER

(By Michael Harwood)

One morning this January, as I stood at a window in an auditorium at the University of Rhode Island and watched a snowstorm piping up to a blizzard on Narragansett Bay, I marveled at the wonderful complexity of the view enclosed within the frame of the window—the surface of the bay, the moving air, the sky, the gulls and the starlings, man and his constructions and wastes. We are only *beginning*, I thought, to understand how it works and interacts—even though it goes on in our element.

Behind me in the sloped lecture hall conferees gathered for the final, summary session of a three-days symposium, "In the Wake of the *Argo Merchant*," which had been sponsored by the university's Center for Ocean Management Studies. To a great degree, this symposium marked the formal end of an effort by marine scientists to assess the ecological impact of the *Argo Merchant* oil spill near Nantucket more than thirteen months earlier. They'd discovered some interesting things, all right, and had added considerably to the understanding of oil spill behavior and effects. But it seemed to me that the largest lesson they and the *Argo Merchant* spill had to teach the attentive layman was how little we know about the ocean, how little man apparently *cares* to know, and how simple-minded and dishonest, in this context, the environmental debate about oil spills often becomes. If we are still ignorant about many of the things going on in nature, up where we can see them and smell them and taste them, consider how much more difficult it is to observe and understand the three-dimensional ocean, never mind the impact on that ocean of quite suddenly injecting into a small area several million gallons of oil.

Before dawn on December 15, 1976, the tanker *Argo Merchant*, bound in for Salem, Massachusetts, with 7.5 million gallons of

thick industrial-grade oil from a Venezulean refinery, ran aground on Fishing Rip, Nantucket Shoals, twenty-seven miles southeast of Nantucket Island. Her Greek captain tried unsuccessfully to work the ship off the shoal, but she was hard aground, and a cracked seawater intake pipe flooded the engine room, putting out the boilers. At 7:00 a.m. the Coast Guard station at Brant Point on Cape Cod received a Mayday call from the *Argo Merchant*.

Dr. Charles Bates, chief science adviser to the Commandant of the Coast Guard, remembers people at headquarters saying as soon as they heard about the grounding, "No one's ever got a ship off there yet." Still, for that day and the next five, the Coast Guard and private salvagers tried to free the tanker from the shoal, and then at least to save some of her cargo and keep it from the sea. The first signs of an oil leak were seen within hours of the grounding, and by the second night oil was spilling in large amounts. Eventually the tanker broke in pieces, and her entire cargo—except for one quart of oil dipped out as a sample—was lost.

The accident ignited a major environmental uproar, and it also initiated the most intensive and wide-ranging study yet undertaken of the impact of a single oil spill in the ocean. There was good reason for concern. In its raw form and as fuel, oil is toxic—poisonous to most creatures, especially in sudden, heavy doses. The United States and other nations were importing more oil each year, and tanker accidents were bound to increase. At the same time, there seemed to be a national commitment to exploring and drilling for oil on the outer continental shelf; the probes off the coast of New Jersey were already being scheduled. Both the drilling and most of the accidents would happen between the limits of the shelf and the dry land—where nearly all the important activities of the planet's marine life also take place, and where most of the fishing goes on.

It was a new concern, however, and it was still growing. Not ten years had passed since the *Torrey Canyon* disaster on the other side of the Atlantic; a lot of seabirds had been killed then, a lot of British and French beaches oiled, and oil spills had begun to be seriously thought of as potentially dangerous to the environment. But ten years is hardly enough time for the human community to turn its head and really look at something. That fact was reflected in many ways. According to Jack Gould, an organic chemist at the American Petroleum Institute, the oil industry in the United States didn't even think about employing marine biologists until the very end of the 1960s, and the academic community couldn't begin supplying oil spill scientists in any number until the '70s. By the time the *Argo Merchant* went aground, the field wasn't well enough established to attract much grant money, and a large fraction of the available funding went to support research on the technological fixes—how to prevent and clean up oil spills—rather than on research on what the impact of oil was in the ocean environment.

There had been some first-rate ecological studies involving spills close to shore. One of these studies, by scientists at the Woods Hole Oceanographic Institution on the Cape, had tracked the effects of a 1969 spill off West Falmouth in Buzzards Bay; an especially toxic oil—the kind burned in home oil furnaces—had spilled and washed up into salt marshes and been pounded into the sediment of the shallow bay by storm waves. Nine years later, shellfishing was still forbidden in the oiled areas; that's how bad it was. But oil spill studies in general, especially those involving open-ocean oil spills like the *Argo Merchant's*, hadn't advanced very far.

So the people who by nature or profession tended to see oil in the ocean as environmentally horrid immediately saw the *Argo Merchant* event as environmentally horrid, and those who by nature or profession were inclined to view the matter with less alarm viewed the matter with less alarm. The fact was that no one really knew what the oil would do.

The accident had taken place in a major fish-spawning and fish-catching area, near Georges Bank, where there was every likelihood that oil-drilling would begin within a decade. There was concern, too, that if the oil came ashore on Nantucket or anywhere else on Cape Cod, not just the environment but the well-being of everyone engaged in the tourist business might be damaged too; it seemed a good idea to keep a sharp eye on what was happening, in order to be ready to protect and quickly clean up the shoreline if oil went that way. So, while the environmental uproar took center stage on television and the front pages, a diverse, pickup army—and navy and air force—of scientists began monitoring the situation, sampling, testing, observing. The process went on long after the Public Event was over.

Intensive and wide-ranging as the effort was, however, the researchers were often shorthanded and short of time and underfunded; much of their work was catch-as-catch-can, dependent on initiative and luck and at the mercy of the elements. In the end only a relatively small amount of new information came out of it—which is what usually happens with oil-spill studies.

HOW DOES OIL BEHAVE?

The cutter *Vigilant* was the second Coast Guard ship to reach the grounded tanker, and it carried, fortuitously, a representative of the Manomet Bird Observatory in Massachusetts. The observatory had recently been sending trained observers out to sea whenever a ride could be hitched with someone—the Coast Guard, the Woods Hole Oceanographic Institution, the National Marine Fisheries Service. Birds were being killed by oil spills; everyone knew that. And often an oily bird, being dramatically photogenic, became the symbol for an oil spill. But no one actually knew what environmental importance to give to an oily bird, because no one knew very much about the birds in the normal environment. The need for basic information was to surface again and again as scientists studied the *Argo Merchant* spill; the questions of the ornithologists were typical: What species of birds could ordinarily be found off the coast at various seasons of the year, and in what numbers? Would they be mostly adults, or sub-adults, or birds-of-the-year? Would they be feeding, resting, or migrating, and what food resources would they depend on? With oil-drilling planned for Georges Bank, Manomet Bird Observatory had for nine months been trying to provide some of that basic information quickly, which chanced to put a single qualified birder on the scene of the *Argo Merchant* grounding within minutes of the time that the first oil began to dribble from the tanker.

About two o'clock in the afternoon of that same day, Ivan Lissauer of the Coast Guard's Research and Development Center in Groton, Connecticut, heard about the *Argo Merchant*. At the Rhode Island symposium he talked about his experience. The Marine Safety Office of the First Coast Guard District in Boston needed a forecast of the movement of any oil that might spill that day. " 'When do you need it by?' I said, and they answered, 'Well, how about fifteen minutes?' "

A predicting model was needed, and the Coast Guard had one—a mathematical formula for putting together tidal currents, river-mouth currents, and wind effects, so as to forecast at any given moment what spilled oil would do within the next few hours and give the Coast Guard officer in charge an idea of where he ought to station cleanup crews or set out oil-containment booms on the water. The model worked fine, Lissauer said, where it was designed to work—close to shore. Given fifteen minutes to predict what would happen out on Nantucket Shoals—the open ocean—he and his colleagues had had no choice but to apply the inshore model. They took the most recent wind forecasts available (the National Weather Service had already begun supplying special forecasts for the vicinity of the tanker), added in the tidal currents that the charts showed for Nantucket Shoals, and in fifteen minutes were able to tell the First District Marine Safety Office that the winds and the tides would probably keep the oil offshore for the short term.

"We got another call at nine o'clock the next morning," Lissauer said, "and [the Marine Safety Office] asked for more forecasts, and in more detail. [The officer] said, 'Starting at nine o'clock this morning, can you predict for us the movement of the oil?' And I said, 'Certainly.' And he said, 'Well, I'm not finished. Can you predict it, starting every three hours, for the next eight days?' And I said, 'Oh. Do I have more than fifteen minutes?' He said, 'Certainly. How about two hours?' So we decided that to run a large modeling effort was impossible, and to use our basic techniques."

They had very little idea of what the situation was on Fishing Rip that morning; they didn't even know how much oil was spilling. They elected to treat it as a continual skill of $x$ amount of oil per hour, and on that assumption the Coast Guard forecasters in Groton drew a worst-case picture—the farthest the oil was likely to reach in any given direction under the expected weather and tidal conditions.

"We decided that the spill would move offshore for the period of at least three to four days" Lissauer said, "and, in fact, we saw no general movement of the oil toward Nantucket, toward the shoreline, for as much as seven or eight days, and this was the information that we passed to the MSO [Marine Safety Office]."

A lot of the *Argo Merchant* science was done that way, in a great hurry, because the Coast Guard officers on the scene of the grounding, or those responsible for doing something about it, had to have answers right away.

Six hours after the report of the grounding, and three-quarters of an hour before the first sighting of oil in the water, word of an imminent spill was passed to the East Coast Spilled Oil Research Team, one of four such teams newly developed and organized by the National Oceanic and Atmospheric Administration (NOAA) and the Coast Guard through an interagency agreement between NOAA's Environmental Research Laboratories and the Bureau of Land Management. (The Bureau had to have information on oil spill behavior as part of its outer continental shelf assessment and oil-field leasing program.) Two of the four Spilled Oil Research Teams were located in Alaska, and the fourth was on the West Coast of the lower forty-eight. The personnel involved all did other jobs as their regular work—for state agencies, the Coast Guard, and NOAA. But each was to be on call to go and study oil spills as they happened and if and as they showed promise of teaching something new.

The word was passed by a telephone call from someone in the National Marine Fisheries Service to Elaine Chan in NOAA's Center for Experiment Design and Data Analysis in Washington, D.C. Chan, in her mid-twenties and just out of graduate school, was a member of the East Coast team. She phoned the Coast Guard's National Response Center, and as she listened to the description of the situation on Nantucket Shoals she recalled, when I talked to her months later, that "it sounded as if it had tremendous potential." The chief scientist of the Spilled Oil Research Project had gone to Florida, where he was taking a law exam that day; Chan, after conferring with other team members,

made plane reservations to get her to Hyannis, on the Cape, and arranged for a chartered light plane to be available if she arrived before sunset, so that she could fly out to survey the situation right away. She was met in Hyannis by another member of the team, but the day was too far advanced for them to make the scouting flight. "We went to the Holiday Inn," Chan said, "and turned on the television to find out what was going on, because we couldn't get through to the Coast Guard." When they did get through to the Coast Guard, they had to introduce themselves and the Spilled Oil Research Team; the project was so new that very few people were aware of it.

"The next morning we got up and went to the airport and jumped in our plane. We had these air-deployable current probes, which measure surface currents. We explained to the pilot what we were doing, that he shouldn't be alarmed, we weren't bombing the ship, and that we wanted to fly around and find out what the currents in the area were, because there was oil leaking from the ship, and that way we could tell where it was going and perhaps be able to do some research on trajectories, and do some predictive work. Not so much with cleanup in mind, but for correlating the movement of currents and the association of wind, current, oil movement." Their plane had no radio contact with the cutters in the area, but they could talk with Coast Guard aircraft. Air traffic control was being done through a helicopter hovering over the tanker, and they got permision to fly around and do their current measuring.

The current probes were designed to sink to the bottom and then release a dye float that would rise to the surface; after a preset length of time, a second dye float would be released from the bottom. The observers in the aircraft would then have two small plumes of dye on the surface below them. A line drawn between the patches gave the direction of the current, and since the time difference between the release of the two patches was known, if the distance between the patches could be estimated, the speed of the current could be estimated. One of the Coast Guard cutters was in the immediate vicinity of their first current-probe drop. Elaine Chan still does not know for sure whether what happened next was intentional helpfulness or the result of someone's curiosity, but, she said, the cutter "moved over between the two dye marks, and so we took pictures, and we knew exactly how long the cutter was; they just moved around like a yardstick, everywhere we were dumping current probes. It was incredible. We didn't communicate with them, but apparently the helicopter pilot who was doing air traffic control told them what we were doing."

From a scientific and a political point of view, one of the most basic things to be done was to map the progress of the spill and describe the behavior of the oil. The members of the Spilled Oil Research Team did a lot of that on the daily flights they made. Some photo-mapping was carried out at high altitude by the National Aeronautics and Space Administration and by a contractor to the Environmental Protection Agency. Attempts were also made to map from a passing satellite, but a more successful use of a satellite was the electronic tracking of a buoy that floated with the oil for a while, sending radio signals.

For a day the oil was seen heading northwest toward Nantucket; it then curled counterclockwise around the wreck and looped up toward the northeast. At that point—the fourth day after the tanker had grounded—a C-54 aircraft from the Wallops Flight Center of NASA flew over the scene, and from that platform false-color infrared photographs——202 of them, nine-by-nine-inches each—were made of the oil spill. (The ships showed white on the prints, the water blue, the spilled oil turquoise.) The Air Force's Ninth Tactical Intelligence Squadron at Langley Air Force Base then turned these aerial photographs into composite strip mosaics, providing a unique, detailed picture of almost the entire spill. The oil did not simply flow downwind from the *Argo Merchant;* first it writhed snakelike, crosswind through the water, like smoke leaving a chimney in a child's drawing. Some distance south of the grounding, the trail of oil began to curve up toward the northeast, and as it did it started to fray at the edges, fan out lacy branches to each side, and those branches frayed, too, and put out smaller feelers. Close-up study of individual photographs suggested that while the slick seemed to keep together as a stream over many miles, the fraying at the edges represented the breaking up or dispersion of the oil.

That was the fourth day of the event, December 19. From then on, the oil began to drift generally offshore in patches and streaks, blown by the prevailing northwesterlies of winter; and by the last day of 1976, the leading edge of the spilled oil was more than 140 miles southeast of the wreck. Feeling a mixture of relief and fascination, the scientists watched it go. During the worst of the spilling, before Christmas, the oil left the tanker in great glops or as a thick, brown river, and then began to spread out—but not the way it might have been expected to do. The so-called slick seemed to consist of a thin sheen broken by thick clumps of oil that were feet or yards in diameter. Such clumps are nicknamed "pancakes." The Spilled Oil Research Team observed that the oil moved downwind faster than the water it rode on, and that the pancakes outran the sheen. The sheen was apparently fed as the lighter fractions drained from the heavier oil, and as time passed the pancakes became increasingly compressed and thick; when they consisted of fresh oil, they were an inch or two in depth, but pancakes a week or more old might be more than eight inches thick. So they tended to retain their integrity, and this was noticed close to the wreck as well as many miles away. Navy divers remarked on it when they went into the exceedingly cold water of Fishing Rip on December 23; the Spilled Oil Research Team had asked for photographs and moving pictures and observations of the oil at its "interface" with the water—how it acted at the edges and underneath. The oil, reported the divers, behaved like mercury: a patch might become separated from the rest, but it was likely to reattach itself. The underside of the oil was flat, like the top, they said; it didn't trail keels or tentacles of oil, and the edges weren't tattered, either, but well-defined.

Many marine scientists were concerned—and a few were convinced—that the *Argo Merchant's* oil was going to end up on the bottom, probably all over Georges Bank, because that would be the worst place it could happen, and the image implied in translation by the more breathless representatives of the press was of a sort of blanket of oil covering the bottom sand the way chocolate syrup covers vanilla ice cream. Many laymen in the environmental movement instinctively believed this was a possibility. I know it worried me at the time. But there were no data at all to indicate whether or not it was likely. Most oil is light enough to float on water; this Number 6 oil certainly was. However, studies in Alaska had shown that if the water contained modest amounts of clay sediment, spilled oil quickly picked it up, became heavier than water, and sank. The water on Nantucket Shoals and Georges Bank contained shelly sand and other particulate matter, but it did not carry much sediment. No one knew whether the oil and the particles would combine to sink the oil. The Coast Guard was being severely criticized at the time—for the tanker going aground, for the fact that the tanker wasn't refloated, for the oil being spilled—and it was hearing a good deal about the bottom being oiled. So the Spilled Oil Research Team was asked to have the Navy divers, please, while they were at it, take a look and make a few photographs on the bottom. Once down there, the divers could see no farther than ten or twenty feet in any direction; the water was thick with swirling sand. But where they stood the sand appeared to be clean, white, and dotted with clams. They photographed an area ten or fifteen feet square before they came up. The same day, scientists on the *Evergreen*, the Coast Guard research vessel, began making remote photographs of the bottom in the area of the spill. They found no sign of oil there either—not in the photographs and not in the bottom samples they dredged up. Wherever a lot of oil floated on the water, samples of the water column beneath the oil indicated that some petroleum hydrocarbons had mixed downward, but evidently not as far as the bottom. (The researchers suspected that the oil they found floating below the surface was the "cutter stock"—Number 6 oil being basically so gooey that in order to pump it from refinery tanks to tanker holds to customer tanks it must be kept warm and be mixed with a thinner or cutter.) So, far from being paved with oil, the bottom at least *looked* clean; it wasn't until February that sampling grabs in bottom sand began to detect small amounts of oil—droplets and tar specks—in the immediate vicinity of the wreck, particularly in the track of the sunken bow section, which had been worked along the bottom by fierce tidal currents until it was one-and-a-half miles from the stern. Divers who went down to look at the ship that month, however, *saw* no oil on the sand; and sampling grabs made in the summer indicated that only trace amounts of oil remained.

SAMPLING THE OCEAN

Tracking the physical movement of the oil, said Jerry Galt, head of the West Coast Spilled Oil Research Team, is "the easy part." We were talking in the coffee shop of a hotel in Hartford during an EPA meeting on the scientific response to oil spills. "If you want to do an assessment, to find out an environmental impact," he said, "you really have to consider a series of things, and what I call 'Where the Goo Goes' doesn't really tell you anything, because oil doesn't *hurt* water. When the oil's gone, the water's not damaged. The next question is, Who got hurt? Ideally, you'd have to go out and find out what populations were there, which is a sizable undertaking. That kind of biological research involves an incredibly difficult realm. Then the analysis of those samples takes highly qualified people; it's very labor-intensive. Not only that, this doesn't give you the answer, either. It just tells you who got hit. The real question you want to ask is, How did it hurt them? So then you have to do effects studies: once you know who's there, then you have to say, Okay, suppose I put oil on this little fella, what happens to him next? And this is even more expensive, because you need to find out all kinds of subtle things—and it's very difficult to do that kind of stuff in the laboratory, because as soon as you put an animal in the laboratory, it's stressed, and so you don't know if it died because you were keeping it in a tank or because you put oil on it. And even after you've done with that, after you've found out who got hit and how they got hurt, there's still a short of so-what question. Is it really bad to kill ten birds? Yes? No? You can make a guess on that. How about a *thousand* birds? To what extent, when you punch a hole in the environment, can it reseed itself? And that has to do with how big the hole is, how big the natural patches are—what the natural seeding rate, fill-up rate is—of this hole in the environment. And what the repeat time is on the next punch.

And *these*," Galt said matter-of-factly, "are really very difficult question."

Attempts to answer such questions began at Woods Hole two mornings after the grounding. The Oceanographic Institution called home its research vessel, the *Oceanus*, which was some 400 miles off, and within days a crisis cruise was under way to collect samples of the water from top to bottom and samples of bottom sediments ahead of the apparent course of the floating oil. Then the National Marine Fisheries Service sent out its *Delaware II* for a brief cruise to collect a broad array of samples—fish, shellfish, crabs, plankton, water, oil, and sediments—inside and outside the immediate vicinity of the spill. Plankton were collected from the water below the surface and on the surface, and preserved in Formalin, a fixative, for later studies in laboratories ashore. Fish were examined for external signs of oil. Some of the catch was packed and frozen—lab workers would examine them for signs of oil contamination; other fish were gutted and their stomachs saved in Formalin—they would be studied to see whether and how the ocean food chain might be contaminated by oil. Each of the fish was looked at for indications of spawning; none was that far along. Crabs scooped from the bottom were examined for obvious signs of damage, then numbered and preserved.

Most of the collecting went on south of the spill, but in the last three of the sampling stops—stations 7, 8, and 9—the *Delaware II* was inside the perimeter of the slick. Oil was evident in the surface water samples at 7 and 8, and the surface plankton net was soaked with oil. At station 9, the plankton tow caught not only some specks of oil tar but also a good many fish eggs, which were then preserved in Formalin solution. A small dredge was dropped astern to collect crabs and shellfish for live laboratory studies.

At the scene of the wreck, Elaine Chan was lowered to the deck of the cutter *Vigilant* from a helicopter, so she could show the captain and the marine safety officer on board how to use sterile sampling bags to collect water samples from various depths beside the ship The Coast Guard's research vessel, *Evergreen*, was now sampling and photographing the bottom.

In the several weeks after Christmas water and sediment sampling was done from a variety of vessels. Dozens of current meters were planted for water movement studies. Buoys and sheets of plywood and colored cards were used to mark particular pancakes of oil so that they could be tracked by the daily mapping flights. The National Marine Fisheries Service interviewed fishermen coming into ports as far northeast as Rockland, Maine, and as far south as Point Judith, Rhode Island, to discover the practical impact on fishing and to record any other pertinent observations the fisherman had made. In anticipation of a possible wind shift that would bring part of the spill onshore at Nantucket, a research scheme was devised to sample the intertidal zone on the island—roughly, the strip of vulnerable and ecologically productive territory between the high and low tide marks—to set baselines for future studies of what happened when and if the oil hit there; a team of biologists and chemists made surveys and collections for two days on the island. The *Oceanus* went out to sea again to sample bottom sediments and the sediment load in the water. The research vessel *Endeavor* of the University of Rhode Island's Graduate School for Oceanography began its first *Argo Merchant* cruise on December 28, collected marine life from the water surface and the bottom, and also took water samples. A young mammalogist arrived from the College of the Atlantic in Bar Harbor, Maine, to coordinate observations of any marine mammals that might get mixed up with the oil slick. Early in January the *Delaware II* of the National Marine Fisheries Service began a week's cruise from the tip of Cape Code south into the spill area, with scientists doing much the same sort of broad-spectrum work that had been done in the *Delaware II* cruise before Christmas. They also released more than 200 "seabed drifters"—equipment designed to float free just above the bottom—for a study of bottom currents being done by University of Rhode Island and Fisheries Service oceanographers; that same week another 150 of the bottom drifters were dropped west of the wrecked tanker from a Coast Guard helicopter. Late in the month the *Endeavor* went back to sea with University of Rhode Island scientists aboard to look for oil on the bottom near the wreck, to do preliminary studies of the marine life in sediments there, to look for oil in the water column, and to record the numbers and distribution of seabirds they saw. The cruise ended four days later—earlier than intended—because of bad weather, but the *Endeavor* returned to finish the job the second week in February. By then the Navy had sent a submarine rescue ship, the *Recovery*, to the scene at the request of the Coast Guard's on-scene coordinator, and, when the weather would let them, Navy and Coast Guard divers had used it as a base of operations for dives to inspect the wreck, which lay twisted and broken along the bottom. The University of Rhode Island's *Endeavor* was back for another cruise at the end of February, and that was the last of the major research cruises. Most of the remaining work would be done ashore, in laboratories

Since nobody knew very much about open-ocean oil spills, the *Argo Merchant* accident had seemed to offer an excellent opportunity to do valuable research. But it costs thousands of dollars a day to keep a large research vessel at sea, and that doesn't count the salaries of the scientists on board. Specimens, once collected and brought home, are distributed to various labs, where they are looked at one by one. This is often complicated and time-consuming, taking the attention of administrators who set priorities and schedules and of scientists and lab technicians who design and do the examinations. Just the preparations can be lengthy. For example, if you want to study the condition of vital organs in an important species of baitfish, you might set aside several dozen specimens and from each one carefully removed a bit of brain and liver and heart and gill and reproductive organs and stomach contents, store them in vials and label them—all before beginning to look at them under a microscope or run them through various chemical tests or write down anything about what you've observed.

At best, such study of the *Argo Merchant* spill would cover many months, even years, because past work already indicated that close to shore the effects of an oil spill might be felt for years. Responsible people in the EPA and the Department of the Interior and its Bureau of Land Management and the Fisheries Service all were confident that federal money would be available to finance such long-term studies. But the *Argo Merchant* spill proved to have a fatal flaw: most of the excitement about doing research stemmed from a fear that the oil would go ashore, and instead it went the wrong way. Congress became bored with the idea of long-term studies. The research had little political sex appeal; the oil hadn't done much visible harm, except to a few birds, so what was all the fuss about? Consequently, the federal money that did go into research had to come out of existing department budgets, and the diminished political urgency made great sacrifices unattractive. Private marine research operations such as those of the Woods Hole Institution and the University of Rhode Island, having geared up for long-range studies, were left hanging. Even in National Marine Fisheries Service laboratories much of the time spent on *Argo Merchant* work had to be stolen from other, funded projects.

By the end of February, the last of the major research cruises was over. Because of chronic rough weather, winter is the very worst season to do collecting at sea, but even so, by March, less than three months after the spill, the *Argo Merchant* event had permitted the collection of a considerable amount of data about open-ocean oil spills. That month the National Oceanic and Atmospheric Administration published a thick preliminary report on what had been discovered, what work was still in progress, and what the gross effects of the spill appeared to have been. This report would have been especially useful had the long-range studies been funded.

THE OILY-BIRD SYNDROME

In March, 1977, I went to New Orleans to attend a biennial oil spill conference. It was organized by the Coast Guard, the EPA, and the American Petroleum Institute for the presentation of technical papers about the causes, effects, prevention, and cleanup of spilled oil. Nearly 1,700 people were there, from twenty-six countries—a sizable gathering, mostly of men and women who had had to deal with oil in water as a reality, not an abstraction.

Two things especially caught my attention about this meeting. One was the frank admission by many of the conferees I talked to that there was still a great deal to be learned about oil in water. The second, which contradicted the first, I was already familiar with from other experiences in the environmental debate.

Both the polluters and those of us who think of ourselves as the surrogate pollutees enter the arena of public environmental argument with anticipatory cries of pain and disaster. Each side has a large constituency that sees the other side as incredibly stupid, unrealistic, and immoral. Exaggeration spawns exaggeration. Jerry Galt, of the Spilled Oil Research Team, once remarked: "When you first find out about a spill, the environmental information that you've got is usually terrible. If the person who spilled the oil makes the estimate of how much oil has been spilled, multiply by ten. If an environmentally conscious newspaper makes an estimate of how much oil got spilled, *divide* by ten." Even in New Orleans, with a lot of biological work on *Argo Merchant* samples still had to be done and written up, one heard American oil industry people dismissing the *Argo Merchant's* oil as "on its way to Europe," and as never having reached the bottom; for a clincher, why, "they sent divers down and the bottom was clean." Word of mouth had spread the good news in the industry about the divers' observations, but evidently not about the recent bottom sampling with grabs near the wreck. Not only that, word of mouth had left out a key bit of background data: the divers in December had seen a patch of bottom smaller than the area covered by one of the bed rooms in the hotels where we were staying—four or five steps in any driection. In February, visual observations were made close to the pieces of the ship, along a track a mile-and-a-half long. Not what you'd call a large sample, in either case.

On the other hand, a young representative of the Massachusetts Department of Environmental Protection was retailing quite another story. One got the impression the Massachusetts DEP had a political and psychological stake in there being quite a lot of oil on the bottom, because the department had taken the position all along that the spill was very likely to do a serious amount of harm. Whatever the reason, the Massachusetts DEP representative in New Orleans told

me that he'd just spoken with one of the Coast Guard people studying the spill, and that "they" were now finding oil on the bottom. His Coast Guard contact had said, he related, "If you ask me where the Argo Merchant's oil is, I'd say it's on the bottom." I was positively dazzled; that certainly wasn't what the Commandant's chief science adviser was saying, nor was anyone from the EPA even hinting at such a thing. An associate director of the Woods Hole Oceanographic Institution, who was at the conference, was talking only about a relatively small patch of oil in the sand near the wreck. I cornered the EPA man in charge of oil spills and hazardous materials, Kenneth Biglane, who had had long experience chasing oil spills, and presented him with the different versions of where the oil was. "Well, they're probably all right," he said. "I heard reports of divers who went down to investigate the wreck, and the divers likened the scene to a dust storm. The currents just continually swept the sand before their masks, and if you have that active a bottom, then oil that has been deposited will be covered up, uncovered, recovered." So, like the old joke about New England weather, if you didn't like the data you were getting from the bottom near the wreck, maybe you should just wait a bit and try again. That sort of vanishing-and-reappearing act wasn't unusual, Biglane added. He'd watched the cleanup of the *Torrey Canyon's* oil in 1968 and then had gone back to the British beaches a year-and-a-half later. "I was told that some of that *Torrey Canyon* oil was down six meters—eighteen feet—in the sand." If such uncovering and re-covering as Biglane described was in fact going on all over the bottom beneath where the oil had passed, how could anyone, I wondered, expect to get meaningful data from there about the ongoing effects of the spill? Or prove anything?

From the point of view of that public bugbear, the media, there is something decidely unexciting about a technical meeting of 1,700 people from twenty-six countries, even if the subject of the meeting is something the press and television have recently been devoting many inches and hours to. The winters of 1976 and 1977 had provided a long string of tanker and oil-barge accidents, groundings, leaks, even a disappearance—and a lot of copy and pictures. In the best of all possible worlds, at least the *major* news organizations would take the trouble to learn more about oil spills and the likely effects of different kinds of oil spills, so that their coverage would be better the next time a spill was hot news. But the meeting was in New Orleans, a long way away for many organizations; and the conference lasted three days, meaning that whoever went would be out of the office for five days, including travel time, and would spend a good deal of money. The immediate return would probably be only "soft news," feature stuff, background, nothing exciting. All good excuses, but even so, the limited media representation at the conference was worth remarking. The *Boston Globe* had a reporter there, as might be expected, considering its constituency on the Cape; so did the *Washington Post*, Long Island's *Newsday*, the *Courier-Post of Camden*, New Jersey, the *Journal of Commerce*, the Newhouse News Service, *New Times* and the *Environment Reporter* of Washington and the *New York Times Magazine* were also represented. So was AP radio and a Little Rock, Arkansas, radio station. For full-time presence on the scene, as far as I could tell, that was it, aside from the local news organizations. A few others made brief appearances. A few TV spots made the network news, I heard. The major print wire services displayed very little interest in the proceedings; and one of their New Orleans stringers, who showed up one or twice, distinguished himself by remarking blandly in a press conference that this *Argo Merchant* thing was new to him.

Independent news operations in coastal cities from Alaska to Maine gave the meeting the go-by; none of the big guns in environmental and conservation reporting was there, and none of the major weekly news magazines, either. I wonder if this attitude of the major media organizations—particularly the daily news media—doesn't grossly warp the public's view of the oil-spill problem and affect the way in which it responds to the problem. When an event such as the *Argo Merchant* spill occurs, most reporters have to do catchup homework under great pressure, and that seems a lousy way to cover an important subject; it takes the minor art of writing a two-paragraph auto-accident story and tries to elevate it to handle major and complicated news. So mainly what comes across well is the flashy part of the story—over and over and over—because the reporter doesn't have a grasp of the background or feel at home with the science.

NEW ORLEANS NOTES

Shipwrecks and groundings account for most of the news and for relatively little of the total oil spilled into the environment—no more than 6 percent, probably closer to 3 percent. Much more is "spilled" just to get rid of it: tanker captains flush oil bunkers and bilges with seawater; car owners and service-station attendants pour used crankcase oil down the nearest storm drains; with our furnaces and our automobiles we pump into the air waste products that later come down in rain. Industrial wastes in water account for between 5 and 20 percent (depending on who does the estimating) of the oil in the worlds oceans; and perhaps as much as a third of the oceans' oil burden is dumped with municipal waste either directly or in river water.

Often this sort of spilling is illegal, so a good deal of effort is being devoted to the practical problem of finding the oil in the water. That's made very obvious by papers given at this conference. Dr. Charles Bates, who is here with the Coast Guard Commandant, says that in American waters tanker captains have a habit of waiting until they're in fog or darkness before they order the cargo tanks rinsed out: then, ploop, it's in the water, and by the time the oil slick is visible the ship that put it there is long gone. What the Coast Guard needed to stop this practice was airborne sensing gear that would produce a photographic image identifiable as oil and nothing but oil—evidence that would stand up in court. The equipment is now in service—on one airplane, but with more to come. "We were fortunate enough to hit three different cases on the West Coast where guys were doing naughty things in a fog bank or at night," Charles Bates said, "and we were able to prove to the court that the slick behind the ship was oil." That's detective work, and does not involve the floodlights and the trumpets.

Most of the important things happening in this field, in fact, involve detective work. The standard, accepted liturgy about oil spill fate and effects states that spilled oil becomes less harmful the longer it weathers in the environment. In general, the lighter fractions of oil are thought to be the most toxic, and they are also the most quickly dispersed, evaporated, and washed away, so presumably the harm that oil can do begins to decline the minute it hits the water. But maybe not. One of the more interesting papers presented at the conference involves an experiment done by researchers at the Virginia Institute of Marine Science. They tested the impacts of two kinds of oil on the life of an estuarine marsh—fresh Louisiana crude versus crude that had been artificially weathered for several days beforehand. The weathered crude proved to be more toxic to life in the marsh than the fresh crude, at least within the first 120 hours after the intentional spill. Even the investigators are buffaloed by this result.

The people who care about oil's impact in water are not even in agreement on how serious a problem it is or what aspects of it should concern us most. Oiled wildlife? Damaged breeding territory of marine creatures? Long-term effects? Short-term effects? Big spills? Little spills? The waste of the precious petroleum? The problem is so new we have only begun to sort out our priorities. For example, many of the reporters who are here for the whole conference—and tend to gang together for meals—have an uneasy feeling about the media's emphasis on oily birds. I'm the card-carrying birder in the group, but I must say that I feel uneasy myself.

We know that oily birds, birds killed in spills, are important, and yet we wonder if news presentation hasn't skewed and magnified the importance, all because oiled birds do seem symbolic—and are also marvelously photogenic, especially when held in the oily hands of, let's say, an oily-faced twelve-year-old-girl. One reporter here recalls sourly that during the *Argo Merchant* event she was rousted from bed in the middle of the night by a phone call from the copy desk, "saying they had this fantastic picture of this kid holding the first dead bird, and they were using it way up front, and would I please rewrite my story to include a line from the director of the bird rescues, saying how devastated all the birds were, so they could run their picture."

I've begun asking everyone I interview here what they think about oily birds: that is, are the birds truly symbolic of the environmental threat posed by spilled oil in the water, or are they distracting from the real issues? Apparently it's a good question, because none of the answers are predictable. I've got an oil man suggesting that the oily birds may mean quite a lot and environmentally oriented people suggesting that the birds have been overplayed. Quite a few I've questioned seem baffled, unprepared; they stagger along for a few sentences and then shut down. I sympathize. Raise the oil spill issue to the level of metaphor and see how feeble our grasp is of the whole business.

THE PROBLEMS OF IGNORANCE

I did not know, when I left New Orleans, just how feeble the grasp was, and recognition came only in easy stages. That summer of 1977—by which time Congress had long since refused funding for more research, and almost everyone had difficulty placing the name *Argo Merchant*—I visited the Milford, Connecticut, laboratory of the National Marine Fisheries Service. I wanted to talk to a few of the scientists who had studied the samples of marine life collected in and around the area of the spill. After all these months, I thought, they must have a pretty good idea of what and how serious the impact on the marine environment had been, and why. I was wrong.

Four people set aside the better part of an afternoon to accommodate me: Dr. Fred Thurberg—trim, precise, and friendly, a physiologist; Edith Gould, a biochemist, known as Dusty; Dr. Arlene Longwell, a geneticist; and Kenneth Sherman, the regional director or ecosystems studies for the Fisheries Services; he came by car from his office in the Narragansett laboratory.

From the start, they made it clear that they had operated under considerable handicaps throughout the *Argo Merchant* event. Most marine research laboratories, the one at Milford included, concentrate on special areas of study, and they have full programs that are tied to dates. Papers must be presented at particular professional meetings, or some government agency has paid for research the results of which must be

turned over at a certain time. When the *Argo Merchant* went aground, Fred Thurberg said, the environmental scientists at Milford were "involved in a big study of the effects of cadmium and mercury on lobsters and certain effects of silver on various bivalves. You have a limited number of staff people and a job to do, and this was an extra job with *very* limited extra funds and *no* extra people." In order to do the analyses of samples from the *Argo Merchant* spill, about half of the dozen staff environmental scientists had to take time from their ongoing studies and work overtime as well; the same was true for three of the five members of the genetics department.

Another difficulty was the limited number of samples available. Bad weather and a shortage of money had restricted the fishing when the oil was in the water in a critical area; the samples that were taken had to be parceled out for various sorts of work-up.

But the most crucial problem involved the state of the art. Dusty Gould, for example, was studying effects of chemicals and metals on the message systems that control metabolism—a new field for marine biologists. "It's almost completely exploratory," she said. "You don't really know quite what to look for. One of the most obvious things to look at in an animal that is under what you suspect is stress is in the pathways of mobilization of energy. When the animal is under a very small environmental challenge, that challenge might make him breathe—consume oxygen—a little bit faster. He can still mobilize his reserves, and one common phenomenon of a challenge of this sort is induction of enzymes. If the activity of the enzymes is way below normal, it generally means a more acute stress, that the animal is unable to mount its metabolic defenses. That's a fairly good rule of thumb."

Discovering through the enzyme activity that a marine animal is stressed is one thing, Dusty Gould went on, but "to pinpoint what toxicant or pollutant is responsible for the stress is something I don't think anyone would care to stick his neck out about. I think the most glaring lack in research of this nature right now—and I don't know that it can be done—is to relate, say, body burdens, concentrations in tissues of a specific pollutant—whether it's petroleum hydrocarbons or metals or pesticides—to the specific malfunction." The culprit causing the malfunction can't be tracked yet, as it goes about doing its damage in the system—"there are so many shunts and back alleys and runarounds in metabolism. Whenever you're dealing with a living biological organism, if you punch it in one place it goes out in a couple of other different places. So you can set up your experiment designing many, many controls to protect yourself from flak, and yet if you're wise, you still will not say, 'This is the result of such and such.' What we do is resort to hedging phrases—learned hedging phrases like, 'It is not unreasonable to assume.' You cannot say, 'This is so'—not and be honest or accurate."

Dr. Arlene Longwell came to marine genetics only a few years ago, from medical research. A specialist in the genetics of cells, she had studied plants as well as mammals, so she brought to fisheries research a valuable perspective and training—and a certain undisguised astonishment. "Fisheries biology is not a very large field," she said. "There are far fewer fisheries biologists and marine biologists studying the ocean than there are, for example, medical researchers or crop-breeders." And as far marine geneticists, she said, "There are far more people working with mice."

When the spill occurred and the resulting scientific demands began, Arlene Longwell was working on genetic aspects of shellfish development—ways of improving the shellfish crop; she was also doing genetic studies of marine animals in the ocean off New York City—the New York Bight, one of the most polluted marine territories on the planet. Ken Sherman asked her to take some time from those projects and examine cod and pollock eggs collected on the *Delaware II* cruise just before Christmas. "The number of eggs that they collected at the spill site was rather small, and Ken sent me half of those," she said, "so we were able to do what we had to quite quickly." (In fact, microscopic examinations were made of the dissected embryos of only 79 cod and 162 pollock eggs collected in and around the spill.) "The report we prepared on it was limited, since we had no baseline, we had never worked before with cod or with pollock in any form, whether it was laboratory fish or plankton—plankton includes fish eggs—taken at sea."

She wanted to show me a batch of photographs of what they found. "I think this is the first time that surface membrane contamination has been depicted in a fish egg. Prior to this," she cautioned, "when experimentalists had attempted to contaminate fish eggs in the laboratory with oil, they had failed. I think after they tried to oil the eggs they probably looked at live specimens. Our eggs were fixed—preserved—at sea before we looked at them. The fixative was good, and it was the appropriate thing to use. But a histologist [tissue specialist] or a cytologist [cell specialist] might say, 'Are you certain that oil wasn't fixed *to* the egg membrane in the process of fixation?' Now, I think this is not very likely, but I can't prove it on these samples. Also, they fouled the net with oil when they were collecting in the slick. At one collecting station, eggs were lightly fouled, and at the next they were most heavily fouled; at the same time, the net was getting more and more fouled. I don't think the net was responsible for the egg contamination, but we can't be certain about this." With that foreword spoken, she began dealing off enlargements of microphotographs, which showed eggs and embryos magnified thousands of times, even tens of thousands of times. And as the pictures fell, she described what I was looking at. "Two deformed embryos—you see the egg sphere has collapsed here. Here the embryo is deformed. These globs are oil. Another problem in looking at the *Argo Merchant* cod and pollock eggs was that all the pollock and many of the cod were at the tail-bud and tail-free stages, which are the least likely to suffer maldistribution of chromosomes. After fertilization, you get first cleavage—two cells—then second cleavage—four cells. These are the stages that are very susceptible to irregularities in chromosome division; there are mutagens and carcinogens in oil, and also it produces secondary effects, so these are the stages we like to work with. But there were none of these earlier stages represented except in the cod, and the cod were remarkably better off than the pollock, even though they should have been worse because they were at the earlier stages. However, when you look at fish eggs as plankton, collected from the surface in a net, you're seeing only a small part of the mortality, because after the egg begins to deteriorate, it drops out of the water column, so you don't sample it in plankton. When we estimate mortality and moribundity, using samples taken from the surface, we're seeing only a small part of it." She spoke of the work of Walter Kühnhold, a biologist from the University of Kiel, West Germany; Kühnhold had happened to be at the Fisheries Service's Narragansett lab as a visiting researcher the year that the *Argo Merchant* event occurred, and consequently his investigations were particularly well known to people in the Fisheries Service. "Kühnhold believes that the oil affects the osmoregulation of the membrane around the embryo—its control over what passes in and out," Dr. Longwell said, "so that a lot of the eggs will be dropping out of the water column even *before* they're grossly deteriorated." She laid down a photograph of the membrane of an Atlantic mackerel egg, magnified 10,000 times to show its structure in great detail. It had come from a healthy egg collected near Cox's Ledge, well out to sea off Long Island.

Now another photograph "This is a mackerel egg from the transect between Sandy Hook and Rockaway Beach Inlet in the New York Bight. Plankton specialists would say, just from the gross appearance of the egg alone, that this membrane came from a perfectly healthy, normal embryo—and look at the deterioration of the membrane." In the microphotograph, it closely resembled tapioca pudding, I thought—all full of bubbles. "Some researchers believe that oil has a particular affinity for membranes and does do some damage to the membrane itself although no one has worked with membranes on fish eggs. . . . These are pollock eggs; they were taken as being clean—the normal for pollock. Now this is the pollock at that station 9 near where they found the tar-like slick. This is oil, caked all over here. And this is an antenna of a copepod—a tiny crustacean—caught in the tar on the egg membrane. . . . To look at the cells of the embryos, I pierce a needle through the egg, and use another needle to tear the embryo off. Then I flatten it on a slide; it tends to flatten into a monolayer of cells, so if the embryo has sixty-four cells, you can look in those sixty-four cells and see what states they're in—how their chromosomes appear, how they are dividing. In the case of the *Argo Merchant* material, a good portion of the cells were in states of deterioration—even though, looking at the embryo grossly, from the outside of the egg, you'd say it was all right."

"Which, frankly, was the state of the art before Arlene took her genetic background and applied it to our fisheries problems," Ken Sherman said.

I asked them what they all thought about the damage done by the *Argo Merchant* spill. "It's clear that we did not have a catastrophic kill—mortality of either adult fish or juvenile fish," Ken Sherman said. "To date, we've had nothing to the contrary from anybody in the fishing industry. Now, with respect to the marine ecosystem, we have to look to the long term, and that's just where we are now."

Quite a lot of gross damage to the ecosystem was evident immediately, on the scene, he said—"with respect to those organisms that are farther down the food chain than we ordinarily talk about, like the zooplankton. Those were fairly heavily impacted. And the fish eggs and fish larvae that Arlene looked at, they were very heavily impacted. But moving from that kind of damage to an impact on a stock of fish is a giant step." For example, if an oil spill in December and January affects at least 2,000 square miles of ocean, as this one did, and seems to kill a lot of the fish eggs and larvae and zoo plankton it comes in contact with, that may mean a great deal in terms of the fishery in five years—and then again it may mean very little. Winter is not a biologically productive time at sea, generally speaking, but there was no way to estimate how many fish eggs and larvae and zooplankton lay in the spill's path. Put in a nutshell, no one knows very much about what happens on Georges Bank and vicinity when oil isn't a major factor, and that question, Ken Sherman said, is only beginning to be addressed. So a reliable assessment of the damage done by the spill just wasn't possible.

He was at the blackboard now, a quickly drawn map of the East Coast at his shoulder "In order to deal with the kinds of problems that we're talking about it's necessary to have a strategy and an approach. The U.S. has really not had one up to this point. We've got a whole series of studies"—he drew little circles here and there along

the coastline of his chalked map—"that are done more or less *in vacuo*." Various universities and marine institutes, with various specialists, undertake whatever interests them—and for which they can raise funding, so government and the foundations also play a major role.

"We've not had a focus on this major area," he went on, "except with respect to the ground fish. Largely because of the enormous foreign fishing presence, the National Marine Fisheries Service has had a survey out here with stations located at about fifteen-mile intervals, over this entire piece of continental shelf for about ten years." That's produced valuable population curves for most of the important fish species off the coast, but the Fisheries Service did the sampling only twice a year. In 1977, Ken Sherman said, the survey was at last being done every two months—an improvement, but still not often enough to develop good data on spawning production. The Fisheries Service is filling some of the gaps by getting foreign fishermen—the Soviets and the Poles and the East Germans and the West Germans—to collect samples and data too. "So now we're finally moving into a study of the marine ecosystem. But in the case of the *Argo Merchant*, we had no baseline physiology for these populations." When the spill occurred, the Fisheries Service had nearly finished laying out a program, which it called Ocean Pulse, for developing those baselines, and it used the event not only to refine the approach but also as a dramatic demonstration of why the baselines were needed. Still, no federal money had been dedicated to Ocean Pulse, eight months after the spill, although Ken Sherman said he was confident that it was in the "tube up in the budget cycle."

Even if the baselines were not *specifically* known, I said, here in front of me around the table were experienced fisheries scientists who ought at least to have a *feel* for what they found in the samples they examined. They wouldn't accept that.

"We *have* found in some areas some sublethal, nonchronic effects," Fred Thurberg said. "And whether these are significant, I don't know. It's very likely these were transient changes. There were no massive mortalities observed. I think you'll find in the final report for some of our work, in the limited subsequent sampling that was done, we did find that the fish stocks had returned to a 'normal' state—or at least the fish that are in that *area* now are exhibiting normal hematological profiles, respiratory rates, and so forth."

I had heard that the most common copepod in the water around Nantucket Shoals—a minute shrimplike animal known as *Centropages typicus*, favored as food by many of the creatures in its surface environment—had been "wiped out" by the oil. No, Ken Sherman said; affected, but not wiped out. Then what was the mortality? "Very likely there was *no* mortality, if we consider the literature on the subject. These organisms are filter feeders, and they seem to have the ability to move petroleum hydrocarbons through their alimentary tracts without any apparent harmful effects on the organisms. They generate a fecal pellet, however, which then presumably is passed on to the food web and could be concentrated in filter feeders on the bottom. Or they could pass this on in the food web if those copepods—there's a high probability, actually—are eaten by larval fish. Then we'd get a problem. This has to be looked at. It hasn't been looked at yet."

I asked Ken Sherman what he thought was the most important lesson of the *Argo Merchant* event, and without a second's hesitation he answered, "I'd say the *approach* that's required to deal with the research problem. Somebody's going to have to deal with that—that the ocean environment is a difficult environment to work in. It's multidimensional and it's dynamic." Somebody was developing part of the approach, we all knew—the crisis part; the EPA was beginning a series of regional meetings in which the scientific community and government developed ways to organize and finance rapid, purposeful scientific response to oil spills when bad luck presented good opportunities for studies. But that would not happen often—not nearly so often as the persisted drip-drip-dripping into urban harbors; an oil spill is created by every coastal city every day. Furthermore, it did seem that with all the attention focused in the past twenty years or so on ocean farming and ocean pollution, it shouldn't require a shipwreck off the coast of Massachusetts to get the federal government and scientists moving on concerted research into the ocean environment. I said as much to Ken Sherman. "Marine science," he replied diplomatically, "dealing with *marine populations*, is relatively new. It's only been recently that enough scientists have recognized that we need to deal with the ecosystem and not single species."

A DROP IN THE OCEAN

I didn't see much sign of environmental partisanship at the University of Rhode Island symposium, where the *Argo Merchant* studies were summed up. But count on it, there are those who will be tempted or conditioned to say, two or five or ten years hence, that the *Argo Merchant* spill did/did not cause major environmental damage. Doubtless even now some partisans are keeping a close watch on New England fish-landing totals, in the belief that if there was/was not a marked impact, fish catches will reflect it. How such conclusions can be drawn or even considered is beyond me—so little is known about normal cycles and production curves and the intricate network of relationships within the huge ocean environment. And that condition is not likely to improve any faster than it has. The *Argo Merchant's* most important scientific lesson is still being largely ignored by the federal government, and the Ocean Pulse program for concentrated basic research into the marine environment did not, in fact, find its way into the federal budget for fiscal 1979.

Our attention is drawn to the spectacular. Maybe we need another major oil spill off the East Coast. The general attitude seems to be, How important is all this science stuff, anyway? Well, who knows? Just as good a question—in fact, a better one—would be how *un*-important is it? The human community is committed to plunging ahead as if it knew the answers to this and every other question one might ask, and meanwhile its knowledge of reality trails far behind. We pick up our knowledge in very small increments, and of that the studies of the *Argo Merchant* spill provide a good example; the results, most of them discussed at the University of Rhode Island symposium, add fragments to the jigsaw puzzle, no more.

For instance, oil may stick to clay sediments and sink as a result, but it does not stick well to shelly sand, even when an experimenter is trying to *make* it stick. Predictive mathematical models based on recorded weather patterns and current data can be pretty good on open-ocean spills, if what you want to know is how bad the oil's worst impact could be, but they lack something if more exact predicting is needed. And if a spill happens in a place less well-documented than Nantucket Shoals for current and weather data—a most likely possibility, since that area is one of the best known in the world—then the predicting problem is greatly magnified.

Assessment of the impacts on marine life off Cape Cod is not made any easier by all the ship traffic passing through. The crisis cruise by the Fisheries Service in January, 1977, found petroleum hydrocarbons in water samples at the tip of the Cape, far away from the *Argo Merchant's* oil. At least in the vicinity of major shipping lanes, petroleum is now part of the normal background noise in the ocean environment off New England.

Walter Kühnhold produced further proof of that. He did a background survey of copepods—those tiny shrimplike creatures so nourishing to larval fish—that had been collected near the Cape some time before the spill and were stored in the archives at Narragansett. His idea was to set a clean standard against which the copepods that ran into the *Argo Merchant's* oil could be studied. But his randomly chosen samples, he discovered, carried petroleum hydrocarbon residues. There was no clean standard.

In the lab, Kühnhold also exposed cod eggs and larvae to Number 6 fuel oil in water and demonstrated that it was bad for and often fatal to them. The larvae of a small and important baitfish called the sand launce were apparently badly hurt in the vicinity of the oil, but a population explosion of the sand launce in New England waters continued, even so.

And as for oiled birds, 175 of them were picked up on the beaches of Nantucket Island and Martha's Vineyard between December 20 and January 24 after the spill; most of them were dead or dying. About 1,120 birds of thirteen species were seen near the wreck in the ten days that began with the grounding; most were gulls, and about half the gulls had been oiled to one degree or another. It was assumed that other affected birds—perhaps a great many—had been killed and washed out to sea with the oil, and some probably flew long distances from the scene before they died, or hitched rides on ships because they were too ill to fly; one report said that of ten dead Great Black-backed Gulls that were washed ashore at Dartmouth, Nova Scotia, two carried oil that was identified as having come from the *Argo Merchant*.

Nothing fancy, in short, just a few observations and figures and educated guesses and conclusions. Science rarely moves in leaps and bounds. It plods, nibbling off a crumb of information here, a bite of data there. Only the headlines about results make science seem to work like magic. And there is an inestimable—indeed, virtually infinite—amount still to be learned about the ocean environment. We know just enough to create competing propaganda—a genre that does not require sturdily factual foundations.

Such impressions began to gel when I went to sea late in the summer after the spill. I'd been told by the director of the Fisheries Service's Woods Hole laboratory that none of the planned government research cruises was designed to do follow-up studies on the spill. In fact, the best the Fisheries Service could do was sneak in an occasional extra station as a vessel passed through the spill area on the way to someplace else. But if I wanted to go on a research cruise anyway, it could be arranged. Having tried unsuccessfully for months to get on the water with scientists doing *Argo Merchant* work, I was tempted; and the hearty-sounding lab official to whom I spoke b te ephone because he was in charge of organizing cruises seemed supremely confident—with good reason, it turned out—that if I did go I would learn a lot. So I signed up for a sea-scallop cruise on the *Albatross IV*, which left Woods Hole September 6 for ten days, going as far south as Cape Hatteras before heading back.

The work on such a research vessel continues around the clock, weather permitting. At each preselected Fisheries Service "station"—dots on the ocean identified by intersecting radio beams and lit numbers on digital readout panels—a trawl or dredge or sampling net goes over the stern and after a set time is retrieved and emptied on deck. Sometimes the catch includes the animals

wanted, sometimes not. The scientists count, measure, examine, and record what's been brought aboard. Samples are saved—in a preserving fluid or in the freezers. Then another haul comes in, and the process begins again. It's plodding work.

It takes place in an awesome three-dimensional expanse, too, which not only inspires in this environmentalist certain heretical—and not altogether justified—comparisons between the size of the *Argo Merchant's* cargo and the size of the open sea, but also makes one constantly aware that we seekers-for-knowledge are very small creatures bobbing on the surface of enormous forces. Our saving grace is that we can be audacious, that we can even revel in the exploration. The young chief scientist on the cruise is passionate about the sea; it is his personal generator. He stood in the bow on the third deck one calm morning and discoursed enthusiastically on what we saw in the water far below us, pointing out—as delighted as if he'd never been there before—sea turtles and fish and little riffles and patches under which action might be developing for our delectation. And when the wind piped up and bad weather was upon us, he leaped to the door of the lab, shook his fist at the sky, and shouted good-humored insults at the ancient Norse deity, "Hey, Odin, we aren't afraid of you! Odin is a *jay-rie!*" Still, Odin didn't care—may not even have been tuned to us. One night the sea was so rough that everything on board not tied down was thrown from where it was stowed, and slid, rolled, tumbled, crashed from bulkhead to bulkhead. What a place to do *science*.

A single scene aboard the *Albatross IV* distilled for me the magnitude and pace of the enterprise. One of our scientists was doing her doctoral dissertation on *Scaphopoda*—a class of mollusks—and she needed specimens. The trouble with looking for scaphopods is that they are very small and hard to find, and the act of looking for them—like the act of looking for oil spill impact—is not the same as looking for birds or mushrooms. The chief scientist had added to our schedule for the sake of the scaphopod search a couple of trawls with a special bottom sampler called a Digby, and the scientist in charge of the researcher's watch had also designed a makeshift pipe-dredge that attached to the mouth of the scallop trawl. So she had plenty of bottom mud to examine. "What does a scaphopod look like?" I asked her. "Looks like an elephant's tusk about this long"—she held thumb and forefinger about a quarter-inch apart.

Riding in the center of an almost featureless 360-degree circle, we put out a Digby trawl,, which is two feet wide at its mouth, or a pipe-dredge a couple of inches across at its open end, and they drag along a bottom we couldn't see, in hopes of happening to scoop out a tiny, horn-shaped animal. And we'd get the sediment sample on deck, and the researchers crouched over it there, or took it to our work table, where for an hour, two hours, she washed the mud through screens of different sizes and paused after each wash to poke slowly with a pair of tweezers through the shell fragments and sand. She worked doggedly, mostly alone, holding the table edge with one hand to brace herself against the swell of the sea.●

● Mr. MUSKIE. Mr. President, the Committee on Environmental and Public Works has unanimously reported S. 2083, the Oil Pollution Liability and Compensation Act of 1978, a bill which deserves enactment as a public law before the close of the 95th Congress.

If we do not act now, we allow the continued existence of a time bomb whose detonation no one can predict. For no one can say when another *Argo Merchant* or *Amoco Cadiz* will occur. This bill is designed to address such disasters.

The bill's purpose is to assist our citizens and protect our resources from the economic, environmental, and esthetic consequences of spills of oil and other hazardous substances. It is a tough bill. It is the best approach to the problems such spills create, and the only approach that I believe has a realistic chance of being adopted in this Congress.

Oil spill liability law has been confusing and inadequate in the past. We have tried to protect our citizens along the country's coast and inland waterways by enacting a patchwork of Federal programs, State statutes and nebulous international agreements, each dealing with different circumstances.

Presently, there are five domestic laws which have provisions affecting liability for clean-up and damages from oil spills: the Federal Water Pollution Control Act—which deals only with clean-up—the Trans-Alaska Pipeline Act, the Deepwater Ports Act, the Outer Continental Shelf Lands Act, and the Limitation of Liability Act of 1851. There are also numerous State laws and common law remedies offering legal recourse in the event of an oil spill. Internationally, there have been two conventions—neither of which has been ratified by the United States—and two voluntary agreements that provide for liability and compensation in the event of an oil spill. Voluntary agreements by tanker owners have either failed to provide sufficient relief to private parties or to extend coverage to damages or ecological impairment.

In the case of protection from spills of hazardous materials, the Federal Water Pollution Control Act is the only Federal statute which assesses liability for such spills, and only for clean-up and mitigation, not third party damages. In fact, section 311 of the Federal Water Pollution Control Act treats spills of hazardous substances under the same cleanup liability scheme as spills of oil. Spills of nonremovable hazardous substances are assessed a penalty in lieu of clean-up liability. There is no Federal statute imposing liability for third party damages resulting from spills of hazardous substances.

However, even with all these legal avenues, the average citizen cannot be assured of prompt and adequate compensation for damages suffered from an oi or hazardous substance spill.

What exists today is an uneven mixture of Federal and State laws dealing with spills of oil and hazardous substances. The need exists for a comprehensive law to pull these various schemes together and fill in the holes.

Therefore, we should approve S. 2083, to provide liability and compensation for cleanup costs and damages created by spills of oil and other hazardous substances.

It was in 1967 that the world first grasped the consequences of spilled oil in open waters. The *Torrey Canyon*, a vessel carrying 880,000 barrels of crude oil, ran aground off the southwest coast of England. The seeping oil fouled beaches, killed marine and wildlife but, more important, awakened the international community to the dangers posed by oil-carrying supertankers. The public outcry was great and resulted in an international convention to discuss the expanding tanker technology which threatened to repeat such disasters in greater proportions.

In 1969, ocean discharges of oil came home to America. We witnessed an oil disaster off the Santa Barbara coast when an oil well blew up, gushing almost 14,000 tons of oil onto pristine beaches, killing marine and wildlife. The $8.5 million cleanup cost and the $14.5 million worth of damages resulted in the Department of Interior's first regulations covering liability for Outer Continental Shelf drilling activity.

It was 7 more years before the domestic interest in oil pollution liability laws was renewed. In December of 1976, the Liberian-flag tanker, the *Argo Merchant*, went aground 28 miles from Nantucket Island. The vessel spilled most of its 7.8 million gallons of heavy heating oil, which eventually was taken out to sea and away from important tourist industry along Cape Cod. But for several weeks we all held our breath, wondering whether the vagaries of wind and current patterns would destroy or save the area.

Soon after the *Argo Merchant*, another tanker ran aground in the Delaware River, spilling 135,000 gallons of crude oil into the fertile tidal marshes below Philadelphia.

Last Mar h, the *Amoco Cadiz* incident off the coast of Brittany, France, left little doubt that the growing world demand for oil has led to larger tankers and greater risks for disaster. The French Government has expended $84 million for cleanup costs alone. Damages are estimated to run well over another $100 million. It is clear that the economic consequences of such spills are far greater than any of us anticipated even a decade ago when the Senate first initiated legislation to deal with this problem.

However, the tragic fact is that it always takes a disaster to ignite concern about the danger of oilspills.

Do we need to wait until another ecological disaster hits our shorelines, or a financial disaster hits those citizens making a livelihood along our coast, to realize that comprehensive legislative action to protect oilspill victims is needed?

Mr. President, coming from a State whose livelihood and soul have evolved from the clean ruggedness of its coastline, I am particularly aware of the concern and the potential for destruction which exists along Maine's 2,300 miles of inlet and bay shoreline.

I ask for support of S. 2083, which was unanimously reported from the Environment and Public Works Committee, because this problem is not going to go away. On the contrary, every year, every month that we neglect to address the problem of inadequacies in our present liability and compensation programs, the greater the risk that more crises will occur—and to a greater extent.

There are numerous spills which occur in American waters every year. A General Accounting Office report identified the sources of oil spills and identified 10,600 oil pollution incidents which occurred in our waters in 1976. These incidents resulted in 23.1 million gallons of oil being spilled. Almost one-third of all spills were caused by oil-carrying vessels. There is no doubt but that our Nation's waters will see increased numbers of such vessels as our dependence on imported oil continues to grow.

The table from the May 16, 1978, report of the General Accounting Office is printed as appendix A.

Increased offshore oil development also enhance the likelihood for oil leakage into the ocean. Texaco, for example, announced last July that it had discovered oil or gas in the Atlantic Ocean off the coast of New Jersey. We can surely expect greater exploration and probable development in that area.

A very real need, then, exists for a comprehensive liability and compensation regime such as is embodied in S. 2083.

S. 2083, as amended and reported, seeks to expand liability limits and coverage of third party damages to put the responsibility of cleanup and damages squarely on those responsible for the act. The concept of a fund, or a "superfund" as this bill has commonly been referred to, is to provide financial protection for victims damaged by a spill where the costs of such damages exceed the spillers' liability. Also, victims would be compensated when the owner of the spilled material cannot be identified. In such cases, S. 2083 provides a fund which would guarantee that all the costs associated with a spill would be compensated through a mechanism which passes these excess costs through to all users of the product.

Before I discuss the major provisions of this legislation, I would first like to emphasize what this bill will not do.

This is not legislation to improve oil tanker safety requirements or to prevent spills. The Oil Pollution Liability and Compensation Act of 1978 would instead provide a means of dealing with removal costs and damages that occur as a result of a spill. It is the purpose of other legislation, namely the pending tanker safety bills, to establish tanker safety and other regulatory safeguards.

S. 2083 does not contain provisions for safer tanker operation, though it leaves in place State laws that may provide such incentives. The absence of provisions providing for incentives for safe operation causes some concern among members of the committee. The committee, therefore, has directed the Environmental Protection Agency, the General Accounting Office, and the Coast Guard to direct a joint study and report on the existence or absence of incentives for safe operation in the industries affected by this legislation.

The bill before us is a reasonable approach to truly protecting our citizens and resources from damages derived from a variety of spills into American waters.

After 3 days of hearings and 3 days of markup by the Subcommittee on Environmental Pollution on a bill I introduced last April, the full Committee on Environment and Public Works unanimously reported an amended version of an oil spill liability bill already reported by the Senate Commerce Committee. The bill differs from versions produced by that committee or the House of Representatives in three important respects.

First, this bill builds upon an existing body of law—section 311 of the Federal Water Pollution Control Act. No new statutory framework would be formed. The House bill and the Senate Commerce Committee legislation, on the other hand, depart from existing law, and so into unchartered waters by creating new statutory structures.

Second, this legislation is unique in that spills of hazardous substances are covered. The committee agreed that the public should have the same protection from damages whether they resulted from discharges of oil or hazardous substances. Testimony to the Subcommittee on Environmental Pollution revealed that hazardous substances, like the Kepone discharged into the James River, can inflict as much, if not greater, damage to natural resources and property as spills of oil.

Third, this bill specifically preserves the right of my State wishing to impose any additional requirements or liability with respect to discharges of oil or hazardous substances within that State. Under this provision, States are free to establish or maintain funds for cleanup or compensation purposes and to collect such fees or penalties as they may establish.

SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT

This bill addresses the problems of liability and compensation through a variety of provisions and concepts adopted, directly or by reference, from section 311 of the Federal Water Pollution Control Act. Other legislative proposals concerned with oil spill liability would establish an entirely new structure which would depart significantly from the regulatory program which has been in effect since 1970.

The existing provisions under section 311 establish liability out to 200 miles for clean up of spills of oil and hazardous substances and for damages to natural resources. A $35 million appropriated fund presently covers claims beyond the limit of liability. The liability for clean up of spills of oil or removable hazardous substances from vessels, not including inland barges, is set at $150 per gross ton or $250,000, whichever is greater for vessels carrying oil or hazardous substances as cargo. The liability limit is set at $125 per gross ton for inland barges, or $125,000, whichever is greater. The liability limit for onshore and offshore facilities is set at a maximum of $50 million—which could be lowered by the President for certain categories of facilities to not less than $8 million. Contingency funds are permitted to be used in order to protect against threatened discharges.

Under section 311, the President is authorized to establish a national contingency plan which provides for the removal of oil and hazardous substances. This plan is implemented by the Coast Guard. It has been in operation for 7 years and is the basic response mechanism for action in cleaning up oil and hazardous substances spills. Appendix B outlines an example of the chain of events surrounding a major oil spill.

The committee bill proposes to keep this mechanism in place.

HAZARDOUS SUBSTANCES

Since 1972, the Environment and Public Works Committee has integrated all legislative provisions dealing with the spills of oil and hazardous substances. This bill follows in that tradition. The authority to deal with oil and hazardous substances within the same regulatory scheme already exists within section 311 of the Federal Water Pollution Control Act.

Economic damages resulting from discharges of hazardous substances are not presently included under Federal law. The need to include hazardous substances within the provisions of this legislation is no less urgent—and often more urgent—than the need to protect victims of oil spills. Scarcely a week goes by without some new account of a toxic substances debacle which has caused economic loss and threatened public health. To exclude hazardous substances from such a bill at this time, to needlessly delay until another Congress legislation which would compensate the victim of such disasters, would be folly indeed.

Since April 12, when I introduced legislation to establish a comprehensive oil spill liability regime, I have been informed by the Environmental Protection Agency of four more tragic incidents of hazardous substance spills. The information on these four spills is attached as appendix C.

When we speak of establishing a comprehensive Oil Pollution Liability and Compensation Act—we must mean a comprehensive act. If we should turn our backs on the inclusion of hazardous substances in this legislation, we would be enacting only half a law.

PREEMPTION

The third major difference embodied in the legislation reported by the Environment and Public Works Committee is the total preservation of the rights of States to provide for more stringent protection than is offered in the proposed Federal legislation. Section 7 of the bill allows States to establish or maintain funds for cleanup or compensation, to collect such fees or penalties, or penalties as they see fit and, most importantly, to establish more restrictive liability and compensation laws than is provided by the Federal law. The committee agreed that any restriction of such States' rights would ultimately do little good and be contrary to this committee's tradition of preserving the rights of States to impose more restrictive requirements for the purpose of protecting their own citizens, as well as air, water, and land resources.

Because some Members saw preemp-

tion of some innovative State laws as a step backward from comprehensive oil spill compensation protection, the committee chose not to preempt States' rights to their own legislation.

The members of the committee have been confronted with the issue of deciding the degree of State autonomy in the past, and S. 2083 embodies the same approach found in other environmental legislation.

This legislation specifically establishes a baseline, or a national minimum standard. Should States desire to maintain stricter liability or requirements through the adoption of stiffer standards, the bill allows for such action. Those States which believe the Federal program provides enough protection for its resources may choose not to enact additional State laws.

A Library of Congress analysis revealed that 18 States have already enacted their own statutes. Thirteen States chose not to impose limits on liability, while five States decided, as the Federal statute dictates, that a limit should exist. Eight States do not list defenses to liability. Of the 18 States which possess liability statutes, only 11 chose also to establish funds. Only 5 of the 11 chose to maintain their fund by charging fees for the substances involved. And only one State, New Jersey, chose to create separate fees for both oil and hazardous substances.

So, a wide variety of options have been open to the States. The committee believes those options should remain open with the Federal role being one of providing a minimum-level program.

The bill which was ultimately reported excludes any preemptive provisions and has received strong support from coastal State resource offices and offices of State attorneys general. Appendix D contains the recent correspondence specifically addressing the preemption question from States and associations.

Mr. President, it is these three major provisions of this bill which make it different from other legislation and are essential ingredients to any liability and compensation fund bill which will be passed. Frankly, without any one of these basic differences, I might find my support for passage of such legislation waning.

In my opinion, working to enact a bill which does not build upon section 311 of the Federal Water Pollution Control Act, preempts individual State programs, or excludes the coverage for hazardous substance spills, would be a waste of time.

Mr. President, at this point I would like to discuss some of the other key provisions of S. 2083.

COVERAGE AND LIABILITY

The committee bill covers discharges of oil and hazardous substances into all bodies of water already covered under section 311, including the inland waters of the United States and waters out to 200 miles offshore.

Discharge standards are the same as under section 311 of the Federal Water Pollution Control Act. That section prohibits the discharge of oil and other hazardous substances except where the discharge standard for vessels beyond the American territorial waters is specifically spelled out under the 1954 International Convention for the Prevention of Pollution by the Sea by Oil.

Strict liability would be imposed on the owner or operator of any vessel or facility discharging oil or hazardous substances in violation of section 311 of the Federal Water Pollution Control Act. The liability, up to certain established limits, covers removal and mitigation costs or expenses resulting from a spill, restoration and replacement costs for damages to natural resources, and the costs or expenses resulting from damages incurred by any third party.

The limits of liability established by the reported bill are as follows:

First, $300 per gross ton or $500,000, whichever is greater, for vessels carrying oil or hazardous substances in bulk or in commercial quantities as cargo;

Second, $300 per gross ton for other vessels;

Third, all removal costs plus $50,000,000 for facilities under the Outer Continental Shelf Act;

Fourth, $50 million for deepwater ports (including discharges from vessels moored at such ports);

Fifth, $50 million for other facilities unless a lower limit is established by the President for a particular class or category of facility but in no case lower than $8 million.

These liability limits supersede the liability limits set forth in section 311 as these include both removal costs and compensation for damages.

The defenses to liability remain the same as in existing law. Only those spills caused solely by an act of God, an act of war, third-party negligence, or negligence on the part of the U.S. Government would relieve the spiller of liability.

Liability is not limited if caused by willful misconduct or gross negligence within the knowledge of the owner or operator, or by a gross or willful violation of applicable safety, construction, or operating standards or regulations. Failure or refusal to cooperate in cleanup activities also invalidates liability limits.

While damages to natural resources are recovered in monetary terms, this bill recognizes that damages are not necessarily limited to amounts which can be spent for restoration or replacement. A specific damage assessment capability is provided for in the bill to assist in this particular area.

THE FUNDS

The oil spill liability fund, established by S. 2083, is derived from a 3-cent-per-barrel fee on oil. This $200 million fund will be available to pay for the removal of oil discharges and damages resulting from such pollution. Such expenses are to be recovered from the spiller up to his limit of liability.

The Secretary of the Treasury is directed to collect the fees on all offshore, imported, exported, and Alaskan oil until the $200 million mark is reached. The fee would be reinstated when the fund is depleted to the $150 million level. Once the $200 million level is again attained, the levy for the fund will once again be terminated.

At a later date, a fee on hazardous substances will be established to fund a hazardous substances liability fund. Prior to such action, however, a study will be conducted to establish an adequate size and a fair fee structure for a hazardous substances fund. Any payments from the oil fund for hazardous substance spills will be repaid with interest.

There are three major reasons for the implementation of such funds. First, the fund is a tool which can be utilized as a quick source of money for immediate cleanup activities or damage compensation should a spiller not act quickly. Second, such a fund can be used as a source of compensation for claims which are not settled by the spiller because a liability limit has been reached or a defense has been justifiably made. Thus, regardless of a spiller's liability, all victims will be fully compensated.

Third, in situations where a spiller cannot be identified or located, the fund would be available to compensate those suffering economic loss from a discharge. In cases where the assets of an owner or operator are not sufficient to meet the liability, the fund can assure compensation by all those owners and users of oil who contributed the 3-cent-per-barrel fee.

The main purpose of the legislation—to assure prompt cleanup and compensation regardless of the spill's circumstances—is guaranteed. And it is appropriately the oil and hazardous substances consumers, not the general taxpayers, who foot the bill where the spiller does not.

HAZARDOUS SUBSTANCES

In line with the authority embodied in section 311 of the Federal Water Pollution Control Act to deal with oil and hazardous substances within the same regulatory framework, the committee unanimously supported including hazardous substances within the "Superfund" structure.

In order to provide equal treatment of claims for damages from both oil and hazardous substances, to provide uniformity among laws and coverage, to simplify decisionmaking by onscene coordinators, and to minimize administrative procedures, the committee determined that hazardous substances should be included within the coverage of the proposed bill.

Current litigation regarding the section 311 hazardous substances regulations has delayed the effective date of the Environmental Protection Agency's designation of harmful quantities of hazardous substances. Liability for discharges of hazardous substances cannot be imposed until these regulations are effective. At that time, claims and payments could begin. If the litigation is resolved before the 18-month study is completed and Congress has enacted a fee system, payments to cover the costs of hazardous substances would be made from the oil fund and repaid with interest by the newly-established Hazardous Substances Fund.

The committee report on this legislation outlines in more detail the litigation involved with the regulation of hazardous substances. It also provides examples

of the types of hazardous substance spills which might be covered by this bill.

EXISTING LAW

The single comprehensive liability law and compensation fund established in S. 2083 would replace those funds created under the Trans-Alaska Pipeline Act, the Deepwater Ports Act of 1974 and the Fund proposed by the Outer Continental Shelf Lands Act Amendments.

PREEMPTION

Section 7 of the reported bill preserves the rights of States to impose additional requirements or liability with respect to discharges of oil or hazardous substances. States would remain free to establish or maintain funds for compensation and clean-up purposes and would be allowed to collect such fees or penalties as they so desire.

FINANCIAL RESPONSIBILITY

This bill continues the practice under existing laws requiring vessels and offshore facilities to show evidence of financial responsibility for the amount of liability exposure. This assures that the spiller is financially able to pay in the event of a spill.

No showing of financial responsibility is required for onshore facilities.

Mr. President, this has been just a brief summary of S. 2083, and I have tried to outline the most important issues our Members perceived during consideration of the measure. I commend my colleagues' attention to the committee report on this bill which provides an in-depth discussion of the bill and associated issues.

I hope that my colleagues will join with the unanimous opinion of the Environment and Public Works Committee to approve this measure. We must move quickly so that we may go to conference and send a bill to the President before adjournment.

We must provide the best liability and compensation protection we can to those who might suffer from oil or hazardous substance spill damages.

It is our duty to act now.

The material referred to follows:

APPENDIX A: "OILSPILLS, 1976"

*Oilspills, 1976*

| Source of spills | Percent of incidents | Percent of gallons spilled |
|---|---|---|
| Vessels | 29.1 | 45.9 |
| Land vehicles | 3.9 | 2.0 |
| Nontransportation-related facilities | 26.8 | 29.5 |
| Pipeline | 5.9 | 18.9 |
| Marine facilities | 4.8 | 1.4 |
| Land facilities | 1.6 | 1.5 |
| Miscellaneous or unknown | 27.9 | .8 |
| Total | 100.0 | 100.0 |

APPENDIX "B"

CHRONOLOGICAL ORDER OF EVENTS SURROUNDING A MAJOR OIL SPILL

*Situation:* A steam-turbine powered foreign flag tanker, 19,000 gross registered tons grounded on a shoal located approximately two nautical miles off the coast of the United States. Vessel cargo: 8 million gallons light crude oil. Weather conditions: severe, seas: 10 ft., wd: 25/kts, sea state: 5.

Vessel condition: hull damaged, water entering room at unknown rate, engine room inoperative as result; listing heavily to port.

Vessel master contacts Coast Guard unit via radio.

Local Coast Guard contacts area Marine Safety Office (MSO).

MSO becomes On-Scene Coordinator (OSC)

OSC initiates response mechanism directing Coast Guard cutter on fisheries patrol to proceed to scene.

OSC notifies National Response Center (NRC). NRC notifies: G-WEP-4, WEP, W, C, CC, LCL, LMI, A, EPA HQ (All components within Coast Guard Headquarters)

OSC notifies State Environmental Agency.

OSC puts oil spill contractors on standby.

OSC initiates overflight.

OSC dispatches Marine Environmental Protection (MEP) and Marine Inspection Office (MIO) personnel to scene.

OSC activates Regional Response Team (RRT) by telephone for their information.

OSC notifies Coast Guard area and Strike Team.

OSC begins sending POLREPS LAW National Contingency Plan (NCP) & COMDTINST 16450.1. (attached)

CGCutter arrives on scene to find vessel hard aground, no pollution yet evident.

OSC contacts agent and owner and issues "Notice of Federal Interest" owner states no action to be taken after high tide.

The Federal Maritime Commission is contacted to obtain information on ship's insurer and relevant data on owner.

Insurer's agent in U.S. is contacted. Received advice to contact the ship's insurer in London directly.

Insurer advises that it has not decided on a course of action.

OSC declares a Federal response, requests and receives project number from Coast Guard district.

National Strike Force (NSF) arrives on scene with Air Deliverable Anti-Pollution Transfer System (ADAPTS).

OSC notifies agent and owner of U.S. assuming control through the Coast Guard.

OSC directs commercial tugs and barge to the scene to commence lightering operations.

Contact is made with Admiralty and Shipping Section, Department of Justice in Washington. A request is made to Justice to assign a trial attorney in order that consultation can begin immediately on legal theories for recovery of cleanup costs.

Telephone contact is made by the Office of Chief Counsel at USCG Headquarters with two international organizations, Tovalop and Cristal. Function of these two groups is to provide compensation for cleanup costs above those available under statute. In addition both groups provide compensation to third parties damaged by the spill.

Tovalop and Cristal requested to advise USCG of vessel's coverage. Specifically is the vessel a Tovalop vessel and is its cargo owned by a Cristal member? Also, will compensation be available to USCG for the costs of cleanup and third party damage claims. Cristal notified because cleanup costs may exceed FMC certificate of financial responsibility.

On scene weather worsens. Ship begins leaking crude oil. Crew of vessel is evacuated. NSF on board.

RRT meets, outlines alternatives. Requests National Response Team (NRT) review their findings.

Tug and barge arrive on scene, weather prohibits lightering attempt.

Overflight planned with OSC, NSF, State Environmental organization as soon as weather permits.

NRT meets; request initiated through DOD representatives for Navy Superintendent of salvage assistance. U.S. Fish & Wildlife assistance bird cleaning.

District requests authority for fund ceiling of $200K.

Chief of Naval Operations (CNO), Washington, D.C. requests Superintendent of Salvage be tasked with technical assistance to the OSC.

USCG receives information that cargo owner has sued the vessel owner for loss of cargo. Department of Justice advised of this. Department of Justice requests that USCG send an attorney to observe depositions. District legal office is requested by Chief Counsel to comply with Department of Justice request.

Vessel owner's attorney petitions for limitation under Limitation of Liability Act, 46 USC 746 *et seq.* in New York. Federal District Court in New York orders that all claims be filed within eight days.

Discussion is held with Department of Justice Trial Attorney and the Claims and Litigation Division, USCG Headquarters, to consider the legal validity of claims for cleanup costs. Cleanup costs now appear to exceed one million dollars.

Coast Guard Oceanographic Unit is requested by OSC to undertake oil spill trajectory.

Commercial salvage company is contracted by Superintendent of Salvage as salvage master.

Overflight reports large slick heading westerly towards shore. Lightering of the vessel begins as weather improves.

Oil spill contractors begin booming off mouths of harbors and estuaries under monitoring of Coast Guard personnel. OSC continues to submit documentation IAW COMDTINST 16450.1.

Department of Justice files protective claim in Limitation proceedings.

EPA representative meets with OSC for contingency planning and to arrange for inland dumping of oil coming ashore.

U.S. Fish and Wildlife establishes a bird cleaning station in conjunction with state authorities.

Oil begins coming ashore along area beaches. Cleanup begins, monitored by Coast Guard personnel, samples are taken for identification.

Additional funds request for ceiling of $1M is approved.

OSC requests and receives authority for establishing a security zone to keep civilians and commercial salvors clear of area.

OSC meets with cleanup contractors, Superintendents of Salvage, NSF, and area authorities.

OSC holds press conference.

Local officials join in cleanup; (harbormaster, shellfish warden, fire and police departments).

EPA meets with State Environmental Office and establishes inland dumping area.

Offloading of vessel completed, estimated loss is held at 2,000,000 gallons, cleanup continues.

Meeting set up by Chief Counsel, USCG, in New York with parties representing shipowner, Cristal, London insurers, cargo interests and the two affected states. Coast Guard attorney from Claims and Litigations Division, Coast Guard Headquarters, the legal office from the affected district, and a DOJ, Admiralty and Shipping attorney present an estimate of claim to responsible parties. Parties agree to consider claim by the United States.

District requests and receives authorization for additional funds ceiling of $1.5 million.

Cleanup completed, Coast Guard and DOJ attorney meet again in New York with vessel's attorney to discuss settlement. Settlement discussions break down.

Coast Guard and DOJ attorney fly to London to meet with Cristal and London insurer to attempt to overcome certain legal stumbling blocks. Parties agree to consider matter once documentation is complete.

Coast Guard convenes Marine Board in New York.

Foreign Flag State convenes Marine Board in New York to inquire into circumstances surrounding the grounding. Coast Guard Headquarters agrees to provide witnesses. Coast Guard and DOJ attorneys represent the interests of the United States.

Pollution removal costs are documented in accordance with COMDTINST 16450.1.

Final documented claim of United States (including all state and Federal agencies) is submitted to Cristal, vessel's attorney and underwriter.

Water Pollution Violation Report completed and submitted to district commander IAW COMDTINST 16450.1.

OSC Report completed and submitted IAW COMDTINST 16450.1.

Meeting held in New York with representatives for owner, Cristal and vessel's underwriter. Settlement agreed upon. U.S. agrees to dismiss claim in the Limitation proceeding in return for payment by underwriter and Cristal. Cristal agrees to notify damaged third parties.

Approval for acceptance of offer is obtained from Coast Guard Headquarters and the Associate Attorney General of United States.

Marine Board concludes that cause of casualty was malfunctioning gyro compass and failure to utilize alternative methods of navigation by vessel master.

Foreign Flag State Marine Board concludes causes were same as those set forth above. Foreign flag state revokes master's document.

APPENDIX "C"

HAZARDOUS SUBSTANCE SPILLS

HAZARDOUS SUBSTANCE SPILL NO. 1

On June 6, a 900 gallon tank of the chlorinated hydrocarbon pesticide methoxychlor fell from a truck and the entire contents entered a small 1.5 million gallon recreational lake near Brightwater, New York—(Long Island). A fish kill occurred in the lake and a smaller fish kill occurred in a second, larger lake. Of major concern were the shellfish beds in the Great South Bay of Long Island Sound into which the chain of lakes flow. The Oil and Special Materials Control Division (OSMCD) of EPA activated and funded the mobile carbon treatment unit from the EPA laboratory at Edison, New Jersey. This unit, called the Environmental Emergency Response Unit or EERU, is capable of filtering contaminated water through its activated carbon tanks at a rate of 600 gallons per minute.

Methoxychlor is a pesticide and is in category X of the Hazardous Substance Regulation. The harmful quantity of a category X substance is one pound. It is estimated that the 900 gallon tank contained about 18 pounds of active ingredient.

The EERU was operational for approximately 8 hours until analysis showed a contamination level of less than 30 parts per billion. The State initiated a sampling program to determine the fate of the methoxychlor. Should high concentrations be encountered in the lake bottom sediment, it may be necessary to drain and dredge one or more of the three lakes to preclude contamination of the shellfish beds in Great South Bay. This effort coupled with the disposal of the dredged material could become a lengthy and expensive operation.

HAZARDOUS SUBSTANCE SPILL NO. 2

Early on June 13, a truck carrier, loaded with 500 fifty gallon cans of the pesticide endosulfan, was involved in an accident on Interstate 5 south of Bakersfield, California. A fire resulted from the accident and the majority of the product, a 33 percent concentration in a kerosene carrier, burned. Although the accident occurred near Grapevien Creek, EPA aerial photography of the site revealed that none of the endosulfan entered the water. The highway was flushed with hot salt water, the runoff contained and removed by vacuum truck. California State personnel have initiated dirt removal along a 500 foot section of the road shoulder.

Endosulfan, a highly toxic insecticide, is an X category substance on the EPA list of designated hazardous substances. One pound of a category X product constitutes a harmful quantity.

In this particular incident, even though none of the product entered the water, an imminent threat could have been produced and actions could have been taken to prevent the entry and subsequent cleanup to remove the threat.

These actions would have been taken only in the absence of quick and proper actions by the spiller.

HAZARDOUS SUBSTANCE INCIDENT NO. 3

A chemical warehouse fire near Dunn, North Carolina, on June 30, 1978, involved a number of pesticides and agricultural chemicals. Among those involved were Diazinon, a category X substance and Malathion, category A (harmful quantity 10 pounds). The local fire department poured 500,000 gallons of water onto the first and contaminated runoff entered the Black River. A sampling program was set up and samples were analyzed by the EPA Laboratory, Athens, Georgia. State personnel were conducting a survey of the river in an attempt to determine environmental damage.

Incidents such as this can produce widespread effects and long lasting environmental damage. Cleanup and restoration may be very complex and in some cases imposible.

HAZARDOUS SUBSTANCE INCIDENT NO. 4

On July 2, 1978, a train derailment near Waveland, Arkansas involved a number of cars containing fuel oil, LPG, crude sulfur and 1 tank car of pentachlorophenol. Region IV emergency response personnel were on scene, however, no surface water contamination or water runoff from fire fighting was reported.

Pentachlorophenol, sometimes called PCP or Penta is a category A substance; the harmful quantity is 10 pounds.

APPENDIX "D"

CORRESPONDENCE

STATE OF NEW YORK,
*New York, N.Y., September 19, 1978.*

Hon. EDMUND S. MUSKIE,
*Chairman, Subcommittee on Environmental Pollution, Committee on Environment and Public Works, U.S. Senate, Russell Senate Office Building, Washington, D.C.*

DEAR SENATOR MUSKIE: I am responding to your August 25, 1978, letter regarding S. 2083, the "Oil Spill Liability and Compensation Act of 1978," as reported by the Committee on Environment and Public Works. My office strongly supports the retention of Section 7 of the bill, which states that nothing in the Act shall preempt any state from imposing additional liability or requirements with respect to the discharge of oil or hazardous substances within the state.

In my view any such preemption would be most inappropriate in light of the recognition by the U.S. Supreme Court of "the police power of the States over oil spillage—an insidious form of pollution of vast concern to every coastal city or port and to all the estuaries on which the life of the ocean and the lives of the coastal people are greatly dependent." See *Askew* v. *American Waterways Operators*, 411 U.S. 325, 328–30 (1973).

Any weakening of the no-preemption provision would detrimentally affect the interests of this State. New York has its own Environmental Protection and Spill Compensation Fund, which is supported principally by a per barrel license fee for the transfer of petroleum. This fund may be used, among other things, to pay for damages and clean-up costs incurred by private parties and governmental entities. My office is of the opinion that New York should continue to develop and operate this Fund as provided under State law.

As is well pointed out in the Report on the bill by the Committee on Environment and Public Works, it would be unfortunate to establish a preemptive Federal law which is not as strict as some state laws already in place. For example, New York's Oil Spill Prevention, Control and Compensation Act provides the discharger of oil with fewer defenses than does S. 2083.

Indeed, even Section 7 of S. 2083 should be improved. The New York Act specifically applies to discharges into waters outside the jurisdiction of the state when damage may result within the state. Section 7 could be improved by striking the words "within such State" so as to eliminate any possible argument that preemption could apply to discharges outside of a state which result in damage within the state.

Also of particular concern to my office is the provision regarding the assessment of damage to natural resources. While the Committee Report does declare that nothing in S. 2083 would preclude the states from carrying out their own assessments, it would be clearer if the bill itself specifically would authorize the states to do so. I wish to emphasize that the bill's requirement that assessment protocols and standard assessment procedures be set forth in regulations will prove to be counterproductive if sufficient funds are not appropriated for scientific research on the effects of discharges on natural resources. Without much further research, such regulations will merely reflect our present comparative lack of knowledge regarding these effects.

Finally, as you pointed out in your letter, S. 2083 includes liability for spills of hazardous substances as well as spills of oil. I agree that this is an important feature of the bill and strongly support its retention. Recent spills of hazardous substances in New York and elsewhere highlight the need for immediate legislative action.

I appreciate the opportunity to present our views on this significant bill.

Sincerely,

LOUIS J. LEFKOWITZ,
*Attorney General.*

STATE OF CONNECTICUT,
*September 14, 1978.*

Hon. EDMUND S. MUSKIE,
*Chairman, Subcommittee on Environmental Pollution, Washington, D.C.*

DEAR SENATOR MUSKIE: This is to advise you that I have reviewed S. 2083 which permits States to establish their own liability standards and other requirements which may be more strict than federal standards relative to liability for oil spills.

It is my pleasure to relay to you my complete support of S. 2083 which I believe protects a vital interest of the several States.

Very truly yours,

CARL R. AJELLO,
*Attorney General.*

STATE OF MARYLAND,
*Annapolis, Md., September 8, 1978.*

Hon. EDMUND S. MUSKIE,
*Chairman, Subcommittee on Environmental Pollution, Committee on Environment and Public Works, United States Senate, Russell Office Building, Washington, D.C.*

DEAR SENATOR MUSKIE: On May 2, 1978, I wrote to you expressing Maryland's concerns over certain provisions of the comprehensive oil spill liability legislation, S. 2900, which was being considered by the Subcommittee on Environmental Pollution. This was followed by a letter dated June 19, 1978, which set forth Maryland's specific objections to certain provisions of S. 2900.

We now have had the opportunity to review the provisions of S. 2083 (formerly S. 2900) as amended by the Committee on Environment and Public Works and reported for consideration to the full Senate. The amendments made by the Committee were very responsive to the concerns we previously expressed. The conclusion drawn by Maryland officials, including members of the Attorney General's Office, is that the amended legislation expressly precludes Federal preemption and allows the State of Maryland to continue to charge oil terminal license fees, thereby enabling us to maintain and develop our existing oil pollution cleanup and prevention program.

Our support of the amended legislation is based upon the presumption that Section 4 (c)(1), which prohibits oil that has been subject to the three cents per barrel levy from being subject to a subsequent levy, is not intended to prevent Maryland or other states from requiring a license fee from individuals who receive, store or transfer oil within the state in order to finance their oil spill cleanup and prevention programs. The language in Section 7 of the amended legislation appears to us to support this view.

The majority of oil pollution in Maryland is caused by oil spills of less than 1,000 gallons discharged from the over-filled oil tanks, tank trucks and sundry delivery systems. The Maryland oil pollution program provides the capability for personnel and equipment to be deployed and to be on scene anywhere within the State within two hours of notification of an oil discharge. We are justifiably proud of our existing capability to protect and preserve Maryland waters, particularly the Chesapeake Bay and the Atlantic Coast beaches, from the threat of environmental degradation posed by oil pollution. This rapid oil pollution response program, specifically designed to suit our needs, should not be dismantled or otherwise disrupted by a Federal oil spill liability scheme.

I believe that S. 2083 as reported by your Committee represents a step forward in the protection and preservation of our limited natural resources by providing for a mutually beneficial Federal/State partnership. Again, I wish to express my appreciation for the Subcommittee's responsive action.

Sincerely,

BLAIR LEE III,
*Acting Governor.*

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RESOURCES AGENCY OF CALIFORNIA,
*Sacramento, Calif., September 1, 1978.*

Hon. EDMUND MUSKIE,
*U.S. Senate, Chairman, Subcommittee on Environmental Pollution, Committee on Public Works, Washington, D.C.*

DEAR SENATOR MUSKIE: Because of the importance to the State of California of liability for oil and hazardous substance spills, the State, through its Interagency Tanker Task Force, has commented extensively on proposed Federal legislation. The provisions of any Federal oil liability legislation are critical to its ability to achieve the objectives of providing full compensation for damages caused by spills, while providing the maximum incentive to prevent spills. S. 2900 (now amended into S. 2083), will achieve these objectives and the State of California supports the bill wholeheartedly.

As the bill proceeds to the Senate floor, and amendments may be offered, I want to reiterate California's concern over the possible effects of Federal preemption.

PREEMPTION OF STATE LIABILITY LAWS

California is concerned about possible preemption of State liability laws for three reasons: 1) State laws may be needed to provide an adequate incentive to prevent spills; 2) States could be prevented from enacting measures designed to assure more complete recovery for environmental harm; and 3) An overbroad interpretion of preemption language could impair the State's water pollution enforcement authority by preempting the State's statutory damage laws.

H.R. 6803, with its preemption of State liability laws, could actually weaken the incentive to prevent spills. As the Interagency Tanker Task Force has commented earlier, H.R. 6803, while purporting to set a strict liability standard, has such broad defenses that even a negligent spiller could escape liability in some instances. California already has strict liability laws applicable to many spills but these laws, and even the State's negligence laws, would be preempted by H.R. 6803.

Federal preemption could also limit the State's ability to obtain complete compensation for environmental losses. H.R. 6803, like traditional damage law, will limit recovery to losses that are quantifiable to a reasonable certainty. But how can the loss of a brown pelican or a gray whale be priced to a reasonable certainty? Traditional law seems to assume that because something is priceless, it is worthless. Some states, including California, have statutes designed to deal with the problem of placing a value on environmental losses. S. 2900 (now S. 2083) has provisions aimed at the problem, but we should permit further innovation and experimentation by the states, so that better solutions may be discovered.

California's statutory damage laws, which provide the enforcement authority needed for the State to assume responsibility for the permit program under the Clean Water Act, set a civil liability of up to $16,000 per day of spill, in addition to ordinary damages. The State Supreme Court has ruled that these laws are not penalties, but provide compensation for "unquantifiable" damage to the environment. H.R. 6803 does not provide compensation for these losses, and therefore its preemption clause should not be interpreted to preempt California's statutory damage laws. Because these laws provide recovery for damage to natural resources, however, there is a danger that H.R. 6803's preemption provisions could be misconstrued to preempt these laws.

PREEMPTION OF STATE FUNDS

California does not have any funds like the proposed "superfund," supported by taxes or fees on the production or transfer of oil. Preemption of these funds is not a matter of great concern to the State, except to the extent that funds in other states may provide a model for future legislation here in California.

California would be seriously affected, however, if preemption goes beyond the prohibition of taxes or fees on oil transfer or production. Money collected by State agencies in actions to impose liability for water pollution, including liability for cleanup costs, civil liability, and criminal fines, is paid into two State funds, a Cleanup and Abatement Account and a Fish and Wildlife Preservation Fund. Among other purposes, these funds are used to abate water pollution, and to replace lost natural resources. These funds are vital to the maintenance of California's oil spill response capability.

These funds do not impose duplicative or burdensome requirements. There is no greater imposition on the oil industry than if liabilities and penalties were paid into the general fund of the State treasury. It is also clear that Congress does not intend to preempt this kind of fund, yet preemptive language which has been suggested does not expressly limit preemption to taxes or fees on oil. H.R. 6803, for example, prohibits the states from requiring any person to "contribute" to any fund the purpose of which is to pay compensation for losses which may be asserted under the act. If such broad language is adopted, a polluter may argue that civil liability, or even criminal fines, cannot be collected in California because the money goes into a fund used to clean up oil pollution or replace fish and wildlife.

PREEMPTION OF FINANCIAL RESPONSIBILITY REQUIREMENTS

The State of California currently does not set financial responsibility requirements for vessels or facilitates handling or transporting oil. However, the State Lands Commission, a proprietory agency with responsibility for managing the State's sovereign, tide, and submerged lands, is considering regulations for oil terminals on public trust lands. The proposed regulations include a financial responsibility requirement.

At least where State law does not merely duplicate Federal requirements but imposes additional requiremnts, State financial responsibility requirements should be permitted. Establishing financial responsibility requirements which reflect the risk of spills is one way the states can provide an incentive to take precautionary measures to prevent spills.

There is no reason to preempt State financial responsibility requirements applicable to facilities. Facilities, unlike vessels, need only comply with the requirements of a single state, which should not be unduly burdensome.

CONCLUSION

Protection of the environment, and the definition of liability standards and recoverable damages, are two areas traditionally regulated by the states, and of vital concern to the states. When the Federal government enacts legislation in these areas, as it is now for liability for oil and hazardous substance spills, State authority should be preserved as much as possible. Thus, environmental laws, like the Clean Water Act, have permitted the states to set stricter standards, and have sought to preserve State enforcement authority. So, too, previous Federal oil liability laws have not preempted State law. There is no need for Federal oil and hazardous substance liability legislation to deviate from this tradition. Leaving the states free to enact stricter liability standards will further the purposes of Federal law and help maintain the proper balance between State and Federal authority.

Sincerely,

HUEY D. JOHNSON,
*Secretary for Resources.*

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DEPARTMENT OF LEGAL AFFAIRS,
*Tallahassee, Fla., September 7, 1978.*

Re S. 2083, proposed "Oil Pollution Liability and Compensation Act of 1978"

Hon. EDWARD MUSKIE,
*U.S. Senator, Subcommittee on Environmental Protection, Dirksen Office Building, Washington, D.C.*

DEAR SENATOR MUSKIE: I have reviewed and support S. 2083, the proposed "Oil Pollution Liability and Compensation Act of 1978." This proposed legislation is particularly important to the State of Florida because of our vast coastline and its importance to our tourist industry.

One of the provisions of the bill of major importance to this State is the fact that the rights of a state to impose additional liability or requirements with respect to discharge of oil or hazardous substances within this State are specifically not preempted. Other provisions of particular importance to me are the ones that provide for recovery of damages for economic loss and loss of tax revenues. Also of importance is that the bill provides for delegation to the State of the authority to settle claims and to obligate money in the Oil Spill Liability Fund.

The Governor and Cabinet of Florida in April 1977, passed a formal Resolution supporting two similar bills, and I am sure that such body would likewise support S. 2083. A copy of that Resolution is enclosed, which shows the interests and concerns of this State.

A copy of this letter is being sent to the Florida delegation enlisting their support for your bill.

Sincerely yours,

ROBERT L. SHEVIN,
*Attorney General of Florida.*

STATE OF FLORIDA

RESOLUTION

Whereas, the United States is increasingly dependent upon oil transported from foreign and domestic sources through an ever larger fleet of oil tankers; and

Whereas, the worldwide safety record of oil tankers is steadily worsening and recent oil tanker accidents have threatened the marine resources of the United States; and

Whereas, two deepwater ports are proposed to be established in the Gulf of Mexico off the coasts of Texas and Louisiana and supertankers en route to and from these deepwater ports will transit the coastal waters of the State of Florida; and

Whereas, Florida's coastline and coastal waters contain some of the State's most valuable and vulnerable resources, including its beautiful beaches and productive marine systems, all of which are dependent on pollution-free waters; and

Whereas, presently pending before the United States Congress are varying legislative proposals to minimize oil pollution incidents and provide compensation for losses due to such incidents; and

Whereas, S. 182, S. 682, and S. 893 impose minimum safety and navigational standards, including provisions for segregated ballast and manning requirements, which standards are necessary to protect Florida's vulnerable coastal waters and resources; and

Whereas, S. 182 and S. 898 create a Comprehensive Federal Oil Pollution Liability and Compensation Fund governing oil pollution liability and compensation; and

Whereas, S. 182 and S. 898 allow recovery for loss of income or earning capacity due to damages to natural resources without regard to ownership of such resources if the claimant derives a minimum percentage of income from activities which utilize such natural resources; and

Whereas, S. 182 and S. 898 allow payments to local and state governments for loss of tax revenues resulting from oil contamination; and

Whereas, S. 182 and S. 898, contrary to other pending legislation, do not preempt state laws imposing liability for or control over discharges of oil or toxic substances, and allow the administrator of the Compensation Fund to utilize state or local governmental services on a reimbursable basis to perform coastal protection functions, which provisions afford a coastal protection role to the Florida Department of Natural Resources' efforts to prevent and monitor oil spills under Chapter 376, Florida Statutes, and allow flexibility to the Florida Legislature to impose additional requirements or liabilities relative to oil polluting incidents.

Now, therefore, be it resolved that the Governor and Cabinet sitting as the Executive Board of the Department of Natural Resources:

1. Support the requirements for minimum equipment and navigational standards as contained in S. 182, S. 682, and S. 898 as essential to the protection of Florida's coastal resources.

2. Support the above concepts of S. 182 and S. 898 creating the Comprehensive Oil Pollution Liability and Compensation Fund which Fund and procedures afford relief from oil polluting incidents to Florida fishermen, others dependent on non-polluted marine resources, and local and state governments, and allow active participation in coastal protection from oil polluting incidents to be performed by the Florida Legislature and the Florida Department of Natural Resources.

3. Urge the support of these concepts by the Florida Congressional Delegation.

4. Direct that a copy of this Resolution be sent to each member of the Florida Congressional Delegation; to each member of the U.S. Senate Committee on Commerce, Science, and Transportation; and to each member of the U.S. House of Representatives Committee on Merchant Marine and Fisheries.

THE DEPARTMENT OF LAW,
*Atlanta, Ga., September 7, 1978.*

Re S. 2083—Oil Pollution Liability and Compensation Act of 1978.

Senator EDMUND S. MUSKIE,
*Chairman, Subcommittee on Environmental Pollution, Washington, D.C.*

DEAR SENATOR MUSKIE: I would like to thank you for providing me with a copy of S. 2083 and requesting my comments on same. The bill certainly appears to take into consideration the states' desire to enforce their own laws in this area, and to participate with the Federal government in the administration of the Oil Spill Liability Fund.

In particular, I speak of subsection 3(b) which authorizes a State to act on behalf of the public to recover damages for the injury, destruction or loss of the State's natural resources; subsection 5(6)(1) which authorizes the President to delegate to states with adequate programs operating under a cooperative agreement with the Federal government, the power to obligate money in the Liability Fund and to settle claims; and Section 7 which provides that the Act shall not be construed or interpreted so as to preempt any state "from imposing any additional liability or requirements with respect to the discharge of oil or hazardous substances within such State." This latter provision would appear to allow the states to collect civil penalties and bring civil actions for damages under its own laws in lieu of proceeding under the Federal Oil Pollution Act, if they so choose.

While this Act may very well preempt the states in the areas of limitations on liability and financial responsibility, it is, in my opinion, by far the best Federal oil pollution bill to be introduced in the Congress to date.

Sincerely,

ARTHUR K. BOLTON,
*Attorney General.*

COMMONWEALTH OF VIRGINIA,
*Richmond, Va., September 5, 1978.*

SENATOR EDMUND S. MUSKIE,
*Committee on Environment and Public Works, Washington, D.C.*

Re S. 2083

DEAR SENATOR MUSKIE: Thank you for your letter of August 29, regarding the Committee's recent action on the Oil Spill Liability Fund and Compensation Act of 1978. As you are aware, the Commonwealth has followed this legislation with great interest, and has appreciated your efforts to encourage the participation and comments of the coastal states. It is particularly gratifying to see that S. 2083, as reported by the Committee, is in substanital conformity with the views and comments we submitted during the Committee's deliberations. Among the most desirable features of the legislation, and one which the Commonwealth and other coastal States have strongly supported, is the disclaimer of preemption contained in Section 7 of the bill.

In comments submitted during the Committee's hearings on the legislation last April, Governor Dalton expressed several reasons for the importance of the non-preemption principle to the effectiveness of the federal-state partnership in dealing with oil spills. I will briefly recapitulate some of those reasons below:

1. Legislation preventing full recovery of cleanup costs and damages from those responsible might hamper State agencies, with scarce funds, in their efforts to perform their primary role in cleaning up smaller spills, and in assisting federal cleanup of larger spills. In Virginia's case, the ability to respond to spills depends on the maintenance of the Virginia Oil Spill Contingency Fund, which in turn is dependent on quick and full recovery of expended funds. While the federal "Superfund" will be of great benefit in this regard, the flexibility afforded by permitting the option of recovery under State law, particularly with regard to minor spills, will ensure, to the extent possible, the integrity of the State program.

2. Requiring claimants to recover costs and damages pursuant to federal law might work a considerable hardship on private claimants, who might find the federal fund remote and recovery expensive and confusing. Long delays in recovery might result if there are a number of claims against the federal fund, and claimants who have suffered damage or expended funds on cleanup may be seriously disadvantaged. Under Virginia law, private claimants may recover damages and cleanup costs in State court, based on strict liability. Under ascheme of federal preemption, all claimants would be forced to aggregate their claim for recovery against the responsible parties, up to the limits of liability, and then present a claim for the excess to the fund. State agencies and local governments would, of course, find themselves in the same position. This might prove to be a very difficult burden, for example, in the case of a waterman or a marina owner who might have to depend on quick recovery for the survival of his business.

3. State oil spill statutes providing for strict and full liability are intended to have a deterrent as well as a remedial purpose on the theory that they will encourage care on the part of those handling oil. The Commonwealth has a direct interest in regulation to protect and preserve its coastal and estuarine resources, and as one approach to regulation has chosen, pursuant to its police power, to make spillers strictly liable for damages and cleanup costs. Federal preemption would weaken or destroy the deterrent effect of State law, and protection of the State's coastal resources would depend in large part on the effectiveness of the Federal scheme as a deterrent.

Thank you again for this opportunity to comment on S. 2083. The efforts of the Committee to preserve the States' authority to regulate oil spills are strongly supported and deeply appreciated.

With kindest regards, I am

Very truly yours,

MARSHALL COLEMAN,
*Attorney General.*

STATE OF NORTH CAROLINA,
*Raleigh, N.C., September 8, 1978.*

Senator EDMUND J. MUSKIE,
*Subcommittee on Environmental Pollution, Washington, D.C.*

DEAR ED: This is to thank you for the opportunity to comment on Senate Bill 2083, the Oil Spill Liability Fund and Compensation Act of 1978, and to add my strong support to your efforts to secure approval of the disclaimer of preemption contained in Section 7 of the bill.

Currently the North Carolina Oil Pollution Control Act, N.C G.S. 143-215.75 et seq. provides for recovery by the state for cleanup costs and for damages to public resources from oil spills and we vigorously oppose federal preemption of state law in these matters for a number of reasons:

1. The various states' experiences with difficulties and delays in recovery against the Federal Water Pollution Control Act fund

testify to the problems inherent in a system whereby the states are required to petition the United States for cleanup and restoration expenditures. Various states have had to contend with delays and administrative difficulties in seeking to recover from that fund, only to discover that the fund was depleted.

2. The ramifications of being totally dependent on the United States for reimbursement for cleanup costs and resource damage and replacement include impairment of the state's abilities to act as guardian of its valuable natural resources. North Carolina currently may attempt to prove in court the value of its damaged resources on a theory of the state's choosing and it is critical to our ability to protect those resources that we maintain this enforcement option.

3. State and federal cooperation in the oil spill area is eminently desirable, but inasmuch as minor spills are more efficiently and promptly handled at the state level it is critical that the integrity of the state's enforcement program be preserved.

Your vigorous efforts to preserve the states' authority to regulate oil spills are noted and greatly appreciated.

With kindest personal regards I am

Very truly yours,

RUFUS L. EDMISTEN,
*Attorney General.*

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NATIONAL CONFERENCE OF STATE LEGISLATURES,
*September 7, 1978.*

Hon. EDMUND S. MUSKIE,
*Washington, D.C.*

DEAR SENATOR MUSKIE: The Senate will soon be voting on the "Oil Spill Liability Fund and Compensation Act of 1978" (S. 2083). As you know, the bill would establish a $200 million federal fund to pay for cleanup costs and damages resulting from spills of oil or other hazardous substances.

As the official representative of the nation's 7600 state legislators, the National Conference of State Legislatures is vitally interested in insuring that federal laws respect individual state's solutions to their own environmental problems. In almost a dozen states the legislatures have already established their own programs, liability limits and funds to cover clean-up costs and damages incurred as a result of oil spills.

Some of these states, including my home state of Oregon, have more demanding liability standards and requirements than those proposed in S. 2083. The rights of the states to apply stricter laws are specifically preserved in both the Clean Water Act and the Deepwater Port Act.

As S. 2083 is now written, the rights of states to establish their own liability standards and their own funds for clean-up costs and damages are preserved. The NCSL strongly supports this position and would be opposed to any efforts to establish a federal law preempting the states from determining their own programs, liability limits and funding mechanisms.

I thank you for your serious consideration of the NCSL position.

Sincerely,

JASON BOE, *President, NCSL.*

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
*Washington, D.C., September 6, 1978.*

Hon. EDMUND S. MUSKIE
*Chairman, Subcommittee on Environmental Pollution, Washington, D.C.*

DEAR SENATOR MUSKIE: I understand that the Senate will soon consider S. 2083, the Oil Spill Liability Fund and Compensation Act of 1978 which would establish a $200 million liability fund for clean-up costs and damages due to spills of oil or hazardous substances. This is legislation which interests many of our members.

Enclosed are copies of Resolutions adopted by this Association concerning state cleanup of oil spills and limits of liability which are forwarded to you for additional information.

Section 7 of S. 2083 as now drafted does not preempt the states' authority to impose additional liability and requirements for oil spills. We share the concern that the states should be able to have their own programs for control, containment, and removal of oil from state waters.

Thank you very much for your consideration of the views of this Association.

Sincerely yours,

C. RAYMOND MARVIN.

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RESOLUTION

OIL SPILLS—LIMITS OF LIABILITY AS ADOPTED AT THE 1977 ANNUAL MEETING

Whereas, existing federal legislation designed to assess liability and provide for cleanup of oil spills; namely, § 311 of the Federal Water Pollution Control Act Amendment of 1972, is inadequate in that it:

1. Provides units of liability which act as a disincentive to responsible parties to take precautions necessary to prevent spills from occurring, and, once they do occur, from undertaking effective containment, cleanup and removal; and

2. Fails to provide for compensation to public and private victims damages by oil spills; and

Whereas, while unlimited liability for cleanup costs, and damages from oil spills is most proper and desirable, it is recognized that the increase in limits of liability of legislation now pending in the United States Congress, albeit too small an increase, is better than no increase at all; and

Whereas, the states are burdened directly with the short and long term impact of oil spills upon their natural resources, economy and citizens, and thereby, have a vital interest in assessing liability, and assisting in the containment, cleanup and removal of spilled oil, and must have available to them every reasonable means of preventing or minimizing the consequences of such spills;

Now, therefore, be it resolved that the National Association of Attorneys General supports legislation now under consideration by the United States Congress which would increase the limits of liability for oil spills, establish a substantial fund from which cleanup costs and damages may be paid, and reserves to the states the right to proceed independently of the fund, and establish their own contingency funds to assist in containment, cleanup and removal of oil spills.

Be it further resolved, that the Washington Counsel of the National Association of Attorneys General is hereby requested to forward a copy of this resolution to the relevant personnel in the legislative and executive branches of the federal government, and to work with such personnel in an effort to effectuate the results advocated by this resolution.

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RESOLUTION—STATE CLEAN-UP OF OIL SPILLS AS ADOPTED AT THE 1977 ANNUAL MEETING

Whereas, legislation is now pending in Congress which would set up funds to pay for the clean-up of oil spills; and

Whereas, it is proposed that the President of the United States will be authorized to take immediate action to clean up such spills at the earliest possible time and in so doing draw upon the funds provided for this purpose; and

Whereas, the protection of coastal waters and costs of coastal states from environmental pollution is of grave concern to these coastal states;

Now, therefore, be it resolved by the National Association of Attorneys General that Congress consider legislation that would provide that once an oil spill occurs in or enters into a zone 3 miles from a state's coast the governor of the state, with the approval of the President, be authorized to take such emergency steps as may be necessary to accomplish the immediate clean-up of the oil spill so as to protect coastal waters and the coast of the state involved to the greatest possible extent, with reimbursement for costs incurred to be provided by the federal government's oil clean-up fund.●

● Mr. WALLOP. Mr. President, many times now I have advocated before this body the capability of States to control their internal affairs. I have often stated that the States are in the best position to know their unique needs and fashion solutions to their particular problems. States know best their geography, their economic base, and their individual strengths and weaknesses, and therefore, are usually in a superior position to mold public policy to address their needs. I do not retreat from that general principle. However, I am today departing from it in support of what I believe to be a justifiable exception to the no less viable general rule.

The bill now before us, S. 2083, seeks to provide a comprehensive Federal solution to the problems of cleanup and compensation of injured parties from catastrophic oil spills. The key word here is "comprehensive." For that is precisely what we need at this point. We, the Federal Government, and the States, do not need another layer of regulation to float on the top of the existing segmented schemes which we now have.

S. 2083, as it is before us, provides for the establishment of a fund which, while preempting existing Federal funds and the trans-Alaska pipeline fund, would duplicate funds which now exist in 11 States. If this bill is enacted in its present form, it will not be a "superfund" it will merely be a "another" fund.

The purpose of these funds are not to tie up capital, they are not to provide jobs for administrators, or to raise revenue for other governmental purposes. Their only purpose is to provide compensation for those injured by oil spills, and immediate removal and cleanup of spilled oil. An injured party is in no better position because he has two identical funds from which to draw. Yet the burden on the handlers of oil, and thus ultimately the consumer, is compounded by the existence of duplicative funds.

We are constantly reminded by some, of the needless administrative expense of operating duplicative Federal and State programs in many areas of concern.

While I oftentimes disagree with that contention, I do not here. The interstate movement and potential spillage of oil on the navigable waters and the contiguous zone has always been a matter of Federal concern. It is so because it is a matter of interstate or foreign commerce to be sure. But it is also a matter of national concern because water pollution, and particularly spills of oil and hazardous sub-

stances, do not respect State lines or even national boundaries.

Unless we can ascertain that there is a compelling reason to maintain individual State funds, after the creation of a national fund, they should be preempted so that our commerce is not nickeled and dimed to death. While I do not wish to criticize existing State systems, several examples from the testimony will serve to point out the degree of administrative expense which is inherent in maintaining any fund, and which would be multiplied by dual State and Federal funds for the same cleanup and compensation needs.

The State of Florida for instance has collected over $15 million since its fund was enacted 4 years ago. The fund's administrative expenses run almost $220,000 per year. Yet less than $12,000 has been spent on damage claims since 1974. Funds operated by the States of Maryland and Maine have both spent as much on administrative expenses as they have on cleanup costs.

The second area of concern is preemption of duplicative State oil spill liability laws. Maintenance of State liability laws will not benefit injured third parties since all claims recognized under the Federal law will be fully compensated by either the spiller or the fund. However, while there is no increased benefit, there is a very real danger that conflicting State and Federal laws on oil spill liability will increase delays and recovery and also increase the cost of litigation incurred by third party claimants.

To the extent that State and Federal oil spill liability schemes conflict, it will detract from the balance of burdens and benefits which this bill seeks to create. The handlers of oil are asked to give up a considerable amount in this bill. In addition to being required to contribute to the fund, they will lose almost all of their common law and statutatory defenses to claims for oil spill damages. In most cases, their liability will be increased. In return, proper oil spill liability legislation should provide a uniform system of liability assessments and a comprehensive, efficient procedure for the settlement of claims. Without preemption, we do not accomplish this goal.

To preempt funds and not likewise preempt separate State liability schemes may in practice be unenforceable. If we were to estabilsh such a system, a State might subject a spiller to unlimited liability for third party damages, yet that State would not be empowered to require proof of financial responsibility necessary to meet that liability. Preemption need not prevent a State from engaging in any cleanup operations, prepositioning of equipment, or pollution research and development. States could be free to levy penalties on polluters who violate their laws.

It is important to note that if there is an economic loss which is not covered under this act, States could be free to provide remedies to insure that their citizens are adequately protected. Let me emphasize that. If there are special circumstances in any State which warrant that additional economic losses should be protected against, States could still be free to enter the field, they need not be preempted.

However, States should be preempted from increasing or decreasing the liability limits provided for in the act. This in no way need affect the level of recovery of any third party. The only issue is who pays, the spiller or the fund. With a comprehensive Federal fund, and in an issue of clear national concern, this should be controlled by Federal law.

Mr. President, while I am generally loathe to suggest preemption, I truly believe it is desirable if we are to have a comprehensive nationwide oil pollution liability and compensation system. Without preemption, this bill may not solve the chaos of State and Federal laws on this subject which we now have; it may only add to them. I hope that as we attempt to resolve our differences with the House, we seriously consider adopting some manner of preemption.●

● Mr. BIDEN. Mr. President, I strongly support the adoption of S. 2083, the Oil Pollution Liability and Compensation Act of 1978. The need for such legislation has become increasingly apparent in recent years. I particularly want to commend Senator MUSKIE, chairman of the Environmental Pollution Subcommittee, with whom I sponsored the original comprehensive oil pollution liability bill, for his efforts in bringing this bill to its present point. Passage of this legislation will achieve most of the financial protection against the costs of oil spills that we originally sought.

One of my goals since coming to the Senate has been to get a comprehensive law that would establish financial responsibility for oil and other spills and assure payment of compensation for damages and cleanup costs resulting from them.

The first steps toward tightening the law were taken last fall when the Congress passed the Clean Water Act, which included such important features as increases in the level of liability; extension of the waters covered by the law; and inclusion of damages to natural resources as a part of the cost of cleanup and restoration.

This latest oil pollution liability legislation that the Senate has adopted will add significantly to the protection of the existing Clean Water Act, bringing it close to the standards I envisioned in my 1975 legislation. Among the important features of the bill are:

A $200-million oil pollution liability and compensation fund, financed by a 3-cent tax per barrel of crude oil transported. This fund would assure that all cleanup costs and damage above the limits of liability of any carrier and pay claims when there is delay or where the responsible party cannot be identified or otherwise escapes liability.

An increase in the liability of shippers of crude oil from $150 per gross vessel ton to $300 per gross ton.

Of equal importance, especially to my State of Delaware, a provision for unlimited liability for cleanup costs plus up to $50 million in damages for facilities located on the Outer Continental Shelf.

An enlargement of the definition of damages to include injury to, destruction of or loss of use of real or personal property; loss of profits or income or impairment of earning capacity; and loss of revenues by Federal, State, or local governments.

The retention by States of authority to establishing more strict requirements than Federal standards.

The House of Representatives has already passed an oil spill liability bill. With timely action by the Senate, it may now be possible to secure enactment of a comprehensive bill this year. On a worldwide scale, the break up of the *Amoco Cadiz* off the shores of Brittany has demonstrated again—as if we needed such demonstration—the frightful consequences we face from the increased transportation of more and more oil across the oceans. It has just recently been reported that the French Government expects cleanup costs from this one spill to exceed $100 million, clear evidence of the need for legislation of this nature.

Mr. President, closer to home, activity is already underway in the OCS lands of the Baltimore Canyon to drill for oil, raising possible new hazards for those who enjoy our beaches or depend upon marine resources for a living. Exploratory drilling in the Baltimore Canyon started in March of this year and has rapidly escalated. A May 1977 issue of "OCS Updates" published by the College of Marine Studies at the University of Delaware, commented in an article on "Stricter Rules for Offshore Drilling" as follows:

> The new regulations should benefit Delaware and other states near the Baltimore Canyon. In 1976, the Office of Technology Assessment estimated that on the basis of statistics for production in the Gulf of Mexico, as many as 18 oil spills totaling 40,000 barrels could occur during the expected 30 years of drilling activity in the Baltimore Canyon. The increased vigilance required by the new USGS regulations should make this estimate overly pessimistic.

It is good to know that regulations governing offshore drilling are being tightened and should reduce the danger of spills. But even if the 18 spills predicted by the Office of Technology Assessment can be reduced, we must be prepared to meet whatever spills remain. This requires legislation that will pay for cleaning up spills and will pay damages to the individuals who depend on the sea for a living and restore areas that are damaged. Particularly in this Baltimore Canyon area where so many States share a common offshore area, only a Federal liability fund and Federal regulations will assure maximum protection, even though each State should be able to increase the level of protection.

Unfortunately, in Delaware, offshore drilling is not all we have to worry about. It is reported by the College of Marine Sciences at the University of Delaware that the seven major refineries along the Delaware River need almost a million barrels of oil each day for their operations. All of this must travel in ships sailing through the Delaware Bay and along the Delaware River. Despite a relatively

good safety record, we have had spills before. Unfortunately, no matter what our precautions, we will have them again. There too, the urgent need is protection against a major disaster. An oil spill liability fund and higher liability limits like those in this bill can offer a large measure of such protection.

The specter of oil-washed shores, devastated fish and wildlife resources, and polluted waters is another one of the terrible consequences we endure as a result of our Nation's dependence on petroleum supplies. Yet, while our dependence on this resource has developed over the last century, our appreciation for the problems of preventing and containing oil pollution from the various operations by which we receive our supplies is a relatively recent event. However, with passage of this legislation, real progress will have been made.

Mr. President, it is rewarding to see the work of the past few years about to bear fruit. I am optimistic that we may achieve more than I had dared to hope when I introduced my bill in 1975. No law is ever static and change will surely be needed in the future. However, it appears that an excellent beginning is about to be made.●

Mr. HOLLINGS. I move adoption of the amendment proposed by the Committee on Environment and Public Works.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

Mr. HOLLINGS. Mr. President, I move adoption of the bill.

The PRESIDING OFFICER. If there be no further amendment to be offered, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third meeting and was read the third time.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that H.R. 6803 be discharged from the Committee on Environment and Public Works and Commerce, Science, and Transportation, and that the Senate proceed to the immediate consideration of that bill.

The PRESIDING OFFICER. Without objection, the bill will be stated by title.

The legislative clerk read as follows:

A bill to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes.

Mr. HOLLINGS. Mr. President, I move to strike all after the enacting clause of H.R. 6803 and substitute therefor the text of S. 2083 as amended by the Senate and that the title of H.R. 6803 be amended with the amendment to the title of S. 2083.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Carolina.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 6803) was passed.

The title was amended so as to read:

A bill to provide for compensation for damages and cleanup costs caused by discharges of oil and hazardous substances, to establish a liability fund, and for other purposes.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that S. 2083 be indefinitely postponed.

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

Mr. HOLLINGS. I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

## NORTH PACIFIC FISHERIES ACT

The PRESIDING OFFICER. What is the pleasure of the Senate.

Mr. BAKER. Mr. President, I ask unanimous consent that it be in order to call up a bill on behalf of Mr. STEVENS, to make technical corrections in the North Pacific Fisheries Act of 1954.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 3551) to make technical corrections in the North Pacific Fisheries Act of 1954.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second times and that the Senate proceeded to its immediate consideration, that it be considered as having been read the third time and passed and the motion to reconsider laid on the table.

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

The bill was passed as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the North Pacific Fisheries Act of 1954 (16 U.S.C. 1021 et seq. is amended as follows:

(1) Paragraph (2) of subsection (b) of Section 11 is amended by striking out the word "subsection"; and

(2) Paragraph (3) of subsection (a) of Section 14 is amended by striking out the period and inserting in lieu thereof a semicolon.

## ORDER FOR RECOGNITION OF SENATOR GRAVEL TO CALL UP CONFERENCE REPORT ON H.R. 2329 AND FOR RECESS TO 8:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. GRAVEL be recognized shortly to call up a conference report on H.R. 2329, the Fish and Wildlife Administration Improvement Act, that there be a time limitation of 10 minutes thereon, overall, and that upon the disposition of that conference report and the motion to reconsider is tabled, if no Senator seeks recognition, the Senate stand in recess until the hour of 8:30 tomorrow morning.

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

## FISH AND WILDLIFE IMPROVEMENT ACT OF 1978—CONFERENCE REPORT

Mr. GRAVEL. Mr. President, I submit a report of the committee of conference on H.R. 2329 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2329) to improve the administration of fish and wildlife programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the proceedings of the House of Representatives.)

Mr. GRAVEL. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. GRAVEL. Mr. President, I move that the Senate concur in the Senate amendment No. 32 in disagreement with the House, with amendments, as follows, and I send that to the desk.

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. ROBERT C. BYRD. 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. ROBERT C. BYRD subsequently said: Mr. President, I ask unanimous consent that the order for the calling up of the conference report on H.R. 2329 this evening be vitiated and that any action taken thereon be vitiated.

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

## PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the first vote tomorrow that is scheduled will occur at 10 a.m., on the extension of the ERA. Conceivably, a vote could occur prior to that time on getting Senators in, but I do not foresee that, because the time between 8:30 and 9 will be consumed by the orders for the recognition of Senators.

So the rollcall vote, so far as I can see, will be at 10 a.m. on the ERA extension.

The next rollcall vote should occur about 11:15 a.m., and that will be on the adoption of the Roth amendment to the tax bill. That will be an up or down vote; it will be a rollcall vote.

Rollcall votes will occur throughout the day tomorrow. I should think that it

would be a long session tomorrow. I hope that considerable progress can be made in relation to the tax bill.

The Senate will be in on Saturday and will continue with work on the tax bill, and there will be rollcall votes. I do not anticipate that it will be a short day, because much work has yet to be done on the tax bill, and the leadership still hopes that Congress can adjourn sine die by the close of business the following Saturday, October 14. However, this will depend upon final enactment of the tax bill and conference reports on energy, and so forth.

## SENATOR EAGLETON'S ABSENCE

Mr. ROBERT C. BYRD. Mr. President, following the vote on the Garn amendment on Wednesday, I commented for the RECORD on the reasons for Senator EAGLETON's absence. Due to a printing error, however, my remarks did not appear adjacent to the vote in the RECORD. Thus, I would like to repeat my comments at this time.

Senator EAGLETON was necessarily absent on official business on Wednesday, because he was in Rome representing the Senate at the funeral of Pope John Paul. Senator EAGLETON accepted this assignment only after considering the business before the Senate, and determining that his absence was not likely to affect the outcome of any key votes. I was pleased that the Senate was able to show its respect and affection for the late Pope by sending as its representative a gentleman of Senator EAGLETON's ability and stature.

I inquired of Mr. EAGLETON if he would go. I felt that someone ought to go representing the Senate.

Ordinarily, the explanation of Senator EAGLETON's absence would merit no further comment.

However, in this particular instance, I would like to add a few more words. Following the vote on the Garn amendment, it was suggested in some press accounts that Senator EAGLETON was dispatched to Rome at the behest of ERA supporters who did not like Senator EAGLETON's views on rescission. Mr. President, I regard such an insinuation as demeaning to the Senate as a whole, and to Senator EAGLETON and myself personally. As the Senator who, with the President, selected Senator EAGLETON for this assignment, I can state categorically that his views on the ERA issue had nothing to do with my choice. I asked Senator EAGLETON to undertake this mission solely because I felt he would most ably represent the Senate, and I am sure my colleagues would join me in expressing gratitude to Senator EAGLETON for accepting this task, and in sensing a feeling of umbrage that such an account would appear in the press in an effort to explain his absence.

I just want to say for the RECORD that the press account was totally in error. It did a disservice to Senator EAGLETON and to the Senate.

## RECESS UNTIL 8:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 8:30 a.m. tomorrow.

The motion was agreed to; and at 8:34 p.m. the Senate recessed until tomorrow, Friday, October 6, 1978, at 8:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate October 5, 1978:

DEPARTMENT OF STATE

Richard A. Ericson, Jr., of California, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Iceland.

Samuel Rhea Gammon, of Texas, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

# EXTENSIONS OF REMARKS

## DONT BLAME THE RABBIT

### HON. STEVEN D. SYMMS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, October 4, 1978*

● Mr. SYMMS. Mr. Speaker, the September issue of New Guard, published by Young Americans for Freedom, contains an article by Greg Gegenheimer, of Austin, Tex., on the subject of inflation, the decline of the dollar abroad, and some of the root causes of these problems. In the article Greg makes the point that blaming wage earners for higher price levels is like blaming the rabbit for a positive pregnancy test. I might add that the same analogy could be said for the rising gold price and the decline of the dollar relative to hard currencies such as the Swiss Franc.

I commend this article to my colleagues in Congress:

DON'T BLAME THE RABBIT

(By Greg Gegenheimer)

The newest figures released by the Labor Department show inflation running at a whopping 11 percent. Other indices measure the rate at closer to 16 percent. And to compound this bad news, all indicators show the rate of inflation—whatever its exact number—is accelerating such that if the upward pressure on prices is not checked, we may face a rate of 20 percent by the end of the year.

Mr. Carter's solution is to ask labor and management to hold down their demands for wages and prices. The President's program is the moral equivalent of a WIN button. He acts as if inflation were somehow *our* fault. Well, contrary to the myth the Administration is trying to foster, inflation is not caused by avaricious businessmen or extortionist labor unions. Higher prices and wages are a symptom of inflation, not the cause. And people can hardly be blamed for trying to protect themselves from the declining value of the dollar. Blaming wage earners for a higher price level is like blaming the rabbit for a positive pregnancy test. He is the victim, not the culprit.

In reality there are two major causes for the rise in the Consumer Price Index; and inflation, as economists use the term, is only one part of the problem. The other is the massive increase in regulatory costs that business has incurred within the last few years. These costs, just like the cost of labor or machinery, must be passed along to the consumer in the form of higher commodity prices. The Environmental Protection Agency alone estimates that industry will require $112 billion in capital investment over the decade ending in 1981 for anti-pollution equipment. An additional $100 billion will be required for operational costs.

Now one might well argue that the benefits we derive from cleaner air and water are worth this extra cost. But it is patent nonsense to pretend that these added expenses are not a significant component in the cost of production and thereby the rise in prices. We may anticipate with complete certainty that as the regulatory role of government increases, prices will increase and the responsibility lies with neither labor nor management. It lies with government.

But Mr. Carter's concern seems to lie more with inflation per se, and here is rhetoric is even more deceptive. Only the central government can cause or cure inflation. Mr. Carter and certainly Secretary Blumenthal know this, and their effort to shift the responsibility constitutes the most perfidious kind of demogogery. Inflation is caused by the money supply increasing at a faster rate than the supply of goods and services. And the White House, along with a big-spending Democratic Congress, holds the major responsibility for the increase in the money supply.

When Congress and the President plan to spend billions of dollars more than they take in, that money has to come from somewhere. Typically it is created when Federal Reserve Banks buy government bonds. This operation is the closest thing to magic we have in modern America. By buying Treasury bonds, the Fed simply opens up a checking account for the government in the amount of the bond purchase. Thus by purchasing one billion dollars worth of bonds the Fed *creates*, on the first round, one billion dollars for Mr. Carter and Congress to spend. When that bond becomes due, there is no problem; the Fed simply purchases another bond and with that money, the government retires the first one. Try getting that from a labor union or a board of directors.

This process in itself is not bad. We want the supply of money to increase, otherwise we have deflation, unemployment, depression, and probably revolution. However, if the supply of money increases faster than the stock of goods and services within the system, the value of those plentiful dollars goes down and it takes more pieces of paper to buy the same quantity of goods. That is how we get inflation and business and labor have no more control over the supply of money than ducks do over rain.

But after examining President Carter's record and his plans for the future, we can