MAY 9

10:00 a.m.
Appropriations
Interior Subcommittee
To continue hearings on proposed budget estimates for fiscal year 1980 for the Department of Energy.
1223 Dirksen Building

MAY 10

10:00 a.m.
Appropriations
Interior Subcommittee
To continue hearings on proposed budget estimates for fiscal year 1980 for the Department of Energy.
1223 Dirksen Building

Appropriations
Transportation Subcommittee
To resume hearings on proposed budget estimates for fiscal year 1980 for the Department of Transportation.
1224 Dirksen Building

MAY 17

10:00 a.m.
Appropriations
Transportation Subcommittee
To resume hearings on proposed budget estimates for fiscal year 1980 for the Department of Transportation.
1224 Dirksen Building

2:00 p.m.
Appropriations
Transportation Subcommittee
To continue hearings on proposed budget estimates for fiscal year 1980 for the Department of Transportation.
1224 Dirksen Building

SENATE—*Thursday, March 8, 1979*

(Legislative day of Thursday, February 22, 1979)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

PRAYER

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

Draw nigh to God and He will draw nigh to you.—James 4: 8.

Most holy Father, we turn from the tumult of the world without, from the pressure of daily duties, from the contentions of debate, from the confusion of many voices to hear again Thy "still small voice." Shed Thy light and Thy truth upon us. Teach us the Lenten lesson that Friday and Calvary precede Easter morning and the open tomb. Give us the grace and the power to triumph in temptation and to turn suffering into a testimony and rise to new life with Thee. Bless all who labor in this place. Bless the Nation we serve and make it a blessing to the whole world.

And to Thee shall be the praise. 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. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 8, 1979.

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.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

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.

ORDER FOR RECESS UNTIL 10 A.M. 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 10 o'clock tomorrow morning.

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

ORDER FOR RECESS FROM FRIDAY TO MONDAY, MARCH 12, 1979, AT 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate convenes on Monday, it convene, following a recess, at the hour of 11 a.m. This can be changed, of course.

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

Mr. ROBERT C. BYRD. Mr. President, I withhold the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

POLL ON CRIME AND FIREARMS

Mr. STEVENS. Mr. President, this morning we will be announcing the results of the national poll which has been taken to measure attitudes on crime and firearms. This poll shows that the majority of the American public view "swift, sure, and strict punishment as the most effective way to fight crime," and see gun control laws as inherently ineffective in deterring criminal use of firearms.

This poll was conducted by Decision-making Information of Santa Ana, Calif., and commissioned by the NRA Institute for Legislative Action. The DMI research was based on a scientifically selected sample of registered voters in 1,500 in-home interviews taken during May and June of 1978 and in 1,010 telephone interviews in December. I think it is one of the most comprehensive studies yet compiled on the American attitude on crime, firearms ownership, and firearms control.

In researching the public's attitudes and perceptions of the causes and solutions for crime, DMI has shattered some major misconceptions on firearms control and has revealed new insights which should prove invaluable to Congress and especially to State legislatures in dealing with crime.

The DMI research shows that among the American electorate:

Eighty-eight percent of registered voters believe that they have an individual right to keep and bear arms.

Gun ownership was acknowledged in 47 percent of voters' households, projected to 45 million gun owners with 23 percent of the total sample having one or more handguns in the home. In 14 percent of all voters' households, or 13 million households, a gun had been used in defense of self, family, or property. With many voters having a direct experience with firearms for self-defense, DMI finds that 83 percent feel "most people who have guns in their home feel safer because of it."

Crime is perceived as an increasing threat in the coming decade with the most feared crimes being crimes of violence committed by criminals, especially murder in the course of another crime and robbery/mugging. So-called crimes of passion—murder by a relative or friend—are of little concern, ranking with white collar crimes of fraud, embezzlement/forgery.

Ninety-three percent favor strict mandatory penalties for criminal use of firearms in commission of crime. According to DMI:

> The electorate clearly sees steps to increase or hasten the punishment suffered by criminals, especially violent criminals, as the best way to fight crime.

In an open-ended question on the best means to fight crime, only 1 percent suggested gun controls. DMI says that since its 1975 survey:

> Gun control has dropped almost completely out of the public mind, it does not spontaneously occur to voters as an anti-crime measure.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

In estimating the effectiveness of 17 anticrime measures, DMI finds by far the most highly rated are those involving increased punishment for convicted criminals. Of the gun proposals on that list, according to DMI:

The more severe the restrictions placed on gun ownership, the less effective such measures are judged to be.

Fifty-four percent see no need for more laws governing the possession and use of firearms.

Fifty-seven percent feel that more gun control laws would fail to reduce crime.

The American electorate opposes many specific laws proposed by "gun control" advocates; according to DMI:

Eighty-three percent oppose a ban on handguns. Seventy-two percent believe that domestic shootings do not justify a handgun ban. Over 80 percent reject the arguments that banning handguns would prevent assassination attempts on public officials.

Eighty-eight percent agree that "registration of handguns will not prevent criminals from acquiring or using them for illegal purposes," and 61 percent oppose the Federal Government spending massive sums for a registration system. Furthermore, DMI finds that:

Seventy-one percent would be concerned about the loss of privacy entailed in computerized files virtually inherent in a nationwide registration system.

Fifty-one percent feel that national gun registration might well lead to confiscation.

The general consensus of the DMI survey finds that while most Americans see crime as worsening, they do not view gun restrictions as effective measures for Government to institute in fighting crime. Above all else, the DMI findings conclude that:

Clearly, a majority of the American people want government to focus on tougher treatment of criminals before trying new social engineering as the treatment of crime.

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

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SPECIAL ORDER

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

A PRESIDENTIAL SCORECARD

Mr. EAGLETON. Mr. President, Winston Churchill made an astute comparison between the fortunes of politics and the misfortunes of war. He said:

Politics are almost as exciting as war, and quite as dangerous. In war you can only be killed once, but in politics many times.

President Carter has been to war in the polls lately, and everyone from the public to the pundits is keeping a running balance sheet on his performance. A poll done by CBS and the New York Times at the end of February shows that only 30 percent of the American public approve of President Carter's foreign policy. Yet, 63 percent would not approve of the use of American troops under any circumstances excepting an attack on the United States.

There is an irony in these statistics. Everyone wants muscle, but no one wants might. The message seems to be "talk loudly, but throw away the stick." Although people disapprove of the overall foreign policy, the truth is that the American people have had their fill of foreign intervention. The last time we tried that it failed miserably, and we have spent the 5 years since binding our wounds at home.

Within the past year, nearly every continent on Earth has experienced some kind of turmoil. We were blindsided in Iran as that country evolved from 25 years of absolute monarchy under the Shah to an Islamic republic under the ayatollah. No sooner did that upheaval begin to register than Southeast Asia erupted. First Cambodia, then Vietnam. Then from Indochina to Afghanistan. Finally, as if to aggravate the already open wounds, President Carter traveled to Mexico at the invitation of President Lopez Portillo only to be met with strong — occasionally insulting — language.

It may be a lean time for foreign policy, Mr. President, but it is fat city for the pundits. Their business is thriving. Our foreign policy problems have engendered rare harmony between such disparate commentators as William Buckley and Joseph Kraft. Mr. Buckley believes that President Carter's "difficulties are organic." Mr. Kraft suggests that President Carter "has lost control of events in ways that permit, even promote, highly dangerous confrontations."

What has created the perception that the President is too soft in his foreign policy? How much is illusion? How much is reality? I am sure that Mr. Buckley and Mr. Kraft arrived at their conclusions via entirely different analytical routes. After reviewing the gamut of press accounts, I have decided to draw my own chart of President Carter's performance. My list contains eight items which I would like to mention briefly.

IRAN

First is Iran, where the administration earned failing marks.

Our perception of Iran for the past 25 years has been one-dimensional. We put the Shah on the throne in 1953 and, since that time, enjoyed an exclusive relationship with him. We almost totally disregarded the growing dissent in almost every segment of Iranian society. We took the Shah at his word when—as late as last fall—he assured us that he was firmly in control and there was no need for concern.

President Carter cannot be wholly faulted for the turn of events in Iran. Substantial discredit also must be given to President Nixon and his Secretary of State, Henry Kissinger. The Nixon administration was so eager to nurture our cozy relationship with the Shah that they encouraged his visions of empire by assuring him virtually any advanced U.S. weapon system he fancied. Hindsight bears out the shortsightedness of that policy. Now our Government must live with the uncertain future of the sophisticated weapons the Shah purchased from us. Henry Kissinger and George Ball recently exchanged sharp views on Iran in consecutive issues of the Economist. In response to Kissinger's theory that Iran's fall can be attributed to the combination of the Shah's modernization program and Jimmy Carter's human rights campaign, George Ball responded:

Prior to [Nixon and Kissinger's] 1972 act of folly, our government had prudently kept a tight rein on the Shah's obsession with elegant weapons. During the 22 years from 1950 through 1971 we had limited our aggregate military sales to Iran to only $1.2 billion, but during the brief span of seven years after Nixon's reckless decision, our aggregate military sales vaulted to almost 16 times that amount—or $19.5 billion.

With such spectacular instruments of power under his control, how could the Shah avoid delusions of grandeur? No wonder he stopped predicting that he would lead Iran to a European standard of living . . . Now he boasted that he would make his country the fifth most powerful in the world, even overtaking West Germany—and that Allah was supporting him in that objective.

Robert Graham, a former Financial Times correspondent in Tehran, has written a comprehensive study of the situation in Iran, with particular emphasis on the impact of the enormous increase in oil revenues on Iran between 1973 and 1977. Graham points out the tragic misuse of these oil dollars as they were funneled into building up the Shah's arsenal at the expense of pressing social needs. He also faults the West for its naivete in turning a blind eye to the Shah's use of repression and military might as tools of his modernization program.

The Carter administration erred in allowing the Nixon-Kissinger carte blanche policy to continue unchecked. Whatever the Shah asked for, he got. In November 1977, during a visit to the United States, the Shah handed in a $9 billion wish list. A portion of that list was actually ordered—2 destroyers, 55 F-16's, and more than 600 missiles. Now we are left holding the bag, and the Pentagon wants Congress to bail out our defense contractors and pick up the tab.

In response to the question, "Who lost Iran?", the point has been made aptly that Iran was never ours to lose. The bottom line is that we had no control over the events which toppled the Shah. The movement which brought the ayatollah to power is part of a larger Islamic movement which is currently experiencing a resurgence through the Moslem world. It is most noticeable in Iran, but ripples are being felt elsewhere in the Near East. We could not control this movement any more than we could control any other religious movement. Our failure in Iran was one of omission, not of commission. By putting all of our money on the Shah, we put ourselves out of touch with other elements in Iranian politics, and, therefore had no warning of what was to come.

The Carter administration—following the pattern of the two previous administrations—was sadly shortsighted in believing that the Shah could absorb the sophisticated weaponry we were selling him. And both the United States and the Shah were grievously mistaken to think that, in the end, those weapons could prevent the inevitable.

On the positive side, President Carter deserves praise for the skillful way in which he handled the evacuation of some 35,000 Americans from Iran, as well as for his use of quiet diplomacy to secure the release of Sgt. Larry Kraus, the marine guard who was held in prison in Tehran by Khomeini forces. The decision to pursue the release of Sergeant Kraus through diplomatic channels rather than by use of force paid dividends after 3 or 4 days of negotiations. The risk of another *Mayaguez* situation—in which 41 American lives were lost to save 39 lives—was too great, and I give the President and his advisers high marks for avoiding such a situation.

AFGHANISTAN

The tragic murder of Ambassador Adolph Dubs in Afghanistan is one event—sadly—over which we had no advance control. This does not make it any less a tragedy, but we must realize the near impossibility of protecting celebrities from terrorists. Over the past 9 years, the United States has lost five ambassadors in service. The assassination of Aldo Moro last year is another example of the sheer unpredictability of such events.

President Carter's actions in the aftermath of this tragedy were as strong as could be expected under the circumstances. The administration conveyed to the Soviet Union in strong terms its unequivocal condemnation of Soviet participation in the assassination. The administration has also recommended a $12 million cut (from $15 to $3 million) in this year's proposed aid to Afghanistan. Both actions, in my opinion, indicate a position of strength, not of weakness.

MEXICO

As far as the President's trip to Mexico is concerned, little needs to be said. The President travelled to Mexico as the invited guest of President Lopez Portillo. He did not travel that distance to be lectured by the President of Mexico. While I admire President Carter for his grace under pressure, I feel that the occasion warranted a somewhat more pointed response than that given.

SOUTHEAST ASIA

There is simply no way the United States—anymore than the Soviet Union—could have done anything to prevent the Chinese invasion of Vietnam. That conflict long predates even the existence of the United States. Under the circumstances, the administration's protests and admonitions to the People's Republic to end the fighting and withdraw seem to me to be the only option we had, not to mention the wisest. It appears that the moderation exercised by the administration has paid off and, if we can believe current reports—including those of this morning—it looks as though the Chinese are in the process of withdrawal.

CHINA

Normalization with the People's Republic of China is a big plus on the Carter scoreboard. The only problem—and this too predates the Carter administration—is that it is about 30 years too late. Since 1949, we have indulged ourselves in the diplomatic fiction that the People's Republic did not exist. Normalization is a step that should have been taken long ago.

MIDDLE EAST

Of course, it is too early to make predictions on the outcome of President Carter's trip to the Middle East. I, for one, continue to believe that Camp David will bear fruit. And it should be noted, Mr. President, that no President of the United States has devoted more of his personal time, interest, and attention or has risked more of his political future than has Mr. Carter in his attempt to bring peace and stability to the troubled Middle East.

SAUDI ARABIA

There is a tendency to read monumental importance into every international action and reaction. The Saudis' decision to cancel Prince Fahd's scheduled visit to the United States is not the grave issue some reports painted it to be. Fahd has ample reason to stay home with a border conflict raging between South Yemen and Yemen. There will be an appropriate time for a Saudi visit, whether now or later.

One problem with sagging polls is that they occasionally cause the subject of the poll to look for ways to demonstrate strength. The recent F-15 fly-in to Saudi Arabia was just such a project, and, from what I understand, it was considerably less successful than anticipated. For all our expense, there is little indication that the Saudis either wanted or appreciated the gesture.

SALT II

The long and painstaking negotiations on the second round of SALT are a credit to this and previous administrations. Current polls reflect the highest public support yet for a SALT II treaty. I think one of them indicated an 81 percent support rate. Such a treaty is in the best interests of the United States, the Soviet Union and the entire world. If the administration can present the Senate with a balanced and verifiable treaty, I believe it should be ratified.

Mr. President, I respectfully submit this scorecard on President Carter's foreign policy to the scrutiny of my colleagues. I do not support every foreign policy decision made by this administration, but I do find reasons to commend the President for his evenhandedness in the midst of crisis.

Critics who claim that President Carter is categorically weak overlook the fact that not a single American life has been lost in combat during the Carter administration. Not a single American troop has been dispatched to a combat situation during this administration.

Most of the criticism of the President is unfocused. It demands more style, with little suggestion for substance. The question that must be pondered is how we, as a world leader, can best exert our influence and aid the cause of world peace.

It is simplistic to seek an overall pattern in foreign policy. It is equally simplistic to blame the President of the United States for situations he is powerless to control. In Iran, for example, we have acknowledged an intelligence failure on our part. But there was no way we could shape or direct the Islamic movement that now is surfacing in parts of the Moslem world. In Afghanistan, there was simply no way we could have prevented the tragic act that took the life of a fine American public servant. In Vietnam, we were powerless to prevent a conflict which has its roots in a centuries-old hostility between that country and China.

We no longer live in a world where, because of our power and might, we can do damn well whatever we please. We are not the only tough guy on the block. But that does not mean we should become impotent. We should resolve to demonstrate our strength in ways that avoid armed conflict, in ways that make maximum use of diplomacy, in ways which turn an existing situation to our best advantage.

Of course, we are not entirely without fault in setting into motion certain recent international events. Cambodia. Iran. Vietnam. Each of these conflicts has the mark of the United States on it somewhere along the line. To profess detachment is to practice selfdeception. Who can deny that in some way our military role in Cambodia—our blind support of the Shah—our prolonged involvement in Vietnam contributed to the current line-up of world events.

But we must not be hostage to our past blunders. We must learn from them. If anything, we have learned that we have an obligation to the world to exercise our policies with responsibility and integrity. In the words of columnist Anthony Lewis:

> This is a difficult world, in which the United States cannot push a button and have its way. And it would be wise to note that bluster requires less courage than do patience and restraint.

In a recent speech to members of the media, President Carter said:

> The United States continues to be the most powerful nation on earth—militarily, economically and politically. I am committed to preserving and even enhancing that power. We will make responsible use of that power where our interests are directly involved . . . I hope that need will never arise.

Finally, Mr. President, in this age of political uncertainty around the world and nuclear overload among the great powers, we are fortunate to have a leader who is dedicated to the principle of reasoned restraint rather than to the practice of blustering retaliation.

I yield back the remainder of my time.

SPECIAL ORDER

The PRESIDING OFFICER (Mr. BOREN). Under the previous order, the

Senator from Pennsylvania (Mr. HEINZ) is recognized for not to exceed 15 minutes.

SENATE CONCURRENT RESOLUTION 10—SUBMISSION OF A CONCURRENT RESOLUTION TO AUTHORIZE THE WEARING OF THE MAROON (OR RED) BERET BY ARMY AIRBORNE UNITS

Mr. HEINZ (for himself, Mr. LEVIN, Mr. GOLDWATER, Mr. JEPSEN, and Mr. DURENBERGER) submitted the following concurrent resolution, which was referred to the Committee on Armed Services:

S. CON. RES. 10

Whereas, our Airborne is an elite corps, feared by our foes and admired by our friends, whose members are imbued with the highest dedication to serving their country;

Whereas, esprit in a military unit is an irreplaceable force—delicate, intangible and bonding—which can only be developed over time, and which lends significant distinction and morale to our fighting units;

Whereas, history has shown that in times of crisis and challenge those who can call on a special reserve of spirit will prevail;

Whereas, the Maroon Beret, being an acknowledged symbol of the Airborne, has helped build this unit's esprit and ability.

Whereas, a lessening of morale and esprit can result in a blow to military discipline and effectiveness;

Whereas, prohibiting the Airborne from wearing the familiar Maroon Beret will undoubtably injure the morale of active members of the unit, as well as affront the pride and esprit of those veterans who served valiantly in the past;

Whereas the special forces of other services branches have not banned the use of distinctive headgear for their members;

Whereas the U.S. Army has authorized two elite units to wear distinctively colored berets which have become symbols of their skills and missions;

Whereas the Maroon Beret is a privilege for which the Airbrone troopers pay themselves, so that this ban effects no cost savings for the U.S. Army;

Whereas the Maroon Beret in no way demeans the regular authorized uniform of the Airborne, nor does it impede the troopers' ability to do their jobs;

Whereas the ban takes away a privilege the Airborne members have earned through their special training, unique missions and notable patriotism, its impact is particularly negative on the morale of Airborne members;

Whereas the symbolic gesture of authorizing the wearing of the Maroon Beret for Airborne members to continue would have significant impact in terms of building morale and encouraging discipline at a time when our military strength is being challenged and the effectiveness of our military forces is being seriously questioned;

Therefore, be it resolved that it is the sense of the Senate (The House of Representatives concurring) that it strongly opposes the ban on the U.S. Army Airborne wearing the Maroon Beret, which has become a recognized symbol of the valor and patriotism of its members, and that it urges the Secretary of the Army to reinstate the Maroon Beret as the accepted and distinctive headgear of the Airborne Unit immediately.

Mr. HEINZ. Mr. President, I rise today to ask my colleagues' support for a resolution to urge the Secretary of the Army to reverse the decision to ban the wearing of the maroon or so-called red beret by the Army Airborne units.

This seemingly insignificant decision on the part of the Army has triggered a strong and understandable cry of outrage from Airborne members and admirers. The Airborne is an elite corps which is recognized by the maroon beret or the so-called red beret—they are feared by our foes and envied by our friends. Their achievements in military history are legend, because of their valor, tenacity, and "esprit". This morale or esprit comes from the knowledge that the Airborne is elite among our military units.

I do not think I have to remind most people that the Airborne was in large part responsible for the success of the D-day invasion of Europe in 1944, and it was obvious even then that they would find a symbol to mark them out as a "special" force. Indeed, they are. We could not be the free and democratic country we are today if the Allies had failed at Normandy, and I believe we appear an ungrateful and forgetful Nation to now say the Airborne cannot wear the maroon beret.

I am very fortunate to have as a constituent and a good friend a great military commander, Gen. Matthew B. Ridgway, who was the Supreme Commander of the Allied Forces in Europe and former Army Chief of Staff. He was one of the first to protest the Army's decision to "retire" the maroon beret. His concern, as a military leader, a military strategist and an eminent student of military history, was for the effect of this action on the esprit and effectiveness of our Armed Forces. General Ridgway wrote, in a letter to the editors of the New York Times in January, the following:

> Esprit in a military unit, as every military man knows, is a delicate intangible, nurtured over a long period of time in many seemingly trivial ways. The result translates into far-reaching, positive benefits in times of crisis, above all in war, and those benefits to the country concerned can endure for many generations, as they have done so brilliantly in so many armies. They can also be destroyed at a stroke, and what was an elite unit becomes just another run-of-the-mine organization * * *

General Ridgway, as we all know, speaks from his heart and his experience. And I have heard from many other members and admirers of the Airborne who share his concerns about the "best interests of our Army and our Nation."

I wrote the Secretary of the Army in January to ask why this decision was made. I know it was not done as a cost-saving device, for the Airborne members pay for their own berets. I know it was not done as a safety procedure, for the berets in no way prevent the men from doing their jobs and can, in fact, be hidden under helmets if necessary in combat. And furthermore, I know it was not done as an equalizing gesture, for the reply I received from the Department of the Army advised me that the Army will continue to authorize distinctive headgear for at least two elite groups—the Rangers (black berets) and the Special Forces (green berets). Instead, I am advised that "* * * while the Army fully appreciates the beneficial effects which distinctive items can have on the esprit of a particular unit * * * the proliferation of nonstandard items has gotten out of hand."

It seems to me that if permitting the use of "nonstandard items" such as the maroon beret can improve the morale of those who must defend us, at no cost to anyone but the wearers, we would be "missing the forest for the trees" to let this happen.

The resolution I am submitting today, which asks the Secretary of the Army to reverse the ban on the maroon beret and instead authorize it as the official insignia of this unit, comes in response to my feeling that esprit de corps is possibly our most valuable military strength when it comes to defending our country. I would agree with the Army that it may not be wise to authorize new symbols or gear for our special units, and I do not think that Congress should get into the business of legislating military uniform. However, to take away the privilege of wearing the maroon beret from these men who defended us in many notable battles seems a hollow and ungrateful gesture at this point in time. Similarly, I would oppose banning the green and the black berets, which are recognized as symbols of the units that wear them. History has shown that in times of crisis those who can call on a special reserve of spirit will prevail. The wearing of the maroon beret is an outward sign of the inward strength and dedication of the men of the Airborne. And it is a small distinction and privilege we accord them for being prepared to pay the ultimate price of giving their lives for their country.

Thus, I ask my colleagues to join me in making it the sense of this body that we are strongly opposed to the ban on the maroon (or "red") beret and that we urge the Secretary of the Army to take immediate steps to authorize wearing of this headgear for all members of the U.S. Airborne divisions.

Mr. President, I ask unanimous consent that General Ridgway's letter to the editors, and my letter to Secretary Brown be printed in the RECORD.

The letters follow:

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

JANUARY 10, 1979.

Hon. HAROLD BROWN,
Secretary of Defense,
The Pentagon.

DEAR MR. SECRETARY: It has come to my attention that the Airborne's Red Beret has been banned as of January 1st of this year.

This seemingly insignificant decision has, however, triggered a strong and understandable response, especially from those who understand best the real value of those berets and what they have meant to our nation.

In a time of crisis and challenge, history has shown that those who can call upon a special reserve of spirit will prevail. All factors being equal, this esprit de corps, intangible as it may be, is often the critical stroke to the final outcome.

I do not know why this decision to ban the Red Beret was made. As I understand it, there is no cost saving to the Army. I do know that with this one, single blow, the mark of distinction and pride which the Airborne earned has been removed. The

dedication and achievements which marked these men at D-Day in June, 1944 through December, 1978, was unceremoniously and ignominiously taken away.

It is my hope that this decision can be reconsidered. The tradition and pride which are associated with the right to wear the Red Beret are not products of salary or bonuses, but are a distinction and privilege far transcending any monetary value.

Your response and explanation would be much appreciated.

Sincerely,

H. JOHN HEINZ III, *U.S.S.*

[From the New York Times, Jan. 4, 1979]

ON THE AIRBORNE'S LOSS OF THE RED BERET

To the Editor:

The decision to ban the Airborne's red beret, effective Jan. 1, may appear trivial, but it is one which has a far greater adverse impact within our army than appears on the surface.

Esprit in a military unit, as every military man well knows, is a delicate intangible, nurtured over a long period of time in many seemingly trivial ways. The result translates into far-reaching positive benefits in times of crisis, above all in war, and those benefits to the country concerned can endure for generations, as they have done so brilliantly in so many armies. They can also be destroyed at a stroke, and what was an elite unit becomes just another run-of-the-mine organization.

Our Airborne is an elite corps, envied and feared by our foes and admired by our friends. Its members are inbued with the highest concepts of dedicated service, proud of its achievements and its uniform, proud of the Airborne image in the public eye, and proud of the red beret, which marked them at once for all who saw them. Without them, as both Eisenhower and Bradley said, the D-Day invasion of Europe in June 1944 would have failed.

We should scrupulously maintain that pride of the Airborne, safeguard all the little things that made and sustain it, high among them the privilege of wearing the red beret, which cost our Government not one penny. The Airborne troopers proudly paid for it themselves.

Since this decision is reported to have been made by competent official authority, it is with the greatest reluctance that I publicly protest it, urging, as I strongly do, that it be reversed. But I have never hesitated, nor shall I, to speak out when, in my heart and from my own experience, I know such action to be in the best interest of our Army and our nation.

I publicly protested the adoption of the volunteer army, now a demonstrated failure and perhaps a disaster, as only a test of war can prove. I publicly deplored the dismantling of Selective Service and the admission of women into our service academies. Every one of those actions is now looming as potentially detrimental to the esprit and effectiveness of our armed forces—a blow at discipline, without which no military unit is worth its keep. All these actions may well prove to have been egregious mistakes when this nation's armed forces face the critical tests which future war will inevitably present. I fervently hope we shall start now to correct them, before it becomes too late.

M. B. RIDGWAY,
General, U.S. Army (Ret.).

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

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business with statements to be limited to 2 minutes each.

Is there morning business?

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

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

STAFF STUDY ON THE ROLE OF THE INSURANCE INDUSTRY IN ARSON-FOR-PROFIT

Mr. PERCY. Mr. President, the staff of the Permanent Subcommittee on Investigations released February 17 a staff study on the role of the insurance industry in dealing with arson for profit.

This report regrettably finds that the industry could do significantly more in dealing with this problem. Indeed, the information presented in the study raises serious questions about the diligence of some companies in combating arson. The report concludes by recommending steps that the industry could take to substantially reduce arson for profit.

The Permanent Subcommittee on Investigations, of which I am the ranking minority member, has been conducting an investigation into arson for profit for over a year. We have devoted a great deal of staff time and energy to the study of this insidious problem which is ravaging many of America's cities.

What we have learned has been both frightening and shocking:

An estimated 1,000 people die each year and another 10,000 are injured in fires that were deliberately set;

Arson losses running more than $1.6 billion a year, and arson is rising by 25 percent annually;

Only 1 in 100 accused arsonists is ever convicted.

As this study on the role of the insurance industry points out, arson not only increases the financial burden which all insurance policyholders must bear, but in a very real sense it threatens the social and economic fabric which holds our cities together.

During hearings held by the subcommittee last year, we heard testimony from many people familiar with the problem of arson for profit. One theme running throughout much of their testimony was the role the insurance industry plays in providing a financial incentive for arson. The subcommittee staff report, based on responses from 15 companies to a questionnaire, forcefully and cogently confirms that the insurance industry can do a great deal more to remove the financial attractions of arson.

As this study notes, the insurance industry has a responsibility to aid law enforcement officials in reducing the incidence of arson. Without a doubt, arson for profit could be substantially reduced if the industry would review its present approach toward arson and more carefully screen applicants and their requests for coverage.

It is an unfortunate truth that the insurance industry, although perhaps unwittingly, has contributed to arson for profit by writing coverage in amounts well above the true value of properties. In addition, buildings with numerous code violations which could easily be detected are frequently insured without any inspection at all. Both of these practices enable arsonists to reap illegal and untoward financial benefits from their heinous crime.

Mr. President, I would like to submit this study for inclusion in the RECORD but, before doing so, I want to summarize some of its key points and recommendations.

First of all, insurers should carefully inspect all properties before writing coverage. This will help prevent the dual problems of overinsurance and coverage of properties which fail to meet building code standards.

Second, insurers should develop a method to enable them to avoid writing insurance for people who have been convicted of arson in the past.

Third, companies should train their adjusters to detect evidence of arson; unfortunately, most insurance adjusters today have not had sufficient training in arson investigation to make intelligent and informed decisions on suspected arsons.

Finally, the insurance industry should develop better statistical information on arson so it will have a fuller appreciation of the dimensions of this problem.

In conclusion, I would like to thank Chairman NUNN and Senator GLENN for their diligent and thoughtful contributions. I also want to express my appreciation to Daniel Melnick of the Congressional Research Service, who assisted the staff in designing the questionnaire.

Mr. President, I ask unanimous consent that the staff study on the role of the insurance industry in dealing with arson for profit be printed in the RECORD.

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

ARSON-FOR-PROFIT: THE INSURANCE INDUSTRY'S ROLE

BACKGROUND

According to insurance sources, arson claims cost insurance companies $1.6 billion in 1977, and the figure is growing. Recent hearings held August 23 and 24 and September 13 and 14, 1978 by this subcommittee developed substantial evidence confirming that arson-for-profit is a nationwide problem which demands far greater attention than has been accorded to date by both the Federal Government and private insurers.

The subcommittee hearings, and three reports from the General Accounting Office, document a minimal Federal response to arson-for-profit, and demonstrated that Federal agencies with responsibility in the area had done virtually nothing to deal with this fast-growing problem.

Since the "profit" in arson-for-profit comes from insurance company treasuries, Senators Charles H. Percy, Republican, of Illinois and Sam Nunn, Democrat, of Georgia, ranking Republican and vice chairman respectively, determined on May 3, 1978, that it would be useful to submit a questionnaire to a major fire insurance companies in the United States to determine what their policies and practices were with respect to arson loss claims. The questionnaire, sent to 15 of the Nation's largest fire insurance companies, was designed to ascertain whether business practices and attitudes within the private insurance market may be a factor contribut-

ing to the upsurge in arson-for-profit. A second purpose was to elicit comment on obstacles faced by the companies in improving performance against arson-for-profit. Recipients of the questionnaire were selected from "Best's Aggregates, Property Casualty 1977," an industry trade publication. To encourage forthright responses to sensitive areas of inquiry—some of which might have a bearing on pending litigation—the subcommittee approved anonymity to all the companies respecting their responses. The companies did permit the subcommittee to list their names as respondents. Appendix B lists carriers that participated in the subcommittee survey.

The major areas addressed in the questionnaire were the following:

Inspections and underwriting;
Claims investigation;
Claims adjuster training;
Statistical information;
Obstacles to limiting arson-for-profit; and
Organized crime involvement.

The responses to the subcommittee's questionnaire, and testimony from insurance company officials and law enforcement officials received during the subcommittee's 4 days of hearings, raised disturbing questions concerning the private insurance industry's role in the Nation's arson crisis, and the adequacy of the industry's commitment to combating the problem.

INSPECTIONS AND UNDERWRITING

The "profit" in arson-for-profit derives from insurance money. Because preliminary evidence developed by the staff indicated that arson profiteers often participate in all facets of the crime—including the procurement of insurance—one portion of the subcommittee questionnaire sought to discover whether prevailing inspection and underwriting practices contribute to the incidence of fire insurance fraud.

Overinsurance

Insuring properties for more than their true value plays a key role in most arson-for-profit schemes, subcommittee witnesses testified. Mr. James McMullen, director of security investigations for Farmers Insurance Group, testified to his belief that "nearly all" arson-for-profit cases involve deliberate overinsurance of properties (p. 131).[1] Former insurance adjuster Joseph Carter, convicted by Federal prosecutors in Tampa, Fla. for participating in a major arson-for-profit conspiracy, informed the subcommittee that, in his view, 99 percent of arson-for-profit involves deliberate overinsurance.

He told of one building in Tampa that was purchased for $30,000, insured for $290,000, then set ablaze for profit (p. 99). Mr. McMullen also told of a building worth $27,000 which burned shortly after being insured for $90,000, under circumstances where fraud was suspected (p. 131).

Overinsurance is widespread, according to subcommittee testimony, because of the failure of insurance companies to verify the value or condition of properties they insure. Mr. Leonard Mikeska, chief arson investigator for the city of Houston, testified:

"Arson is on the increase, because of the ease with which people can obtain insurance on their properties, frequently at amounts that make it hard, even for the average honest citizen, to resist at least contemplating arranging for his place to be burned." (p 173)

Ronald Ewert, acting executive director, Illinois Legislative Investigating Commission, testified:

"Private insurance companies also contribute to the arson problem by failing to inspect applicant background or to perform value appraisals on properties prior to issuing policies. This allows potential arsonists to insure their properties for much more than their fair market values." (p. 202)

Responses to the subcommittee questionnaire indicate that none of the 15 companies surveyed regularly perform inspections on properties, prior to coverage.

Underwriting inspections usually occur after coverage is bound, if at all. Responses varied as to how often or under what conditions such inspections occur. Commercial properties appear to receive inspection more frequently than private dwellings.

Two companies surveyed stated that they inspect most insured properties. Another said they inspect commercial risks valued at more than $20,000, private dwellings under $10,000 or over $75,000, nonowner occupied dwellings, and three- and four-family dwellings.

Only one company acknowledged outright that it follows no standard inspection guidelines. However, the responses indicate this may well be the case with most of the companies surveyed. One company wrote that, "as a general rule, fire insurance risks are not subject to physical inspection."

Survey responses confirm testimony that companies rely heavily upon the judgment of their agents in accepting or refusing risks. But, agents often do not heed their responsibility to become familiar with the risks they accept, according to Mr. McMullen, because "their profit motive through the sale is placed at a bigger priority than their responsibility toward their insurer" (p. 130). The agent's income depends on the number and dollar value of the policies he writes. Subcommittee witnesses testified that rather than keeping coverage to a minimum, many agents prefer to sell as much insurance as the owner requests, and sometimes more. A Minneapolis arsonist, testifying under an alias, noted that agents often refuse to sell less coverage than is specified in a standard policy, even if the owner requests it:

"You can't buy the amount of insurance you want on these buildings. They stuff it down your throat. You try to buy $10,000 worth of insurance, they stuff you with $25,000. It just makes it very profitable." (p. 25)

According to insurance adjuster Joseph Carter, agents routinely accept poor, unexamined, and overinsured risks:

"Building owners would routinely tell the insurer that their buildings, while in fact vacant, were tenant-occupied. Often a building owner will come into an agent's office, give him the address of the structure, how large it is, and what kind of coverage he wants. The agent will then tell him how much the premium is, the building owner will give him a check and the property owner is immediately covered under a binder until the company issues a policy. The agent does not inspect the property."

"In my experience as an adjuster in Tampa, I was appalled at the number of buildings on which I adjusted fire and other types of loss which were unbelievably overinsured." (p. 86)

Carter also said, "I didn't think the insurance companies should cover properties with code violations, but they did it all the time" (p. 86). Thus, reliance on poorly-monitored agents, understandably interested in boosting their own commissions, leaves companies wide open to arson profiteers who, unlike most honest property owners, seek as much coverage as possible for maximum potential gain.

Companies contend that routine prior inspections would prove prohibitively expensive. However, subcommittee witnesses indicated that more such inspections—perhaps triggered by unusual circumstances or performed randomly—could save money in the long run. Mr. McMullen told the subcommittee that building inspections could be made at nominal expense. Mr. Eades Hogue and Ms. Eleanor Hill—the Federal strike force attorneys who prosecuted the Tampa arson-for-profit case—noted that many structures insured as dwellings by the participants in that conspiracy were certified by Tampa housing officials as unfit for human habitation. It was their feeling that agents or their companies could really learn of such risks simply by telephoning the local housing inspector (p. 122).

CLAIMS INVESTIGATION

Because it appeared that arson profiteers are rarely challenged, either in criminal or civil court, one portion of the subcommittee questionnaire explored whether claims investigation procedures provide a significant deterrent to attempted arson-for-profit.

Eleven companies stated that they investigate fully all suspected arsons, regardless of cost. At the same time, witnesses before the subcommittee testified that companies will often negotiate settlements with suspicious claimants, if money can be saved by doing so. For example, Tampa adjuster Joseph Carter stated that he would often "'buy out" suspicious fire claims. Suspecting arson in connection with a particular fire, he would confront the culprit, threaten him with prolonged legal harassment, and instruct him to settle for less than the full face value of the policy. He testified that companies "which wanted to settle claims quickly at the least amount of cost" applauded his work, since it freed them from paying the full face amount of the policy and avoided costly litigation. He suggested that many companies operate in this fashion:

"If they can get out for less than the face value of the policy and they don't have to hire an attorney to handle the claim in court, which costs them more money, they are willing to settle without any big hassle." (p. 94)

Mr. Mikeska of the Houston arson squad commented that, "Most (insurers) are not very vigilant. It is extremely difficult to convince them to file a complaint against a suspected arson conspirator (p. 137).

Mr. Ewert of the Illinois Legislative Investigating Commission concurred. His study showed that insurers often fail to pursue investigations fully, preferring to save money by negotiating settlements with suspicious claimants.

In this context, four surveyed companies acknowledged to the subcommittee that they might settle a claim with a suspected arsonist, if investigatory costs seemed too high compared with the value of the claim. One company wrote that, "the value of the claim is a factor in determining how thorough an investigation should be, because of economical (sic) consideration." Another wrote that, "the amount of expense we are willing to incur would depend to some extent upon the size of the loss."

Though aware of the financial risks facing companies attempting to challenge suspicious claims, witnesses nevertheless felt that the industry should increase the current level of commitment to claims investigation. Discussing possible remedies to the arson problem, Mr. Carter suggested that:

"Insurance companies should be much more willing to hire outside, independent investigators to do a full-scale inquiry into suspected arson. This would be money well-spent because it would get the word out on the street that the companies are beginning to be much more conservative in paying out on fire claims." (p. 94)

PROFESSIONALISM OF CLAIMS ADJUSTERS

Sometime called the "elusive" crime, arson commonly escapes detection by all but the most trained eye. Physical evidence tends to be consumed by the blaze or buried in the rubble. Evidence of fraudulent intent may

[1] Refers to pages in the printed hearings of the Permanent Subcommittee on Investigations entitled "Arson-for-Hire."

also lie undiscovered, if insurance and law enforcement authorities fail to conduct investigative interviews and to examine public and private records that might reveal motive. To gain information on the current level of professionalism within the claims adjustment business, one portion of the Subcommittee survey focused on arson detection training.

Only six of the companies queried could specify how many hours of arson detection training they required of each property claims adjuster. Five companies indicated they required no arson detection training for their adjusters. The four remaining insurers said they required arson detection training, but could not specify the number of hours, chiefly because training usually comes only as part of overall adjuster training programs.

Training varies considerably in quality. One company sponsors a two-day arson fraud workshop for all new adjusters, given at a special training facility. Another requires only three hours of arson detection training, but relies solely on outside programs rather than in-house training.

Subcommittee witnesses testified that arson detection training for adjusters is spotty. Mr. Carter, whose 20-year career in the adjusting business included service with several major companies, said: "I never received any training when I began fire adjustment, except what I learned on the job. No type of formal training or seminars or schooling" (p. 94).

Mr. Gary Bowdach, a subcommittee witness on organized crime matters, testified on August 2, 1978 concerning growing mob involvement in arson-for-profit. Acknowledging that "arson-for-profit is the easiest thing there is to get away with." And that "the chances of getting caught are almost nil," Bowdach suggested that insurance companies could greatly alleviate the problem by contesting suspicious claims more vigorously:

"I think the insurance companies really should be the ones to do it because they have the biggest stake. (They) should have a staff of trained investigators in arson and trained investigators in seeking out the people and motivation behind these things. They leave it up to the local fire marshals and the police department arson squad and it just does not seem to get the job done because the police departments have to take things in priority.[2]

Mr. Carter concurred. Stressing the crucial roles of adjusters in originating claims investigations, he indicated that formal training would upgrade their alertness and efficiency. Thus, through well-trained adjusters, insurers could challenge a larger number of fraudulent claims.

Reports from adjusters of suspected fraud or bribery sometimes go unheeded by central offices. Companies which disregard advice from the field may sap morale, undermine professional diligence, and encourage cynical attitudes toward responsibility in this area. Mr. Carter cited an example of insurer indifference which he believes to be typical of what adjusters encounter in the field. Following a partially successful Tampa arson fire which he adjusted, Carter advised the two companies holding the risks on the building to stop coverage: "Only one, however, follower my advice. The other company continued covering the partially burned building until it burned all the way down on (the) second try" (p. 92).

Subcommittee witnesses were also questioned about the extent of corruption within the adjusting business. Asserting that adjusters are "grossly" underpaid as a profession, Mr. Carter felt that this fact, combined with frequent temptations in the form of bribe offers, produces extraordinary levels of corruption in the business (p. 106). Based upon his knowledge of adjusting practices, Mr. McMullen, of the Farmers Insurance Group, agreed, estimating that "probably about 25 percent of adjusters would succumb to proposals to participate" in an arson-insurance fraud conspiracy (p. 132). Such assertions from persons experienced in the field indicate that potential arson profiteers may find it all too easy to enlist cooperative insurance adjusters.

STATISTICAL INFORMATION

Reports from the GAO, the Illinois Legislative Investing Commission and the Aerospace Corp. (under a grant from the Law Enforcement Assistance Administration) all indicate a shortage of basic statistical information on arson, making it difficult to assess the precise nature of the problem and its possible solutions. The Subcommittee queried companies on their recordkeeping practices, seeking to ascertain how much in-house information currently exists among insurers.

Only eight companies surveyed said they retained cumulative data on both the number of structures covered by fire insurance and the number and value of structures lost to fire. Of these eight, five keep this data only for dwellings, not for commercial properties (including businesses and most large apartment buildings). Consequently, most insurers have no firm grasp of the magnitude of their own arson losses.

Only one company said it records how many structures undergo inspection prior to coverage. One records how many fire losses were inspected by adjusters prior to payment. No company surveyed retains cumulative records in both of these categories. Consequently, insurers frequently know little about the diligence of agents and adjusters working for them.

Only one company stated that it records the number of losses that are followed by interviews with the property owner or his acquaintances, witnesses, or law enforcement authorities. That same company was the only one to say it records the number of losses followed by financial background checks on the owners. Thus, most of the surveyed companies indicated little awareness of the thoroughness of their own adjusters in investigating suspicious fires.

Mr. Ewert of the Illinois Legislative Investigating Commission noted that the lack of good fire loss data makes it highly difficult to identify evolving patterns of insurance fraud and obscures questions of policy and allocation of resources. The Illinois Commission interviewed industry officials who reiterated this view. Companies may fail to take effective and timely action against arson, partly because they are poorly informed. In an address before the Fire Marshal's Association of North America in November 1975, Ralph J. Jackson, loss prevention manager of Allstate Insurance Co., discussed possible reasons for insurance company inaction on arson:

"The insurance companies do not know how serious the arson problem is. Very few companies have been collecting information on arson, so it just isn't available in their computers."

During the subcommittee hearings, Senators Percy, Nunn, Chiles, and Glenn, all expressed surprise that insurers retain so little information on arson, while at the same time compiling extensive, up-to-date data, for example, on auto claims. Because auto claims information provides a useful basis for denying or limiting coverage to poor risks, the Senators wondered why insurers have not compiled and recorded comparable claims information on fire losses.

While several companies advised the subcommittee that they are developing systems to provide data on the number and value of arson losses, nine out of fifteen companies stated that they have no plans to develop more useful procedures for compiling and analyzing arson-related data.

PRIVACY AND FAIR CLAIMS PRACTICES LAWS

Aware that legal problems may discourage insurers from taking effective action against arson profiteers, the subcommittee sought comments on this matter.

Most companies surveyed criticized existing privacy laws and fair claims practices acts for seriously obstructing their efforts to investigate suspicious claims.

Privacy laws, designed to protect individuals against unwarranted disclosure of confidential information concerning them, are cited by insurers as impeding the exchange of information between insurers and law enforcement authorities. Evidence gathered by law enforcement agencies, though often insufficient to prove criminal charges, may be useful in civil proceedings by companies attempting to demonstrate fraud. Privacy laws, however, prevent exchange of information by establishing grounds for slander suits against public authorities who release incriminating information to private companies.

Likewise, the companies commonly noted that an individual can sue the insurer for releasing information to enforcement authorities seeking to build a criminal case.

Lack of information and fear of law suits were both cited as preventing companies from aggressively pursuing suspected arson incidents. Mr. McMullen related a case in which his company had to pay $4 million in damages for releasing to police facts detrimental to the policyholder (p. 132).

Fair claims practices acts, designed to insure fair treatment of policyholders, require companies to decide promptly whether to pay claims and to disclose grounds for decisions not to pay. The subcommittee survey confirms that payment must often be made before time-consuming arson investigations yield any concrete proof of fraud. Yet, payment delays, while the company evaluates its position, may result in assessment by the courts of heavy punitive damages against a company. On the other hand, companies complain, too-quick assertion of suspected fraud may leave the insurer open to a slander suit, unless subsequent investigation substantiates the charge. Companies indicate that they hesitate to charge fraud when their evidence is not complete. Thus, they maintain, legal requirements and financial hazards often force them to pay claims that might be successfully contested, if enough time were allowed.

Several other laws also received criticism from survey respondents. One company noted that state arson laws often lack severe enough penalties, and fail to specify who is responsible for enforcement. In addition, a number of states require insurers to pay full face value on policies—well above a property's fair market value—thereby encouraging arson-for-profit. Another respondent criticized local ordinances which require burned buildings to be demolished quickly, often leading to the destruction of physical evidence of arson.

ROLE OF GOVERNMENT

The companies surveyed were not in agreement in their assessment of law enforcement efforts against arson. Several sympathized with the lack of adequate training and manpower. Criticism was leveled at the Federal Bureau of Investigation for lack of interest and reluctance to share information.

The companies offered a number of suggestions, encouraging the Federal Government to:

Use the Law Enforcement Assistance Administration to fund state and local anti-arson programs aimed at acquiring better equipment, at putting more and better people on the job, and at improving arson training and detection programs;

[2] Hearings "Organized Criminal Activities—South Florida and U.S. Penitentiary, Atlanta, Ga.," U.S. Senate Permanent Subcommittee on Investigation, August 1978, pt. 1, p. 90.

Provide more funding for the National Fire Prevention and Control Administration in the Department of Commerce;

Establish a nationwide bureau of records on suspicious fires and offenders, along with a national fire academy, modeled on the national police academy;

Review insurance requirements of the Department of Housing and Urban Development, the Small Business Administration, as well as various banking regulations, with an eye toward reducing arson-for-profit;

Make arson a part I crime in the FBI's uniform crime reports, thus expanding the available data and inducing local authorities to give more attention to the crime;

Prosecute arson more vigorously, particularly through use of the Federal Racketeer Influenced and Corrupt Organizations (RICO) statute; and

Revise the privacy laws to foster freer exchange of arson-related information.

In addition, respondents proposed that State and local governments should:

Revise definitions of arson to include any intentional destruction of buildings by fire in order to defraud;[3]

Stiffen penalties for arson;

Loosen fair claims practices requirements to facilitate good faith arson investigation;

Enact state laws modeled on the Federal RICO statute;

Establish clear lines of responsibility for arson investigations and

Publicize neighborhood arson patrol and confidential informant reward programs.

ORGANIZED CRIME

Subcommittee witnesses left little doubt that organized crime now views arson-for-profit as a low-risk means to garner whopping profits. Gary Bowdach, who committed four mob-linked arsons in a 1-month period in Florida, termed the available revenues "inviting" for organized crime, and suggested that crime families may now employ traveling professional torches who can easily make lucrative incomes plying their trade throughout the country.[4] Mr. Carter warned that crime syndicates "are becoming well-acquainted with the vast amount of moneys that could be made out of arson-for-profit" (p. 100). Mr. Angelo Monachino, another subcommittee witness, who participated in 11 arsons-for-profit as a soldier in the Rochester, N.Y., Mafia, agreed that "organized crime is becoming increasingly involved in arson-for-profit" (p. 60). San Jose Police Chief McNamara commented that, "arson is but a visible manifestation of the traditional techniques of organized crime" (p. 183).

One portion of the subcommittee survey asked insurers to provide any information known to them concerning organized crime involvement in arson-for-profit. None of the companies could supply any information. One company commented that, "We have seen no evidence of involvement on the part of national organized crime syndicates." A more typical response was that, "We are not in a position to answer this question." Such responses raise serious questions about the lack of attention being paid by insurers to what appears to be a major aspect of the Nation's growing arson problem.

Organized crime's growing stake in the arson business lends special urgency to the search for solutions. Any reluctance by insurers to take strong steps against arson-for-profit—or any barriers to their doing so—can only abet the growth of organized crime's involvement in the increasing number of arsons. Contrary to assertions from some quarters of the industry, arson-for-profit cannot be eliminated solely through improved efforts from government and law enforcement. Nor should the industry limit its involvement to publicity campaigns and financial support for study groups, though these are usually worthwhile. Companies truly wishing to contribute must pay closer attention to the problem and show greater willingness to alter their own day-to-day business practices, several of which currently make it easy for arsonists and their clients to commit their crimes with little fear of apprehension.

INDUSTRY AND GOVERNMENT REACTION

In the 4 months that have passed since the conclusion of the subcommittee's hearings, key segments of the industry—the American Insurance Association, Insurance Information Institute, National Association of Insurance Agents, and National Association of Independent Insurers, among others—have not contacted the subcommittee either by way of responding to criticisms of industry policies, or setting forth anticipated reforms for the future. It should be noted, however, that other than the questionnaire submitted to 15 major companies, the insurance industry was not specifically asked for its response to the hearings.

The Federal bureaucracy, moving with commendable dispatch, was specifially contacted by the subcommittee in connection with the August-September hearings and has affirmatively responded to the crisis. The Federal Bureau of Investigation; the Law Enforcement Assistance Administration; and the Alcohol, Tobacco and Firearms Bureau of the Treasury Department have all informed the subcommittee that they will begin targeting arson-for-profit as a major law enforcement priority. Specifically, the FBI has advised each of the 59 Bureau offices throughout the country to identify, actively pursue, and monitor arson-for-profit cases involving organized crime. The LEAA has actively encouraged each of its state and territorial law enforcement planning agencies to look favorably upon and to begin investing funds in arson control programs. And the ATF has established expert task forces in 17 cities that will focus on arson-for-profit schemes.

One industry trade association—the Alliance of American Insurers (AAI)—did submit a post-hearing statement to the subcommittee. Its message was that the arson upsurge is "completely beyond the control of insurance underwriters," a contention disputed by witness after witness at the hearings. The response from AAI expresses that organization's "serious" concern about the "rapidly spreading cancer of arson-for-profit," while defending current industry practices (p. 463). AAI asserts that "substantial sums" have been invested for arson detection training for adjusters and maintains that companies do not make a "policy" of paying off on fraudulent or suspicious claims (p. 477). While it may not be a "policy" to pay suspicious claims, evidence received by the subcommittee from numerous witnesses suggests that refusals to pay are rare; particularly when costly investigation would be involved. Finally, AAI disputes other testimony before the subcommittee by stating, without specific reference, that dishonesty among insurance adjusters is rare, and by denying that there is any need for tighter standards on precoverage risk inspection.

In sum, the AAI agrees that there is a problem, but absolves the industry of any blame for that problem.

FINDINGS AND RECOMMENDATIONS

The subcommittee hearings and insurance company survey together confirm substantial shortcomings in the response of the industry as a whole to the current arson crisis. As Chief Mikeska of Houston's arson squad told the subcommittee:

"I recently attempted to get $10,000 life insurance increased on my life. I was required to go to my doctor to have a complete physical. If I want to increase my insurance on my home, I get on the telephone, advise my agent I would like to increase my insurance by $50,000, there is a binder put on it, no questions asked whatsoever." (p. 176)

The insurance industry over the years has controlled and minimized its auto and life insurance risks. But fire fraud losses—made possible in part by laxity in underwriting and claims adjustment procedures—continue to cost billions of dollars each year.

The upsurge in arson-for-profit stems primarily from two conditions: the enormous profits available and the ease of obtaining them without fear of penalty. In light of arson's skyrocketing human and financial costs, leaders of the American insurance industry should review and reformulate current operating procedures so as to screen out poor risks, reduce incentive to commit arson, and increase the odds against getting away with fraud.

The following recommendations are advanced:

(1) Insurers should require routine risk reviews prior to coverage, including property inspection and background checks on applicants.

Urban devastation due to arson cannot be halted unless access to big insurance dollars can be more tightly restricted. Even more than police and fire authorities, the insurance industry can help take the "profit" out of arson-for-profit.

Through routine prior-to-coverage risk review, insurers or their agents could:

Verify that properties in question are being occupied or utilized as stated and are not tax delinquent or deteriorated to a point where they might be abandoned and burned;

Ensure that requested coverage corresponds to actual property value, thus avoiding overinsurance; and

Screen applicants for prior history of fire losses.

Witnesses agreed that insurers must undertake greater initiative in this area. Mr. Carter noted:

"The insurance agent should be much more selective in choosing which properties are covered by his company. It is incumbent upon him to go out and inspect each and every risk. I think they should inspect every single property they insure." (p. 94)

Mr. Hogue, one of the Federal prosecutors in the Tampa case, said:

"First of all, they need to inspect the property. They need to go out and look at the property. Additionally, the companies are going to have to screen applicants for fire insurance more closely. They are going to have to insist that they scrutinize who wants fire insurance." (p. 125)

These practices would inevitably entail added costs, but would foreseeably save enormous sums in the long run. Rather than examining all risks, insurers could minimize their inspection loads by obtaining and sharing information with building code authorities and realty agents. Insurance agents and underwriters could further protect their companies by researching an applicant's financial history, along with the fire history and age of the property. Such research could alert companies to possible motives behind sudden requests for sizeable increases in coverage.

(2) *Insurers should scrutinize current policy on claims challenge, develop effective*

[3] A Minneapolis arsonist, "Michael Smith," told the subcommittee how he escaped prosecution for arson because Minnesota law at that time defined arson only as fire started without the owner's consent, which is rarely the case in arson-for-profit (p. 24).

[4] Hearings "Organized Criminal Activities—South Florida and U.S. Penitentiary, Atlanta, Ga.," U.S. Senate Permanent Subcommittee on Investigations, August 1978, pt. 1, p. 111.

arson investigation teams, and make more frequent civil challenges on arson fraud.

As survey respondents pointed out, insurance companies often confront hard choices while handling suspicious claims. In some cases, even the most thorough investigation may fail to turn up enough evidence to support suspicion of fraud. Because most State laws require prompt decisions on whether to honor or to challenge claims, insurers understandably prefer routine settlement to the riskier course of challenge based on less-than-complete evidence.

Nevertheless, the current upsurge in arson-for-profit poses a challenge to the insurance industry. In the ABC-TV news closeup, "Arson: Fire for Hire," an informed source claimed that arson rings know which companies pay off most easily and with the least careful investigation. He said torches and their clients prefer to "do business" with these companies. Subcommittee investigators confirmed the accuracy of those observations. But an arsonist may think twice before attempting to defraud a company with a reputation for being "tough" on claims. Many companies claim vigorous followup procedures, but nationwide arson statistics and Subcommittee testimony both indicate considerable room for improvement throughout most of the industry. Aggressive claims challenges may prove an effective way for companies to protect their assets, and thus keep premiums down.

(3) Companies should develop in-house investigative expertise and be prepared to pursue arson investigations.

As Mr. Carter and other witnesses indicated, insurers must take measures to improve their success ratio substantially. With capable assistance on hand or on ready-call, companies would be better prepared to challenge borderline cases, where appropriate.

(4) Insurers should work together with government officials toward modifying privacy laws and fair claims practices laws.

The record before the subcommittee indicates that changes in these laws may enable insurers more easily to contest fraudulent claims. Insurers could assist in drafting model arson laws, spelling out key definitions, expanding immunity or exemptions for information exchange, and lengthening claims payment deadlines in cases of good faith suspicion of arson.

(5) Companies should require claims adjusters to have better arson investigation training.

To challenge claims successfully, insurers must be alert to possible instances of fraud, and adept at gathering the evidence needed to support denial of fraudulent claims. Insurers often cannot rely on fire and police authorities to perform these tasks. Even where authorities are well-trained to detect arson, they sometimes fail to relay essential information to the insurer. Hence, fraudulent claims are paid routinely, simply because companies are unaware of the situation. The survey results show that some companies have already developed comprehensive programs, suggesting that other companies could offer much-improved anti-arson training. Without their own cadre of well-trained adjusters, many companies may continue each year to pay uncounted millions in fraudulent claims, while fire insurance premiums soar.

(6) Companies should investigate the possibility of serious corruption in the ranks of claims adjusters.

To ensure honesty and professionalism among adjusters, companies should more assiduously monitor settlement arrangements and pay close heed to allegations from adjusters concerning attempted bribery and suspected fraud. Because relatively low-salaried adjusters who oversee huge outlays of money may be too frequently exposed to lucrative bribe offers, insurers may want to review the salary situation of their adjusters.

(7) Companies should retain and share information on the number, value, and location of all arsons and suspicious fires, as well as information concerning the owners of such properties.

Successful anti-arson planning may well depend on each company's efforts to compile accurate, up-dated data on the nature of its own arson problem. Although the American Insurance Association in 1970 discontinued its former Fraud and Arson Bureau and arson loss reference files, it recently established a new property insurance loss register which should expand the fund of arson information available to insurers for claims challenges.

Individual companies, however, could much improve their own data-gathering procedures. Currently, uncertain both of the size and nature of their arson losses, too many companies appear inadequately prepared to map out better tactics for coping with arson. Some companies have recently initiated efforts to improve their arson data-keeping procedures, indicating awareness that such efforts may help them combat arson more effectively.

(8) Insurance industry representatives should be afforded an opportunity to testify at public hearings to present evidence concerning measures being taken to materially reduce the criminal attractiveness of arson-for-profit.

Such hearings would serve to demonstrate how the industry is responding and proposes to respond to the arson epidemic, while providing the American public with a fuller understanding of the industry's role in combating this crime. They would also serve as a vehicle for the industry to express its views on the problem and suggest changes in the law that would assist the companies in coping with this insidious crime.

APPENDIX A

QUESTIONNAIRE SENT TO 15 INSURANCE COMPANIES BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Company name:——
Company address:——
Official responding:—— Position:—— Tel. No.——

1. Prior to issuing a fire insurance policy, what practices does your company follow with respect to physical inspection of structures?

2. Which of these factors influence your decision to research the background of an applicant for fire insurance?

	Farm property	Commercial property	Private home
Newness of ownership	--	--	--
Depends on value of property to be insured	--	--	--
Location of property	--	--	--
Type of use	--	--	--
a. If decision to research an applicant's background is based on value insured for, state amount	$--	--	--

3. What factors influence your decision to conduct a physical inspection of each property fire loss?

	Farm property	Commercial property	Private home
a. Size of loss (state amount)	$--	--	--

b. The difference between the cost of investigation, if arson is suspected, and value of claim.

c. Other factors (please specify on separate sheet of paper).

4. Please specify at what amount of loss does the adjuster interview the following:

	Farm property	Commercial property	Private home
Police Dept.	$--	$--	$--
Fire Dept.	--	--	--
Witnesses to fire and causes	--	--	--
Persons familiar with claimant	--	--	--
Business associates of claimant	--	--	--
Relative of claimant	--	--	--

a. If there are no dollar loss criteria for conducting any of the interviews cited in this question, please attach a statement explaining what criteria is used to determine the scope of investigation by the adjuster.

5. Is each adjustor required to participate in a program involving training in arson detection? Yes—; No—.

a. If yes, how many hours of arson detection training is required of each adjustor?——hours.

6. Are current state laws or local regulations regarding fire insurance any impediment to investigation of arson by your company? Yes—; No—.

a. If yes, explain.

7. What actions can the federal government take to remove the profitability from arson?

8. On a separate sheet of paper, please evaluate the degree of cooperation your company receives from local, state and federal law enforcement agencies on arson fraud detection, as well as any reasons you may think explain the degree and kind of cooperation or non-cooperation?

9. What could local, state and federal officials do to curb arson-for-profit?

10. In view of the increasing incidence of arson, how have your company procedures and policies changed to deal with this problem?

11. Do you believe that organized local rings, acting without assistance from national crime syndicates, are responsible for arson-for-profit operations? Yes—; No—.

a. Please provide specific examples of such activities.

12. Do you believe that national organized crime syndicates are responsible for arson-for-profit operations? Yes—; No—.

a. Please provide specific examples of such activities

13. What factors other than profitability make arson attractive?

PART I

14. Please check the categories for which your firm maintains records which indicate the following facts during 1977:

a. Number of structures covered by fire insurance: —.

b. Number of structures physically inspected inside and out before insurance coverage was granted: —.

c. Number of structures involved in fire loss, together with amount of loss: —.

d. Number of losses which were inspected by adjustors prior to payment: —.

e. Number of structural losses which were followed up by interviews with:

(1) owner: —.
(2) police dept.: — .
(3) fire dept.: — .
(4) witnesses: —.
(5) business associates of owner: —.
(6) friends of owner: —.
(7) neighbors of owner: —.
(8) relative of owner: — .

f. Number of investigations of financial status of owners of property which incurred losses: —.

PART II

Do you expect to have any additional compilations of statistics referenced in Part I pertaining to 1977 available later in the year? Yes —; No —.

a. If yes, please provide a statement describing the statistics which will be available.

PART III

Do you plan to begin collecting any of the data referenced in Part I in the future? Yes— No—

a. If yes, please provide a statement describing your plans.

15. Overall, how effective do you think your underwriting and adjusting practices are in curbing arson-for-profit? Very good — Good — Fair — Poor —

a. What changes in your practices could be made to reduce arson-for-profit?

16. Please provide any suggestions you think relevant in connection with the Subcommittee's inquiry into arson-for-profit.

APPENDIX B

The following companies responded to the Permanent Subcommittee on Investigations' questionnaire:

Aetna Life and Casualty Co., Hartford, Connecticut.

Allstate Insurance Companies, Northbrook, Illinois.

Commercial Union Insurance Co., Boston, Massachusetts.

Aetna Insurance Co. (affiliate of Connecticut General Life Insurance Co.), Hartford, Connecticut.

Continental Assurance Co., New York, New York.

Fireman's Fund Insurance Co., San Francisco, California.

Hartford Insurance Group, Hartford, Connecticut.

Home Insurance Co., New York, New York.

Insurance Company of North America, Philadelphia, Pennsylvania.

Reliance Insurance Co., Philadelphia, Pennsylvania.

Royal Globe Insurance Co., New York, New York.

Safeco Insurance Company of America, Seattle, Washington.

St. Paul Fire and Marine Insurance Co., St. Paul, Minnesota.

Transamerica Insurance Co., Los Angeles, California.

Traveller's Corp., Hartford, Connecticut.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired.

POSTPONEMENT OF THE EFFECTIVE DATE OF RULE XLIV OF THE STANDING RULES OF THE SENATE

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of Senate Resolution 93, which the clerk will state by title.

The legislative clerk read as follows:

A resolution (S. Res. 93) to postpone the effective date of rule XLIV of the Standing Rules of the Senate.

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

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

(At this point Mr. STEVENSON addressed the Senate in connection with the introduction of legislation. His remarks and a colloquy with Mr. MOYNIHAN are printed under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. Does the Senator wish the time equally divided?

Mr. MOYNIHAN. Will the Chair please explain?

The PRESIDING OFFICER. The quorum call must come out of the time of one side or the other.

Mr. MOYNIHAN. I ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. MOYNIHAN. Mr President, the distinguished Senator from Alaska has control of the time.

Mr. STEVENS. Mr. President, I yield to the Senator from Illinois such time as he desires.

Mr. STEVENSON. Mr. President, I thank the distinguished Senator from Alaska. I rise to ask the Senator from Alaska if this resolution would in any way affect the limitations on honoraria which are contained in the Federal Election Campaign Act.

Mr. STEVENS. I will say to the Senator from Illinois it will not affect those limitations. The Election Campaign Act limitations will remain in effect. As I pointed out last evening, the limitations under rule XLV which pertain to activities that might cause conflict of interest will also remain in effect. We cannot engage in professional activities or employment which might cause conflicts. We cannot affiliate with a firm, allow our name to be used, or hold any position as officer or director of a public corporation, or lobby our colleagues for a period of 1 year after leaving office. The provisions of rule XXXIV prohibit us from accepting gifts from persons or groups with interest in legislation and rule XLVI limits the funds we can use for expenses we incurred in line with our official duties. All remain in effect and are not changed by this resolution. This resolution affects only the provisions of rule XLIV as they apply to honoraria and outside income.

Mr. STEVENSON. I thank the Senator.

The purposes of rule XLIV are to minimize the possibilities of conflicts of interest, reduce the appearance of conflicts of interest, and limit the amount of time that a Senator can spend away from senatorial business.

Mr. President, those purposes are also served by the requirements of rule XLII for reporting gifts and outside earned income, including honoraria. So I ask my friend if the provisions of rule XLII would be affected in any way by this amendment.

Mr. STEVENS. I say to the Senator from Illinois they would not be as I pointed out yesterday. We must disclose our personal and family finances, including a listing of all honoraria received, all earned income in excess of $100, the identity of each source of unearned income and gifts, and many other financial details required by rule XLII. This has no impact on that rule in regard to disclosure.

Mr. STEVENSON. I thank the Senator. This colloquy will demonstrate that the Senate has at least three rules for every conceivable form of questionable conduct.

Rule XLV also deals with the same purposes as rule XLIV; namely, the possibilities of conflicts of interest. Rule XLV prohibits conduct which could give rise to a conflict of interest or any appearance of such a conflict. For example, it prohibits a Senator or Senate employee from exerting improper influence of compensation, from using one's official position in the passage of legislation, or receiving a pecuniary interest from affiliation with a firm or corporation for compensation, from serving on the board of certain publicly regulated corporations, from engaging in any outside business or employment for compensation which is inconsistent or in conflict with the conscientious performance of his official duties.

I ask my friend if the resolution would in any way alter the prohibitions now contained in rule XLV.

Mr. STEVENS. The answer to the Senator from Illinois is no, it would not.

Mr. STEVENSON. Mr. President, I again thank the Senator.

For the benefit of all Members and the staff of the Senate, I remind them that these other rules are in effect, and that they are, of course, enforced rigorously by the Senate Ethics Committee.

That committee has interpreted these rules in a manner which prevents conflicts of interest, limits the amount of time spent on nonsenatorial activities, and, of course, requires the disclosure of all financial interests of Senators and the staff. These rules, enforced by the Ethics Committee, also require public disclosure of participation in outside activities by Senators and Senate employees.

I might take advantage of this opportunity, if my friends will indulge me the time, to read from certain of the interpretive rulings of this committee.

Mr. STEVENS. Mr. President, if I might interrupt the Senator from Illinois, the time now is reserved for the Senator from Virginia, (Mr. HARRY F. BYRD, JR.) for 1 hour preceding the vote on his amendment to S. 245.

Mr. STEVENSON. Mr. President, I ask unanimous consent, then, that excerpts from Interpretative Rulings 33, 56, and 70 of the Ethics Committee be printed in the RECORD so there will be no doubt about the intentions of the Senate and the consequences of its action today if we approve this resolution. Conflicts of interest, any appearance of conflicting interests will remain prohibited.

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

INTERPRETATIVE RULING No. 33

The propriety of outside employment is governed by Rule 45. No employee, regardless of salary level, may receive compensation by virtue of influence improperly exerted. Nor may any employee engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

INTERPRETATIVE RULING No. 56

It prohibits Members and employees from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with performance of official duties.

INTERPRETATIVE RULING No. 70

Paragraph 6 of Rule 45 on conflicts of interest was intended to severely restrict the practice of any profession (for compensation) by Senate employees. That paragraph states in pertinent part that no Member or (full-time) employee compensated at a rate in excess of $25,000 per annum shall; a) affiliate with a firm or partnership, b) permit his or her name to be used by such, or c) "practice a profession for compensation to any extent during regular office hours of the Senate office in which employed."

Mr. STEVENSON. With the assurances of the Senators and that understanding, I have no objection to the resolution which they have offered.

Mr. HARRY F. BYRD, JR. Mr. President, I shall yield 5 minutes of my time to the Senator from Alaska.

Mr. HARRY F. BYRD, JR. was recognized.

Mr. HARRY F. BYRD, JR. Mr. President, I shall be glad to yield 5 minutes of my time to the Senator from Alaska.

Mr. MOYNIHAN. Mr. President, we thank the distinguished Senator from Virginia and express our deep appreciation to the Senator from Illinois, chairman of the Senate Ethics Committee, for his forthright and forceful statement.

Mr. STEVENS. I join the Senator from New York in thanking the Senator from Illinois for his statement. I point out for the RECORD that the rules that are in effect concerning conflicts, disclosure, and in particular, the association of a Senator or employee with firms or publicly held corporations, remain in effect notwithstanding the postponement of the date in rule XLIV which will be brought about in this resolution.

I thank the Senator from Virginia, also, for yielding time.

TAIWAN ENABLING ACT

The PRESIDING OFFICER. Under the previous order, the hour of 11 o'clock having arrived, there will be 1 hour of debate on the amendment of the Senator from Virginia (Mr. HARRY F. BYRD, JR.) to be equally divided between the Senator from Ohio and the Senator from Virginia.

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

The assistant legislative clerk read as follows:

A bill (S. 245) to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

ORDER OF PROCEDURE

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. I should like to inquire, what disposition was made of the matter we have been discussing for the last hour?

Mr. MOYNIHAN. The Senator from New York informs his friend from Arizona that the matter will be taken up following the disposition of the bill before the Senate at this moment, which I believe is to be at noon today. We shall resolve this other matter by 12:30 p.m.

The PRESIDING OFFICER. That is correct. The vote on disposition of the Byrd amendment to the bill will occur at 12 noon. Then the Senate will vote at 12:30 on Senate Resolution 93.

Mr. MOYNIHAN. The Senate will vote by 12:30, I believe.

The PRESIDING OFFICER. Not later than 12:30, the Senator is correct.

TAIWAN ENABLING ACT

The Senate resumed consideration of the bill, amendment No. 93.

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business of the Senate is amendment No. 93 to S. 245.

Mr. HARRY F. BYRD, JR. Is not the pending matter the amendment offered by the Senator from Virginia?

The PRESIDING OFFICER. Yes, it is, the Senator is correct.

Mr. HARRY F. BYRD, JR. Mr. President, the pending amendment states this:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

Mr. President, in the heat of debate last evening, some of the opponents attributed to this amendment provisions which are not incorporated in any way in the amendment. Let me state what the amendment does not do.

First. The amendment does not express either approval or disapproval of the President's decision to give notice under article X of the Mutual Defense Treaty between the United States and the Republic of China.

Second. The amendment does not take from the President any power he now has.

Third. It does not prevent the President from expressing the intent to abrogate a treaty.

Fourth. It does not affect in any way the notice the President has given under article X, which states:

Either party may terminate the treaty one year after notice has been given to the other party.

Fifth. It does express the view of the Senate that, under the Constitution, the President cannot unilaterally nullify a treaty.

I state again the precise amendment on which the Senate will be voting at the hour of 12 noon. The amendment reads as follows:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and any other nation.

This, Mr. President, in the view of the Senator from Virginia is an extremely important matter. It goes far beyond the question of Taiwan. The United States has many very important mutual defense treaties with many different nations. The Senate of the United States, by its action today in voting down the Byrd amendment, if, indeed, the Senate takes that action, would be establishing a precedent by saying to the Nation and to subsequent Presidents that a President, acting alone, can terminate a treaty that has become law as a result of approval by a two-thirds vote of the Senate of the United States.

Mr. President, in the discussion yesterday, the able senior Senator from Louisiana (Mr. LONG) called attention to article VI of the Constitution. Article VI reads thusly:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Senator LONG then very aptly stated this:

The impression I gather from that article is that a treaty signed by the President and ratified by a two-thirds majority of the Senate is the law, and if you have a later law to the contrary, it would supersede that law. In case of conflicting laws, whichever law is the latest of the two would prevail. That is the impression that I have.

Then he continues:

If you want to repeal a law, you have to do it with another law. The Executive can make agreements, but he is sworn to uphold

the law himself, so that he cannot repeal a law just by saying "I just don't like the law; I am not going to abide by it."

The Senator from Louisiana continues:

If one of us tried to do that, we would be put in jail. They would say, "You don't have the right to decide what law you are going to abide by or what law you are not going to abide by."

The Senator from Louisiana continues in that same vein, pointing out that a treaty, being a law, cannot be set aside unilaterally by one branch of the Government, or cannot be set aside unilaterally by the President of the United States, whoever he may be.

Mr. President, I realize that there are many who feel that the President should have that prerogative, but under the Constitution I think it is very clear that he does not have it.

The purpose of this amendment is not to focus on Taiwan, but the purposes of this amendment is to focus on the broader problem of what happens to future treaties made by the United States, ratified by the Senate, with other nations of the world.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Arizona.

Mr. GOLDWATER. I think it would be helpful if the members of the Foreign Relations Committee, including the chairman, would indicate to those of us who support the Senator's amendment whether they would approve of the President abrogating or terminating the treaty in which it created the United Nations or created NATO.

I think this is rather important that the chairman, or ranking member, or any member, say that they want that condition to prevail in this country.

If the Senator would further yield, because he just referred to the words of Thomas Jefferson which are in our manual, and we are supposed to live by that manual.

I would like to read what the Supreme Court Justice Joseph Story, a very scholarly jurist, wrote in his commentaries on the Constitution of the United States in connection with treaties:

This joint possession of the power—

Speaking of the President—

affords a greater security for its just exercise, than the separate possession of it by either.

It continues:

[I]t is too much to expect, that a free people would confide to a single magistrate, however respectable, the sole authority to act conclusively, as well as exclusively, upon the subject of treaties . . . there is no American statesman, but must feel, that such a prerogative in an American president would be inexpedient and dangerous.

Now, I think that might be right at the heart of what the Senator from Virginia is talking about and which we do not seem to be able to convince the members of the Foreign Relations Committee is valid.

I might further comment that while the Constitution is not too precise in this field, the words of the Founding Fathers are bound with precision in relation to the power of the Senate in treaties and the power of the President in treaties.

Story adds, in words having equal bearing upon repealing or making treaties:

The check, which acts upon the mind from the consideration, that what is done is but preliminary, and requires the assent of other independent minds to give it a legal conclusiveness, is a restraint which awakens caution, and compels to deliberation.

To me, that is all we are trying to do. We want to solve this question, can a President of the United States wake up in the middle of the night, without talking to anybody, and say, "Well, that treaty, I don't like that treaty, let's end NATO, let's end our association with Japan, let's end any of the treaties we have," and we have to stand by and put up with it.

We have no power under the argument advanced yesterday by members of the Foreign Relations Committee, no power to act.

I think it is very necessary that the Senator's amendment is put into this measure, which I consider to be a good piece of legislation, much better than we originally had.

I think we need the teeth to keep consistency with the desires of most members of the Foreign Relations Committee that I know to bring back to the Congress those powers which left this Congress during the last 40 years.

Here we are playing around with something that has never been done in the 201-year history of our country until this President took it on himself to do it.

I just wanted to make those few comments. I thank the Senator from Virginia.

Mr. HARRY F. BYRD, JR. The able Senator from Arizona is so right. I thank him for his statement.

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

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

Mr. CHURCH. Mr. President, I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished chairman.

Mr. President, the Constitution reads on this particular question, and I am reading from paragraph 2 of section 2, article II of the Constitution: "He"—the President—"shall have Power, by and with the Advice and Consent of the Senate, to make Treaties"—to make treaties. It does not say anything about shall have the power to terminate them.

It would seem to me that the authors of the Constitution intended for this to be a share in power, meaning by my saying "this," I mean the terms of the treaty.

If the authors of the Constitution had intended that the power to terminate be shared, they would have said so. The Constitution only talks about making treaties, and in that instance includes the Senate.

"He"—the President—"shall have Power, by and with the Advice and Consent of the Senate, to make Treaties."

It seems to me that the distinguished Senator from Virginia has raised a very nice, interesting, important and far-reaching question, and the constitutional implications are broad. They are broad. It is a question that I think should be carefully considered.

The Foreign Relations Committee has indicated that it would hold hearings on this matter. I suppose that the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) would certainly avail himself of that opportunity on such occasion.

The constitutional questions are so broad, Mr. President, that I would hope that the distinguished Senator from Virginia, having raised the issue, having expressed a strong viewpoint on it, having made a case, from his standpoint, that is worthy of consideration and attention for hearing and study, would consider withdrawing the amendment and not pressing the Senate to a vote on it at this particular time.

The distinguished Senator from Virginia has indicated that the adoption of his amendment by the Senate to the pending matter would not affect the Mutual Defense Treaty with Taiwan, would have no impact on that whatsoever. That being the case, the distinguished Senator from Virginia would lose nothing in withdrawing the amendment, inasmuch as, in his viewpoint, it would have no impact on what the President has done to terminate in accordance with the provisions of article X of the Mutual Defense Treaty—that treaty.

This is not the proper vehicle for this amendment. Mr. GOLDWATER, our distinguished colleague from Arizona, and others—I have not looked over the names, but I do know of Mr. GOLDWATER and others—are pressing this issue in the courts; and I think it would be well to let the courts make a decision on it. In the meantime, the Foreign Relations Committee could conduct hearings. Mr. HARRY F. BYRD, JR. could send a resolution to that committee, and hearings could be conducted, evidence could be presented, and the Senate then would be in a better position, with that kind of preparation, to vote on this very broad, far-reaching constitutional question.

If the Senate had intended in a mutual defense treaty that the Senate vote on its termination, the Senate would have written that in as a reservation. The Senate approved the ratification of that treaty with its eyes open, with its ears open, and knowing full well of the provisions in article X of the treaty allowing for termination of the treaty by either party.

Some will say, "Well, who is the party?" If the "party," by the constitutional forebears, had been intended to be the Senate, it seems to me they would have said so, just as they said that the party in making treaties is the President, by and with the advice and consent of the Senate. They certainly must have foreseen that treaties might be terminated, that treaties might even be abrogated, that it might be in the interests of our own country to terminate a treaty. They must have foreseen that. If they had meant for the Senate to be a

party to the termination of treaties, I am constrained to believe that they would have had the foresight and the wisdom to have written that into the Constitution.

Mr. President, I simply urge my distinguished colleague from Virginia, Mr. BYRD, he having raised a very important question here, to consider withdrawing the amendment at this time and pursuing it before the Committee on Foreign Relations. It is a matter that is appropriate for thorough consideration by that committee.

No hearings have been held on this amendment. There has been no consideration of it by the Foreign Relations Committee. Again I say that the members of the committee already have indicated on the record their willingness to hold hearings and to give serious study to the issue. I think that is the appropriate manner for dealing with this question. I do not believe that the Taiwan Enabling Act is the appropriate vehicle. It is not a treaty.

In the future, if the Senate wants to write into any treaty a provision that will outline clearly the termination of such treaty, or the abrogation of it, that it is a question which will have to be decided jointly between the President and the Senate, it can do so. Also, it can say in that provision whether or not the Senate should terminate by a majority vote or by a two-thirds vote, or whatever.

Without the kind of study that is needed, I hope that the Senate would not be forced to take action at this point, and on this vehicle, on an amendment that has such far-reaching implications. It would be a blanket requirement. In order for all treaties to be terminated in the future, the approval by the Senate would be required. By what vote? A two-thirds vote? A three-fifths vote? What?

It may be in the interests of this country—who knows?—to terminate some other treaties down the road. It may be in the security interests of this country to terminate some other treaties down the road. Who knows? We may have a Republican President at some far distant time in the future, or we may have a Democratic President. But, whichever, that President, as the Chief Executive of this country, is in the best position, I believe—and apparently the Founding Fathers thought so—to terminate a treaty; and they left it open to the Senate to write provisions in any treaty. They left it open to the Senate.

There is nothing in the Constitution that prevented the Senate in 1954 from writing a provision therein which said that either party shall have the power to terminate, with the understanding that the U.S. Senate, on the part of the United States, shall first approve the termination.

The constitutional forefathers left that door open for us. They did not leave the door open when it came to making treaties. They said that the President of the United States shall have the power, by and with the advice and consent of the Senate. The door is closed. The President cannot make a treaty without the approval of the Senate, and I have so said to Mr. Carter in connection with SALT. I said:

> If an agreement is sent up there, count me out. If it is done by way of an Executive agreement, count me out—o-u-t.

I am against it to start with, should it be sent in by an agreement. The constitutional forebears closed the door there. It has to be done with the advice and consent of the Senate. It would not be so with the termination of a treaty. They did not say that.

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

Mr. ROBERT C. BYRD. So I do plead with my friend from Virginia, who is a very understanding Senator, who is a very able Senator, who wants the Senate to do the right thing in the interests of the United States; and I am sure he believes that the right thing can best be done if the Senate is well informed through adequate hearings. If he would do that, the Senate then would be in a position to proceed with its hearings in the Foreign Relations Committee and would not have to cast a vote today, when Senators are not prepared. I am not prepared. I have my own viewpoint, hastily arrived at through reading a couple of lines in the Constitution and thinking about it overnight. But what other evidence do I have? I need other evidence. I need a report on the part of the Foreign Relations Committee. I need its testimony. I need to read its hearings so that I will be guided properly and so that I will not vote in the wrong way. I intend to vote against the amendment, and I intend to vote for a tabling motion, if such a motion is offered, but that might not be the right thing.

I urge the Senator to consider withdrawing the amendment and letting the Foreign Relations Committee conduct hearings on the matter, and let us approach it from an informed standpoint, after adequate testimony has been adduced and thorough study has been had. I cannot read any Senator's mind, but there are Senators today who, for political reasons or otherwise—they may be running for reelection next year—may feel constrained, in the light of events and for other reasons, to vote for the amendment.

I think it is not. I hope they would not be forced to do that without adequate preparation and study on a matter of such far-reaching constitutional implications, and I mean they can be far reaching with respect to security interests of this country in the future.

For their sake, I hope they will not be forced to vote on this issue today. It is the wrong vehicle. It is the wrong time. It is under the wrong circumstances. It will not affect one way or the other this particular subject that is before the Senate, basically, the Taiwan Enabling Act. And for all of those reasons, I hope that the distinguished Senator from Virginia will consider withdrawing the amendment and that he will withdraw it.

I respect him if he does not. I respect his right to disagree with me. But I know that he will think about it. In consideration of the need for all Members of the Senate to be fully informed on this subject before they vote one way or the other, I hope that he will withdraw the amendment.

Now I yield to my friend from Arizona, Mr. GOLDWATER.

Mr. GOLDWATER. I thank my good friend and leader.

I just wished to read a piece of testimony that I gave before the Foreign Relations Committee to show that this is not exactly new:

> I wish to remind the Senate that the issue before us is not novel. It is not new.
>
> In 1856, the Foreign Relations Committee took up the identical question before us today.
>
> They examined the question of how a treaty should be terminated when the treaty itself provides for cancellation after notice given by either party.
>
> The Committee had no difficulty in answering the question. In its official report, our Senate Committee in 1856 said that "where the right to terminate a treaty at discretion is reserved in the treaty itself, such discretion resides in the President *and* Senate."
>
> The report went on to say that a treaty can also be repealed by joint action of both Houses of Congress, but it rejected any idea that the President could do it alone.

Yesterday I put a list of 51 treaties in the RECORD that have been abrogated or terminated, as some would prefer, since the beginning of our Republic. If my memory serves me correctly only one treaty of mutual defense was included, and that was abrogated by the entire Congress and later the President approved the action.

So this is not new, and I will say to that the Constitution is not exactly clear in this whole field.

I asked a question earlier that no member of the Foreign Relations Committee has answered. I wish to know what the opinion, for example, of the majority leader might be on any President—I do not care if he is a Republican, if we live that long, or a Democrat if we have to put up with that—but would he wish to have any President have the power to say, "We are going to pull out of the United Nations tomorrow," or "We are going to leave NATO tomorrow," or "We are going to cancel our Japanese treaties"?

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. GOLDWATER. The majority leader has the floor.

Mr. ROBERT C. BYRD. I had hoped the Senator was letting me yield to him on his time

Mr. GOLDWATER. Gladly, but I have to get permission from my boss.

Mr. HARRY F. BYRD, JR. The Senator from Arizona does not have time.

Mr. ROBERT C. BYRD. I thought it was on the Senator's time.

Mr. GOLDWATER. I assume it is on the Senator's time. I will be glad to split it with the Senator.

Mr. ROBERT C. BYRD. All right.

Let me just respond, if I may, to the distinguished Senator.

No 1, he has referred to a committee of the Senate 123 years ago that in the

light of circumstances at that time issued a report saying thus and so.

The Senate did not say it. It was the committee.

Second, he has asked how I feel about the President of the United States terminating this treaty or that treaty, and then he mentioned the NATO Treaty.

I cannot envision any President, Republican or otherwise—or Democratic—terminating our responsibilities under NATO, because that would run against the security interests of the United States. Everyone knows that.

But there might be a treaty which would be not in the security interests of the United States which the President would feel he should terminate and which he had the right to terminate in accordance with the provisions thereof.

I say leave it to the judgment of that President at that time and under those circumstances.

It was clearly within the province of the Senate when the Mutual Defense Treaty with Taiwan was written in 1954 to have included in its provisions that the approval of the Senate should be had for termination.

I think it comes at a late date now to claim that, and the Senator from Virginia does not so claim. He says it would not have affected that treaty, and that is one of the basic reasons why I hope he will withdraw his amendment on this occasion, because it will not affect that treaty.

It can go before the Foreign Relations Committee. Hearings can be held. They will be held. And the Senate then will be in a position to knowledgeably, knowingly, and in an informed manner vote on the issue at an appropriate time.

I thank the Senator.

I thank the Senator for yielding.

Mr. HARRY F. BYRD, JR. I have so little time. I yield myself just 1 minute.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 1 minute.

Mr. HARRY F. BYRD, JR. Mr. President, I wish to point out that the Constitution does not say how to repeal a statute. It does not say the power to terminate a law is shared with Congress. But it is obvious Congress must act to terminate a law.

At this point, also, Mr. President, I wish to print in the RECORD information that was submitted yesterday by the Senator from Arizona (Mr. GOLDWATER) listing 51 treaties which were terminated by legislative action, and I ask unanimous consent that it be printed in the RECORD.

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

TERMINATION OF TREATY OR TREATY PROVISION WITH LEGISLATIVE ACTION (51)[1]

A. Termination with legislative approval or ratification (48)[2]

Authorizing legislation, treaty, and total treaties affected:

Act of July 7, 1798, 1 Stat. 578, French-American Treaties of 1778–1788, 4.

H.J. Res. of April 27, 1846, 9 Stat. 109, Convention on Boundaries with Great Britain, 1.

S. Res. of March 3, 1855, 9 Senate Executive Journal 431, Commercial Treaty with Denmark, 1.

J. Res. of Jan. 8, 1865, 13 Stat. 566, Reciprocity Treaty with Britain, 1.

J. Res. of June 17, 1874, 18 Stat. 287, Treaty of Commerce and Navigation and Commercial Convention with Belgium, 2.

Act of February 26, 1883, 22 Stat. 641, Amity Treaty with G. Britain, 1.

J. Res. of December 21, 1911, 37 Stat. 627, Treaty of Commerce and Navigation with Russia, 1.

Seamen's Act of March 5, 1915, 38 Stat. 1164, Several treaties and conventions, 25.

S. Res. of May 26, 1921, 61 Cong. Rec. 1793, International Sanitary Convention, 1.

Treaty on Principles and Policies Concerning China (Nine Power Agreement) of February 6, 1922, 2 Bevans 375, Treaty of Commerce and Navigation with Japan, 1.

1944 Chicago Convention on International Civil Aviation, 3 Bevans 944, 965, 1928 Pan American Convention on Commercial Aviation, 1.

1946 Convention for the Regulation of Whaling, 4 Bevans 249, 1937 Convention for the Regulation of Whaling, 1.

Trade Agreements Extension Act of 1951, 65 Stat. 72, Treaties of Friendship, Commerce and Consular Rights with Hungary and Poland, 2.

1948 Convention on Safety of Life at Sea, 1929 Convention on Safety of Life at Sea, 1.

Foreign Assistance Act of 1961, 75 Stat. 424, Commercial Convention with Cuba, 1.

Export Control Act of 1948, 50 USC App. 2021 et seq.

Trading with the Enemy Act, 50 USC App. 1 et seq.

Mutual Assistance Act of 1954, 22 USC 1934.

Inter-American Treaty of Reciprocal Assistance of 1947, 4 Bevans 559.

Cuban Resolution of 1962, 76 Stat. 697.

Byrd Amendment of 1971, 85 Stat. 427, § 503, "One aspect of our treaty obligations under the U.N. Charter." *Diggs* v. *Shultz*, 470 F. 2d 461 (D.C. Cir. 1972), 1.

Fishery Conservation and Management Act of 1976, 16 USC 1801, Three Conventions on Fisheries, 3.

B. Termination with implied authority conferred by inconsistent legislation (3)[3]

Date of legislation, treaty, and total treaties affected:

Tariff Act of July 24, 1897, 30 Stat. 151 Commercial Convention with Switzerland, 1.

National Industrial Recovery Act of 1933, 48 Stat. 195, Convention on Abolition of Import and Export Prohibitions and Restrictions, 1.

Trade Agreements Act of June 12, 1934, 48 Stat. 943, Treaty of Commerce and Navigation with Italy, 1.

FOOTNOTES

[1] One incident of Congressional ratification of a Presidential notice is not included in the table because notice was withdrawn before the treaty was terminated. In 1865, shortly after President Lincoln had notified Great Britain of our withdrawal from the Rush-Baggot Convention regulating naval forces upon the Great Lakes, Congress defended its power in the field by passing a Joint Resolution based on the principle that Lincoln's action was invalid until ratified and confirmed by Congress. H.J. Res. of Feb. 9, 1865; 13 Stat. 568.

[2] Congress terminated all existing treaties of the Hawaiian Islands with foreign nations in the Joint Resolution of July 7, 1898, but the action is not included in the table because those treaties were not ratified under the Constitution.

[3] Another treaty which was terminated because of inconsistent legislation is the 1891 Treaty of Amity, Commerce and Navigation with the Independent State of the Congo. In 1916, Belgium, which had annexed the Congo, twice denounced the whole treaty after Congress directed the termination of a substantive article thereof in the Seamen's Act of 1915. The treaty is counted only once in the above tables, being included with those treaties affected by the Seamen's Act in Table A. Termination of the treaty is reported by the State Department under the heading "Abrogation of Treaties and Provisions of Treaties which Conflicted with the Seamen's Act of March 4, 1915," Foreign Relations, 1920, vol. 1, pp. 207–209.

Mr. HARRY F. BYRD, JR. Mr. President, one further word. I shall, of course, take under advisement and give full consideration to the wishes and desires of the majority leader.

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

Mr. HARRY F. BYRD, JR. I yield myself one-half additional minute.

The PRESIDING OFFICER. The Senator from Virginia is recognized for one-half minute.

Mr. HARRY F. BYRD, JR. I will not make a decision at this moment, but I will, of course, give full consideration to his wishes, although I see very little need for it.

Mr. CHURCH. Mr. President, how much time remains to the opponents of this amendment?

The PRESIDING OFFICER. The Chair will advise that 11 minutes remain.

Mr. CHURCH. Mr. President, I reserve 5 minutes of that time to reply to the distinguished Senator from Virginia.

First of all, let me say to him that this summer the committee will have before it a major treaty on treaties, the Vienna Convention on the Law of Treaties, at which time we shall be conducting thorough hearings, that could include the very question that has been raised by the distinguished Senator.

I should think that would be an appropriate time to consider all of the possible ramifications of the very important issue he has raised.

I wish to assure the Senator that at that time or at some other appropriate time the committee will examine this question in depth.

I reiterate the request of the majority leader that the Senator from Virginia give serious consideration to withdrawing the amendment at this time, because I feel that it is inappropriate as a part of this bill. Furthermore, before we pass judgment on a question of such far-ranging ramification, we should have the benefit of thorough hearings and expert testimony.

For example, Mr. President, the resolution as it is presently written raises questions on its face. Even if we were to accept the arguments offered in support of the amendment, which I cannot accept, the arguments raise a question as to why the amendment has been framed in such a way as to be limited to mutual defense treaties.

In other words, if the Senator from Virginia or the Senator from Arizona are correct in their assertion that a treaty may not be terminated except with the consent of the Congress, then why should this sense of the Senate resolution be limited to one kind of treaty, namely, mutual defense treaties? Even on its face, the amendment is not consistent with the argument that has been advanced in support of it.

The majority leader has already pointed out that under the Constitution the advice and consent of the Senate is required only for the purpose of making treaties. When it comes to their termination, it is true that the Congress can take part, and on numerous occasions in the past, that indeed has happened.

If the Congress had wished to initiate the action that would terminate the Mutual Defense Treaty with Taiwan, then there is nothing to prevent the Congress from passing a resolution—a joint resolution—calling for the termination of that treaty which, if signed by the President, would be an act of law. And, under the well-known doctrine of supersession, the last act of the Congress, being last in time, would still supersede the mutual defense treaty, and once bearing the force of law would operate to terminate the treaty.

So I do not argue with the proposition that it is appropriate for Congress when it wishes to assert its right to terminate treaties simply by passing a resolution which, when signed by the President, has the force of law and, being the last statement on the subject, supersedes any previous law. That is how we change statutes and treaties.

The PRESIDING OFFICER (Mr. HEFLIN). The time of the Senator from Idaho has expired.

Mr. CHURCH. I ask unanimous consent for 3 extra minutes, Mr. President.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. CHURCH. In the current case we happen to have a treaty which includes in its own text the manner by which it may be terminated. In article X the treaty itself provides:

> Either party may terminate it 1 year after notice has been given to the other party.

When this treaty came before the Senate in the first instance, when the Senate by a two-thirds vote ratified the treaty, it also ratified article X which contains the method whereby the treaty may be terminated. That is every bit as much a part of the treaty as any other article.

So the Senate placed its imprimatur of approval upon this method for terminating this particular treaty.

The President has acted in conformity with article X, and I think there is no question—at least there is no question in my mind—that he has acted in an appropriate manner, and that by giving this notice upon the expiration of the year's period, the treaty will be terminated according to its own terms.

I close, Mr. President, with a statement from one of the foremost authorities on international law. I quote from the Restatement of the Foreign Relations Law of the United States by the American Law Institute, from section 163 which reads as follows:

> Under the law of the United States, the President, or a person acting under his authority, has, with respect to an international agreement to which the United States is a party, the authority to take the action necessary to accomplish under the rules stated in section 155 the termination of the agreement in accordance with the provisions included in it for that purpose.

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

Mr. CHURCH. I thank the Presiding Officer.

I ask unanimous consent that the remaining time be given to the distinguished Senator from New York, the ranking member of the Committee on Foreign Relations.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, I have expressed to Senator BYRD yesterday, and I express again, my feeling that it is a great service to the Senate, and that this question will be resolved, and I will join—and I think he has known me long enough to take my word for that—actively and vigorously in resolving it, with his leadership.

I am deeply concerned about the adoption of this resolution now for this reason, Senator: The Senator from Arizona, exercising his right as an American, has started a suit. If the Senate declares even in a sense resolution that the action of the President, in its opinion, is not lawful, it leaves a very grave legal question as to whether we are complying with the agreement we are really implementing here with the People's Republic of China, because the communique says:

> The United States of American recognizes the Government of the People's Republic of China as the sole legal government of China.

Therefore, if we are going to violate that then we have violated what we started out to do, and this whole effort and the whole edifice fall.

So my point is because of the frame of reference in which this amendment is cast, and quite without the Senator from Virginia or any other author desiring it, I agree with that, and I notice the Senator has put it in writing, and I do not think you can help it when the Senate says in its opinion that this is an unlawful act, because the President has no such power, then you cannot avoid the legal consequences which are that the President has not yet acted until somebody else, stronger than we, more authoritative does so, and that is a tough one because I think the Supreme Court is very likely to dismiss this suit on the ground that it is a political question.

So if he has acted unlawfully what are we here for? This whole legislation collapses. That is why I am concerned about it.

That is why I would add, for whatever it is worth, my assurances to those of the leadership and those of Senator CHURCH, our chairman, to most assiduously and faithfully do this job.

The VICE PRESIDENT. All time of the proponents has expired.

Mr. HARRY F. BYRD, JR. I thank the Senator from New York. I yield 2 minutes to my colleague from Virginia.

Mr. WARNER. I thank the Senator. As a cosponsor with the senior Senator from Virginia of this amendment, I address to the opposition a question: Since the Constitution provides the procedures for the creation of a statute or a treaty (although it does not in either case specifically provide procedures for repeal), and since it does declare both statute and treaty, alike, to be the supreme law, why does it not logically follow that treaties, like statutes, can only be repealed by action of the Senate?

I bring to your attention article VI of the Constitution which says:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.

How can the President, with just a stroke of the pen, remove a part of the supreme law of the land?

The distinguished Senator from Arizona provided for the record historical facts with respect to past treaties, the ones that have been either abrogated or terminated by the President after consultation with this body.

I believe that only four treaties in our history have been concluded without the joint procedure. One where the other party (country) went out of existence, and the remaining three where the treaties became totally outdated and did not require action. Thank you Mr. President.

The VICE PRESIDENT. The time of the Senator has expired.

The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, article 10 of the treaty with Taiwan states that either party, and that means either government—in the United States the Government means both the legislative branch and the executive branch—either government may terminate the treaty 1 year after notice has been given to the other party.

So it may be terminated during this year.

I emphasize again what I said before, and what other Senators have continued to insist, that the Constitution says nothing about how a treaty shall be terminated. I say the Constitution says nothing about how a law shall be terminated. The Constitution does not say how to repeal a statute. It does not say the power to terminate a law is shared with Congress, but it is obvious that Congress must act to terminate a law.

Frankly, this amendment is so clear that I see no reason to hold public hearings on it, or any other hearings on it.

I will read it again for the RECORD:

> It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and any other nation.

Senator GOLDWATER has put into the RECORD 51 treaties which have been terminated by legislative action.

As I say, I see no reason for an amendment as clear as this to be the subject of special hearings by the Foreign Relations Committee. I have no objection to it, however.

I want to give full consideration, of course, to the views expressed by the distinguished majority leader. I would give full consideration to a unanimous-consent request that if this amendment is withdrawn, the Foreign Relations Committee will consider and will report back to the Senate this precise amendment, expressing any views it wishes to on it, will report back this precise amendment

for an up-or-down vote on a date certain. I prefer to vote today. I think this matter is of great importance. I think it should be determined now. But I am willing to give some consideration if a firm, ironclad agreement can be made to report this amendment back in 30 days; that it become the pending business before the Senate, and that an up-or-down vote occur on the amendment. Of course, the Foreign Relations Committee can present any viewpoint it wishes. They can say it is a lousy amendment and should be voted down. They can make any statement they wish. But I would seek an up-or-down vote on the amendment at a time certain.

If those who are opposing this amendment today want to enter into such an agreement, I will give it consideration. But I certainly will not do it merely on the basis that the Foreign Relations Committee will hold hearings on it and may or may not take any action on it. This is a vitally important matter. It affects the future of all of our treaties. It affects the future of the U.S. Senate. It affects the future of our Nation, as I see it, if we are going to say by a vote today, an unprecedented vote, if this amendment is voted down, that the President of the United States, in the sense of this Senate, has the right unilaterally to nullify a treaty.

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

The VICE PRESIDENT. The Senator has 3½ minutes remaining.

Mr. HARRY F. BYRD, JR. Mr. President, I want to say again this amendment does not express either approval or disapproval of the President's decision to give notice under article 10 of the Mutual Defense Treaty between the United States and the Republic of China. The amendment does not take from the President any power he now has. It does not prevent the President from expressing the intent to abrogate a treaty.

It does, however, express the view of the Senate that under the Constitution the President cannot unilaterally nullify a treaty. So far as the Senator from Virginia is concerned, that is the position that I think the Senate of the United States should take, that a President cannot unilaterally nullify a treaty.

Mr. CHURCH. Will the Senator yield so I might respond?

Mr. HARRY F. BYRD, JR. Yes.

Mr. CHURCH. I would be happy to assure the Senator that the Foreign Relations Committee would hold hearings on the subject of the termination of treaties. We would look to the best authorities we could gather for that purpose. We would consider the Senator's proposal, and we would report back to the Senate on the subject in such form as the committee believes appropriate.

The Senator will always then have the opportunity to substitute his amendment for any proposal the committee might wish to offer.

I could not commit the committee in advance to report back the Senator's amendment in exactly the same language that the Senator has now presented it.

Mr. HARRY F. BYRD, JR. I thank the Senator. I will make the unanimous-consent request, and the Senate can do as it wishes. I ask unanimous consent, Mr. President, that if the Senator from Virginia and my associates agree to withdraw this amendment, that the Foreign Relations Committee will hold hearings, or do whatever it wishes to do—I do not think hearings are necessary—hold hearings or do whatever it wishes to do, and report this precise amendment back to the Senate and it become the pending business on May 1, and will continue to be the pending business until it is disposed of either by approval or by tabling.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, would the Senator not consider this type of a request: That the Senator's amendment be referred to the Committee on Foreign Relations; that the Committee on Foreign Relations hold hearings on the Senator's amendment, and that the Foreign Relations Committee be required to report back no later than, let us say, 60 days. We have to give them more time than May 1, because under the Budget Reform Act we have to have the first budget resolution disposed of before May 15, so we run into a lot of problems that, by law, we are already tied to.

Mr. President, I ask unanimous consent that the Senator from Virginia may have 2 additional minutes and the Senator from Idaho 2 additional minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. No later than 60 days, or we can make it 90 instead of 60, that the committee report back that amendment, as amended, if amended.

I do not think we can put a committee into a straitjacket in their conducting hearings, the Agriculture Committee, the Small Business Committee, or whatever committee, to say that it will hold hearings and be required to report back that particular resolution, word for word, comma for comma, semicolon for semicolon, with no change, and that that measure then become the pending business in the Senate.

I hope the Senator would, with the assurance by the Senate, buy an order by the Senate itself that the committee report it back—the chairman and ranking member would do that anyway—report back no later than 90 days. Then, as majority leader, I am willing to add the provision that it then be the pending business, unless, at that particular point—well, the pending business following action on any business that then may be pending. We may have an appropriation bill up or we may have war powers, we may have—who knows what we may have up at that point?

That, it seems to me, is a good arrangement. It gives the Senator the assurance that his resolution has to be the resolution that the committee discusses, conducts hearings on, his amendment is going to be reported back as amended if amended, his amendment is going to be the pending business before the Senate at a particular point in this session. That gives the Senator assurance that the Senate is going to have an opportunity to act on this amendment or resolution.

I hope the Senator will allow me to make that request which, coming from the majority leader, I think, says the majority leader cannot change it. He cannot schedule anything, he is bound by the order. The committee cannot change it. It is bound by the order to report the Senator's amendment back as amended if amended. The Senator can continue with all his rights as a Senator to offer his amendment to that proposal if it is reported back. I hope the Senator will allow me to interpose that request.

Mr. President, I ask unanimous consent that there be an additional 15 minutes of debate, to be equally divided between Mr. CHURCH and Mr. HARRY F. BYRD, JR., in order that this matter might be resolved.

Mr. FORD. Will the Senator yield for a question?

Mr. ROBERT C. BYRD. Yes.

Mr. FORD. Does this extend, then, the 12:30 vote, or will it come at 1:30?

Mr. HARRY F. BYRD, JR. What is the unanimous-consent request?

Mr. ROBERT C. BYRD. That there be an additional 15 minutes on this matter; not to exceed 15 minutes. We cannot guarantee that a quorum can be called off in 5 minutes.

The VICE PRESIDENT. Is there an objection?

Mr. HARRY F. BYRD, JR. Reserving the right to object, I am not sure I understand what the unanimous-consent request is.

Mr. ROBERT C. BYRD. This unanimous-consent request is simply that the time be extended for not to exceed 15 minutes before acting on the Senator's amendment. It probably will not take 5 minutes.

Mr. HARRY F. BYRD, JR. I do not object.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HEFLIN). The clerk will call the roll.

The second 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. Mr. President, I had hoped that the distinguished Senator from Virginia would accede to the request which I presented, which I felt was a very reasonable request, allowing the Committee on Foreign Relations to conduct hearings on the resolution offered by the Senator from Virginia, which is in the form of an amendment at this point, which would require that the committee report back within 90 days, no later than 90 days—or, if the Senator wished to make it 60, that would be agreeable, no later than 60 days—the Senator's resolution as amended if amended, and that it then be the pending business before the Senate following the disposition of whatever the pending business was at that particular time.

Mr. President, that is a very reasonable request. It would allow the Foreign Relations Committee, which has jurisdiction over this type of legislation, to conduct hearings, to get eminent witnesses to come in, pro and con. Then the Senate

itself would have an opportunity to vote in a knowledgeable way, after they have been adequately informed, on a question that could have far-reaching constitutional implications and which ought not to be submitted at this time on a vehicle which the distinguished Senator from Virginia, himself, says would not be affected by this. But it is a meaningful proposal.

The Senators are going to vote. The Senator does not agree to this request. The Senators are going to have to vote on a matter that has far-reaching constitutional implications and they are going to vote on the basis of their emotions, I suppose, their political intuitions, rather than on the basis of facts carefully secured by the Committee on Foreign Relations, thoroughly studied, and with all Senators having an opportunity to have a committee report, printed hearings, and thus be in a better position ably and knowledgeably to vote on such a far-reaching question.

Mr. NELSON. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. NELSON. I should like to appeal to the distinguished Senator from Virginia to go along with this request. This is an important issue which, for some reason or another, in the whole history of the Republic, so far as I know, has never been addressed. However, on its face, I think the Senator from Virginia is correct.

I think if there were no other choice, I would vote for the amendment as drafted by the Senator from Virginia, and after committee hearings I probably will. However, in that process, something may be raised that would cause me to think the phrasing ought to be somewhat different.

In any event, in principle, I am in agreement with the distinguished Senator from Virginia. But if there is an insistence that the vote occur today, I simply will have to vote against it.

I do not think we ought to be legislating on an historically important principle, involving all kinds of implications, without at least going through the normal process of having hearings and constitutional authorities testifying.

I suspect they will come down on the side of the distinguished Senator from Virginia. But I think we ought to use the process, since nothing has been done about this in 200 years, and I do not know why we could not wait another 60 days.

Mr. ROBERT C. BYRD. I thank the Senator.

On top of that, there is a case pending, Mr. GOLDWATER has presented a case dealing with the President's action in terminating the Mutual Defense Treaty with Taiwan, and that case would not be prejudiced one way or the other by a Senate vote today.

I just hope the Senator from Virginia and his colleagues who are supporting him in the amendment would think again one more time, give it another chance, and let the Senate order the proposal I have presented, or would present, as previously outlined.

It is a fair proposal. It is responsible. It lets everybody have a chance to know what they are voting on.

I may very well vote with the Senator at that time. But today I would have to vote against the proposition. As Senator NELSON says, he would have to, also.

It does put Senators in a difficult position to cast a vote on a matter of this kind with such far-reaching constitutional implications without a word of testimony, without a word of hearing, without a committee report.

Mr. JOHNSTON. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. The time has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate may proceed for 5 additional minutes, and that the Senator from Idaho may control half of the time and the Senator from Virginia half.

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

Mr. JOHNSTON. Mr. President, I ask for recognition simply to plead with my friend, the Senator from Virginia, to let this matter go to committee.

I say that because on yesterday, persuaded that he was right, I told the Senator from Virginia I would be with him on this particular matter.

On reflection overnight, I am troubled by the implications of the resolution. I am also cognizant of the fact that nothing would be lost to go to committee and report back within a period of 90 days because the notice, as given by the President on Taiwan, is not affected at all by this amendment.

So that if we report it back in 90 days, I expect to be with the Senator from Virginia. But I am not sure and am not prepared to do so today.

I would hope we could go to committee with this matter and find out if there are any implications that are not apparent on one day's study on the matter.

I thank the Senator.

Mr. HARRY F. BYRD, JR. May I ask, what assurance would there be that the Senator from Virginia could get an up or down vote on this precise amendment 60 days from now, as it might be?

Mr. CHURCH. If I may respond—without prejudging what the committee might recommend after hearings—the Senator would always be in a position to offer this precise language as a substitute for the language that was recommended by the committee, should he wish to do so; and I am prepared to have that decided then by an up or down vote at the appropriate time once the committee has had an opportunity to do its work on such a far-reaching issue.

Mr. JAVITS. If I may add one other thing, Senator CHURCH and I will pledge ourselves to see that the Senator has that opportunity, and that procedures not interfere with the right of the Senator—not just the right, but the right under this agreement—to substitute anything we proposed in haec verba, according to the way he has proposed it.

Mr. HELMS. On an up or down vote?

Mr. JAVITS. On an up or down vote, with no tabling.

Mr. HARRY F. BYRD, JR. The Senator from West Virginia indicated a 60-day timeframe would be satisfactory.

Mr. ROBERT C. BYRD. I said 90 days earlier, hoping that by doing so we would not come in conflict with the expired deadlines in connection with programs, or with requirements we have to meet by law, such as the action on the first concurrent budget resolution which has to be completed by May 15.

I would like to at least leave a little room for those contingencies.

Now, this is March, and then we have April, that is 60 days. May 15 is a deadline we know we have to meet under the law on the first concurrent resolution.

Could we not say not later than 90 days? That assures the Senator he is going to have a decision one way or the other on the matter.

We are talking about a different 30 days right now. But I would have to be conscious of the other problems that the Senate may be confronted with in connection with its programing of legislation, and legislation that by law we have to dispose of by certain deadlines.

Mr. JAVITS. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. I just made the suggestion to Senator CHURCH, he has to agree, but I make the suggestion to the Senator that the report of the committee come within 60 days, and the majority leader agree that matter be made the pending business within 90 days. That gives us the flexibility.

Mr. CHURCH. That is agreeable to me.

Mr. ROBERT C. BYRD. I hope very much that the Senator from Virginia would accede to that request——

Mr. HARRY F. BYRD, JR. Does that mean it would be made the pending business not later than the week of the 4th of June, for example?

Mr. ROBERT C. BYRD. I have not had the opportunity to look at the Calendar, but it would be that the majority would be bound by order of the Senate to make the resolution reported by the committee the pending business no later than 90 days from today.

Mr. HARRY F. BYRD, JR. The resolution reported by the committee, but the resolution reported by the committee, I judge from what the majority leader said and the chairman of the committee said, may not necessarily be this resolution.

Mr. ROBERT C. BYRD. It will be that resolution with the Senator's number, his name on it, as amended, if amended. It may not be amended. But I would think that the Senator would not object to the committee's taking testimony and offering amendments, voting on amendments to the resolution, in the light of evidence adduced.

When the matter comes up on the Senate floor, the Senator from Virginia could offer his pending amendment, which would be sent to the committee as a resolution, as a substitute for whatever the committee reports; or he could offer a perfecting amendment to the committee's resolution as reported. He would maintain all his rights. The two managers of the pending bill, who would be the managers in that case, have as-

sured him that he would get an up-and-down vote on his amendment.

This goes a long way, I say to the distinguished Senator from Virginia. Nobody probably has thought of the fact that his amendment, when offered, can be amended, whether it is a substitute or what. The amendment can be amended on the floor. They have offered to give him a vote up and down on his amendment as it is written right at this moment.

Mr. JAVITS. His amendment can be amended right now.

Mr. ROBERT C. BYRD. Of course.

Mr. JAVITS. Even after we vote on a motion to table.

Mr. ROBERT C. BYRD. There is no question about it.

The Senator really is being very fair in considering this request. He is being protected fully all the way around. He is being assured by the order of the Senate that the committee is going to report back the subject matter; that the majority leader will have to program it; and that the Senator will have an opportunity for an up-and-down vote on his amendment as presently written, if he wants to offer it that way to the resolution, if the resolution is changed in its terminology by the committee.

Mr. GOLDWATER. Mr. President, reserving the right to object, will the leader make a clarification? Did the leader make some reference to the amendment after——

The PRESIDING OFFICER. Will the Senator use his microphone?

Mr. GOLDWATER. It does not work. [Laughter.]

The leader made some reference to the amendment as reported by the committee being then referred possibly to "the committee on resolution."

Mr. ROBERT C. BYRD. No, I did not.

Mr. GOLDWATER. I got "the committee on resolution."

Mr. ROBERT C. BYRD. I was misusing it. That was an inexactitude in the use of terminology.

I referred to his amendment as being reported. It is an amendment now that Senator BYRD has offered. I assume that if it goes to the Foreign Relations Committee, it would have to be a resolution. When it is reported from that committee, it will be a resolution. Then the Senator could offer an amendment to that resolution.

I just sort of got my tongue tied a bit, I say to the Senator from Arizona, and used the word "resolution" when I may have meant the word "amendment." He certainly misunderstood me. I did not say what he thought I said.

The PRESIDING OFFICER. The additional time has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Virginia may have 2 additional minutes.

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

Mr. HARRY F. BYRD, JR. Mr. President, as I understand the proposal, this entire matter would come back to the Senate, would be scheduled for action one way or the other in the Senate, not later than the 7th day of June.

Mr. ROBERT C. BYRD. If that is the 90th day, yes, that would be correct.

Mr. HARRY F. BYRD, JR. Today is the 8th day of March. If we follow that procedure, it would be Friday, June 8.

Mr. ROBERT C. BYRD. I do not know, because May has 31 days and April has 30 days. But it is 90 days. Whether we use the new math or the old, it is 90 days. [Laughter.] Provided it is not a Sunday.

The Senator can be assured that whether this majority leader is still the majority leader on that day or not, the RECORD will be there, the Senate will be standing, and the majority leader at that time will be bound and shackled and chained—he can come in kicking and screaming, if he wants to—but that resolution will have to be made the pending business when the 90 days runs their course.

Mr. HARRY F. BYRD, JR. Mr. President, this is a vital matter. I do not think it is necessary to hold hearings on it. But I always like to cooperate with my colleagues. With the assurance that the matter will come before the Senate not later than 90 days from today and that the Senate will have an opportunity to debate all aspects of it. I will cooperate with the wishes of the majority leader.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Virginia always has been cooperative and reasonable, and I knew that he would be in this instance. He just vindicated my feelings.

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

Mr. ROBERT C. BYRD. I yield.

Mr. WARNER. Mr. President, as a cosponsor with the senior Senator from Virginia, I join him in this measure. I compliment the senior Senator from Virginia, the majority leader, the chairman and the ranking minority leader of the Foreign Relations Committee for reaching this agreement. I believe the ultimate resolution of this issue will be one of the historic landmarks of the Senate.

Mr. HELMS. Mr. President, notwithstanding anything else, my understanding is that it will be reported by May 1.

The PRESIDING OFFICER. The time has expired.

Mr. ROBERT C. BYRD. I ask unanimous consent for 1 additional minute.

Mr. HELMS. What is the request?

The PRESIDING OFFICER. The time has expired.

Mr. CHURCH. Mr. President, I ask for 1 additional second.

The answer is "Yes."

Mr. HELMS. That is all I want to know.

Mr. HARRY F. BYRD, JR. In other words, the matter will be handled by the Foreign Relations Committee between now and May 1, and it will be reported back to the Senate on May 1.

Mr. CHURCH. By May 1.

Mr. HARRY F. BYRD, JR. By May 1. And the majority leader will schedule it for Senate consideration in a period of 90 days.

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. At this time, there are two pending unanimous-consent requests. The Chair asks that Senators indicate on which request they would like action at this time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendment that is now pending, by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.), be withdrawn and that the amendment in the form of a resolution, bearing his name and the names of any other Senators he wishes to have as cosponsors, be referred to the Committee on Foreign Relations; that that resolution as amended, if amended, be reported back to the Senate no later than 60 days from today; that it be made the pending question before the Senate no later than 90 days from today, and that there be an up-and-down vote on his amendment at that time, if the distinguished Senator from Virginia feels constrained to offer it.

Mr. President, for the phrase "no later than 60 days," I substitute "no later than May 1."

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object—and I shall not object—the Senator from Virginia points out that there are two resolutions at the desk, both of which could be referred to the Foreign Relations Committee.

I ask unanimous consent that the name of the Senator from Wisconsin (Mr. PROXMIRE) be added as a cosponsor.

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

Mr. ROBERT C. BYRD. Is it clear, then, as to which resolution will be referred to the Foreign Relations Committee?

The PRESIDING OFFICER. Which one does the Senator want referred? One is a simple resolution and one is a joint resolution.

Mr. HARRY F. BYRD, JR. I would be willing to have both of them considered.

Mr. CHURCH. Very well.

Mr. ROBERT C. BYRD. We will take both, but the committee will report back only one.

Mr. HELMS. The language is the same.

Mr. HARRY F. BYRD, JR. The language is identical.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The PRESIDING OFFICER. The Chair is informed, with respect to order No. 12 under "General Orders," that this is on the calendar. Should it also go to the committee?

Mr. ROBERT C. BYRD. May I answer the question?

I ask unanimous consent that the joint resolution that is on the calendar go to the committee, because when it comes back, it will be put back on the calendar.

Mr. HARRY F. BYRD, JR. Yes. And the simple resolution, which is identical to the amendment——

Mr. ROBERT C. BYRD. Also go to the committee.

The PRESIDING OFFICER. Without objection, both will go to the committee.

● Mr. HART. Mr. President, had a vote occurred on the Byrd amendment, I intended a vote against the motion to table the amendment submitted by the Sena-

tor from Virginia, and I would like briefly to explain my reasons for doing so.

The amendment raises a fundamental issue of constitutional principle which rises above one's position on the issue of normalization of relations with the People's Republic of China. It is the issue of the Senate's role in foreign affairs and, more specifically, its role in the formulation and dissolution of treaties.

I do not challenge the President's primary and constitutionally unambiguous authority in the realm of foreign affairs. But the Senate must be forceful and consistent in exercising its own responsibilities in this area. Certainly this body—including many of my colleagues here who will vote to table this amendment—has fought hard over the past decade to restore to itself the constitutional powers which were eroded by executive usurpation and the failure of legislative assertiveness. I wish some of the supporters of this amendment would have been as assertive in exercising this responsibility on issues such as Vietnam and Cambodia. I wish those who felt as I did then about unilateral executive action in Cambodia would join me now in witnessing for the same principle.

My vote is not to turn back the clock and reverse the President's termination of the mutual defense treaty with Taiwan. Although I believe he acted in an unwise and unfortunate manner by ignoring the Senate, I nevertheless recognize the President's notification to Taiwan that the treaty will be terminated at the end of 1979 as a fait accompli. I have no desire to undermine the normalization agreement with the People's Republic of China.

Some of my colleagues have correctly noted that the amendment is not precise as to the procedure by which the Senate would give its approval and that it raises certain other ambiguities. Others have suggested that definng the Senate's proper role in treaty termination is too complex an issue to be settled at this time and should be addressed in subsequent hearings. I welcome such hearings, but I also cannot turn away from the principle raised by the Senator from Virginia. Consistent with my deeply held conviction that the Senate must meet its responsibilities in the field of foreign affairs, and reflecting my strong concern that unilateral executive action in terminating treaties is a dangerous precedent, I will vote to oppose tabling the amendment.●

POSTPONEMENT OF THE EFFECTIVE DATE OF RULE XLIV OF THE STANDING RULES OF THE SENATE

Mr. STEVENS. Mr. President, it is my understanding that the resolution I offered to amend the rules is to be voted on not later than 12:30 this afternoon.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Arizona may have 1 minute on the resolution.

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

Mr. DECONCINI. Mr. President, I register my firm and unwavering opposition to Senate Resolution 93. This resolution undoes what the Senate has already agreed to. The Senate ethics resolution of the 95th Congress, Senate Resolution 110, limited the amount of outside earnings a Senator or highly paid staff member could earn. This provision was the subject of extensive debate, and agreement was finally reached that the amount of outside earnings to be allowed would be about 15 percent of salary.

The resolution before us today pushes back the effective date of this provision until January 1, 1983. Under the terms of Senate Resolution 110, this limitation should have gone into effect on January 1 of this year.

I am not unsympathetic to the concerns and needs of my colleagues. Yet, it seems to me that this body exercised its collective best judgment in the full glare of national publicity when it enacted Senate Resolution 110—a resolution that was hailed far and wide as a major reform in Senate ethics. We are now about to eliminate, at least for 4 years, the central feature of that reform. I cannot in good conscience, Mr. President, vote for this measure. And, I would urge each and every one of my colleagues to consider this matter carefully before casting a vote.

● Mr. SASSER. Mr. President, I wish the RECORD to show that I oppose this resolution, Senate Resolution 93.●

● Mr. EXON. Mr. President, if a rollcall vote would have been taken, I would have voted "no" on Senate Resolution 93.●

Mr. STEVENS. Mr. President, I move the adoption of the resolution.

Mr. METZENBAUM. Rollcall.

The PRESIDING OFFICER. Under the previous order the Senate will now proceed to vote on Senate Resolution 93.

The question is on agreeing to the resolution.

Mr. METZENBAUM. 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. 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.

Mr. METZENBAUM addressed the Chair.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator from Ohio have 2 minutes on the resolution.

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

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to indicate my opposition to this proposal.

I think that when there were salary adjustments made that this matter was taken into account. I think it was part and parcel of the entire package .

I myself have strong reservations and objections to changing the effective date and wish to be recorded in the negative in the event there is not a rollcall vote.

Mr. DECONCINI. Mr. President, I also wish to be recorded in the event there is not a rollcall vote in the negative.

Mr. BAUCUS. Mr. President, in the event there is not a rollcall vote I, also, wish to be on record as voting in the negative.

Mr. STEVENS. I move adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution. (Putting the question.)

The resolution (S. Res. 93) was agreed to, as follows:

Resolved, That section 313(c) of Senate Resolution 110, 95th Congress, is amended by striking out "January 1, 1979" and inserting in lieu thereof "January 1, 1983".

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

● Mr. STONE. Mr. President, I was dismayed to learn that today, Thursday, March 8, the Senate passed by voice vote a resolution to defer for 4 years the implementation of Senate rule XLIV. This rule, which limits a Senator's outside earned income to 15 percent of salary, was a key feature of the Senate Code of Ethics which was adopted with much fanfare last Congress.

Suddenly, with no committee consideration, little floor debate and no rollcall vote, the Senate has put Senate rule XLIV in limbo for 4 years. It is a step in the wrong direction and one which could lead to a total abrogation of the rule when those 4 years are up.

I regret that this important change in the Senate rules was made without a rollcall vote and if such a vote had been conducted I would have voted against the change in the rule.●

TAIWAN ENABLING ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 245, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 245) to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people of Taiwan on an unofficial basis, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. JAVITS. 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. TOWER. 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. TOWER. Mr. President, on December 15, 1978, after hurried and secret

negotiations, and without adequate consultation with Congress, President Carter announced that the United States would establish diplomatic relations with the People's Republic of China (PRC) on January 1, 1979, with an exchange of Ambassadors on March 1, 1979. At the same time, the United States gave the required 1 year's notice that it would terminate its Mutual Defense Treaty with the Republic of China (Taiwan) on December 31, 1979.

The main issue growing out of the Carter administration's sudden normalization of relations with the People's Republic of China is not really the recognition of Peking, but rather the "derecognition" of the Republic of China on Taiwan. Our major concern today must be with the security of Taiwan and of American political, economic, and security interests there. America's allies and potential enemies throughout Asia and the world are watching this debate closely. They are looking for indicators of America's resolve to protect her interests and stand by her allies. The Taiwan legislation we pass today must send out a clear message that the United States will not sell out a friend, now or ever, to placate any powerful totalitarian regime.

The administration has proposed that unofficial relations with Taiwan be maintained after January 1 by a State Department manned, nongovernmental American Institute in Taiwan. This legislation, S. 245 is an outgrowth of that proposal. It speaks to the security of Taiwan and attempts to maintain all cultural and economic agreements and relations now existing between Taiwan and the United States. As such, it is far better legislation than that put forth by the Carter administration, but it must be improved. America's security interests in Taiwan must be clearly spelled out.

While Peking was anxious to normalize relations with the United States in order to counter Soviet influence in Asia, the Carter administration extracted no real concessions from Peking on the security of Taiwan. The United States has agreed to Peking's three major demands: Recognition of Peking as the legal government of Taiwan; withdrawal of all U.S. troops from Taiwan; and termination of the United States-ROC Mutual Defense Treaty. In addition, the United States has agreed to a moratorium on new arms sales to Taiwan for 1 year.

In exchange, the PRC has said that it will seek peaceful reunification of Taiwan to the mainland. However, Peking has very clearly refused to renounce the use of force against Taiwan. Peking says it will permit the people of Taiwan to keep their own political and economic systems and security forces as long as they choose. But these verbal pledges apply only if Taiwan agrees to recognize Peking's sovereignty and does not permit foreign military bases. The PRC has made no formal commitments on these already very conditional promises, and the administration itself has done little to amplify them.

For example, the PRC has pointed to Hong Kong and Macao as examples of coexistence with different economic systems on territory claimed by Peking, but those entities have not recognized Peking's sovereignty. A more disturbing example of reunification involves the subjugation of Tibet, a process which many would describe as "genocide." We should not take the example of Tibet too lightly. We have seen recently in Vietnam that China is willing to use force to achieve its objectives, but the examples of the Korean war, the Sino-Indian war, and the bloody purges following the Communist victory on the mainland should have already told us that.

In my view, the Carter administration has taken a stronger pro-Peking tilt than was necessary to achieve normalization and, in the process, has endangered the people of Taiwan. The Carter administration rejected alternative ways to deal with normalization such as the "German model" of recognizing two Chinas. It rejected placing our Embassy in Peking with an official liaison mission in Taipei.

The Carter administration has even refused to give any governmental status to Taiwan. It is the Congress which is considering granting diplomatic immunity to Taiwanese officials and, despite promises that the United States would not interfere with United States-Taiwan cultural exchanges, the Carter administration has moved to close down some of the Taiwanese consulates.

The weakness of the Carter administration in negotiating with Peking and in failing to show resolve with respect to the security of Taiwan cannot be corrected completely by the Congress. We can, however, move to strengthen the legislation before us, S. 245.

For that reason, I have cosponsored the amendment proposed by Senator PERCY which would make clear that the security of Taiwan effects the security interests of the United States. I believe that the language in the bill as reported by the Foreign Relations Committee is not sufficiently strong. The words "of grave concern" do not carry in them the strong sense of commitment which I believe should be inherent in this legislation. Indeed, I believe that national leaders around the world will look upon the success or failure of Senator PERCY's amendment as a measure of American will and reliability.

Today, and in the years ahead, the Senate must also insure that the security of Taiwan is not compromised indirectly. For example, the Congress should make clear that it will not condone administration acquiescence in any form of discrimination by Peking against firms doing business with Taiwan, and it must force the administration to take a firm stand protecting Taiwan in international monetary and financial institutions and facilitating trade and investment between the United States and Taiwan.

In short, we must make sure that our political, economic, and security interests in Taiwan mature rather than erode.

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

The PRESIDING OFFICER (Mr. BAUCUS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. 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. COCHRAN. Mr. President, I would like to state my basic support for this legislation. I believe that it provides for the security of Taiwan and for uninterrupted continuation of warm and friendly relations with the people of Taiwan.

I do not believe that a relinquishment of concern for the fate of Taiwan should result from normalization of relations with the People's Republic of China. The Senate should clearly state its determination that the United States aid in maintaining the security of Taiwan and in maintaining fruitful trade and warm cultural relations with the people of that island.

This determination matches our desire to maintain the close and special intimacy which arises from our 30-year relationship with Taiwan. As a result of those relations, we have at present approximately 60 treaties with Taiwan covering such matters as trade, visas, and economic and technical cooperation. Our total trade with Taiwan was more than $7 billion last year. Our investment in Taiwan is almost one-third of all foreign investment on the island. This relationship cannot and should not end.

If the People's Republic of China wishes to maintain good relations with the United States, it must let the peace of Taiwan stand as the first litmus test of our new relationship. Let us hope that the Government of the PRC was sincere when it declared in its message of January 1, 1979, that it "will take present realities into account" and will "respect the status quo on Taiwan * * * in settling the question of reunification."

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.

The Senator from Illinois.

AMENDMENT NO. 79

(Purpose: To express United States policy with respect to any resolution of the Taiwan issue by other than peaceful means)

Mr. PERCY. Mr. President, I call up my amendment No. 79 to the pending legislation and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY), for himself, Mr. GOLDWATER, Mr. HOLLINGS, Mr. TOWER, Mr. DECONCINI, Mr. HUDDLESTON, Mr. STEVENS, Mr. STONE, Mr. COHEN, Mr. WEICKER, Mr. PROXMIRE, Mr. COCHRAN, Mr. MORGAN, and Mr. DANFORTH, proposes an amendment numbered 79.

Mr. PERCY. 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 14, lines 9 and 10, strike out "of grave concern to" and insert in lieu thereof "to the security interests of".

Mr. PERCY. Mr. President, I offer this amendment on behalf of myself and Senators GOLDWATER, HOLLINGS, TOWER, DECONCINI, HUDDLESTON, STEVENS, STONE, COHEN, WEICKER, PROXMIRE, COCHRAN, MORGAN, and DANFORTH.

Mr. President, as the chairman of the Foreign Relations Committee knows, the Senator from Illinois has long favored normalization of our relationships with China, because it is in the national interest. China should take its rightful place in the community of nations.

I believe the distinguished chairman of the committee would remember my former professor at the University of Chicago years ago, Paul Douglas, against whom I ran for the Senate in 1966. He will remember him not only as a beloved colleague, but also as a wise man for whom we had infinite respect. Nonetheless, I did find some of his economic theories erroneous and I sharply disagreed with his judgment on some matters in foreign policy.

I certainly disagreed with him, when I ran for the Senate, on the Vietnam war. This issue sharply divided us.

Senator Paul Douglas was one of the founders of an organization formed for the purpose of keeping mainland China out of the United Nations and I opposed him on that particular issue. I felt it most unrealistic that a government representing, at that time, three-quarters of a billion people, since grown, should be kept out of the United Nations and should not be a full member of the international community.

So, as I have worked in the Senate, I have taken a deep interest in the affairs of the People's Republic of China. I was privileged to lead a delegation of Senators and Congressmen to China to study firsthand that remarkable country, and felt even more deeply at that time that the process of normalization should be expedited to the greatest possible extent. So I am fully supportive of the legislation before us and have enjoyed working with the chairman of the committee (Mr. CHURCH) and the ranking minority member (Mr. JAVITS) on considering legislation that would enable us to move forward.

I have felt in the past and still feel today that full diplomatic relations are not only realistic, but they are also in the mutual national interest of both China and the United States. Therefore, with no intention to jeopardize this process, I call up amendment No. 79 to section 114 of the Taiwan Enabling Act for myself and for my distinguished cosponsors. Section 114 of the legislation deals with a continuing and strong U.S. interest in a peaceful solution to the Taiwan issue. This is a subject that we have been privileged to discuss among ourselves at great length, that has been debated by the American public, and that has been discussed fully among the Members of this body and Vice Premier Teng when he was here, together with the distinguished ambassadors and members of the Chinese diplomatic mission in Washington. As we all know, the executive branch really did not want Congress to make any statement whatsoever on this issue. The Senate Committee on Foreign Relations felt differently. The committee and the Senate, I think, owe a great deal to Senator CHURCH and Senator JAVITS for persuading the executive branch that the American people's concern about the future of the people on Taiwan could not be ignored. A strong statement on the issue was absolutely imperative.

The fundamental thrust of section 114 is good and there is a great deal in the language that I support and I urge my Senate colleagues to support. We state in this section that it is U.S. policy to make clear that "the U.S. decision to establish diplomatic relations with the PRC rests on the expectation that any resolution of the Taiwan issue will be by peaceful means." We also state that we will maintain our capacity to resist force or corecion that would jeopardize the security or social or economic system of the people on Taiwan. And we state that we will provide defensive arms to the people on Taiwan. These are strong statements of U.S. expectations and intent and I wholeheartedly endorse them.

I do recommend to the Senate, however one change which I believe strengthens and clarifies the section. Section 114 (a) paragraph (3) reads:

It is the policy of the United States to consider any effort to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States.

My amendment would delete "of grave concern to" and would substitute "to the security interests of."

I believe this substitution of language is essential, because we have a responsibility to make to the PRC a clear statement of U.S. interests in a peaceful settlement of the Taiwan issue. We must not lead the Chinese to miscalculate or underestimate our interests. A clear statement reduces ambiguity and lessens the chances for misunderstanding.

Certainly, we, in taking any action, must take into account that succession of leadership takes places in our country and other countries. Therefore, we should make unmistakably clear in the language of this legislation how we feel on this matter.

The President did not obtain from the PRC a pledge on the nonuse of force against Taiwan. Perhaps this was diplomatically unobtainable, as the administration maintains. But the point is that China's spokesmen have been very clear in what they have said. Chinese Premier Deng Xiao'ping told the committee during his recent visit to Washington that China will fully respect the realities on Taiwan. But he also maintained, when pressed on the issue, that China will not make a commitment to use only peaceful means. In other words, the Chinese have retained use of force as a definite option. Vice Premier Deng was frank with us. He did not worry about the consequences for normalization.

He believed, as I believe, that it is best to be frank in exchanging views. When we agree, we agree to disagree and do so openly and we can each express ourselves. I think we have that obligation today.

Now it is our turn to be equally frank. We must state that a PRC effort to resolve the Taiwan issue by other than peaceful means would be a threat to the security interests of the United States.

I urged my colleagues on the Senate Foreign Relations Committee to adopt this language, but it was rejected.

One argument made against my amendment was that it might derail the normalization process. I reject this argument. We should not muddy our definition of U.S. interest because we are afraid of offending PRC sensitivities. Vice-Premier Deng did not mince words when he refused to pledge nonuse of force against Taiwan because of any concern that normalization would not proceed. Vice-Premier Deng was not concerned about offending the United States when he said in Tokyo, immediately following his tour here, that the United States had shown a lack of direction on the Iranian crisis and had mishandled it. The Chinese were not concerned about derailing normalization when they stated that they must "punish" Vietnam and when they soon thereafter invaded Vietnam. The Chinese say what they mean and we respect them for it. Now we must say what we mean and the Chinese, in my view, will respect us for it.

I do believe, even though there is sometimes a different approach taken in the field of diplomacy, we are still dealing with human beings. The experience of the Senator from Illinois has always been that a relationship is more normal, natural, and healthy and more long-lasting when friends are good enough to speak frankly to each other. I do not really believe that the Chinese would respect us if, knowing we felt deeply about something, we did not forthrightly, frankly, and honestly express exactly how we feel in important documents as is the legislation presently before us.

President Carter has declared that the United States could go to war over Taiwan. This is much stronger language than I am suggesting and the Chinese certainly have not terminated the normalization process because of it.

A second argument made in the Senate Foreign Relations Committee against my amendment was that it would commit the United States to take military action if the PRC used force against Taiwan. This criticism is unfounded. My amendment leaves completely open the options for a U.S. response. It neither pledges use of force nor rules out the possibility of use of force. I would oppose language that would commit us in advance to use force in the case of hostilities directed at the people on Taiwan. In fact, it is my view that it is unconstitutional to direct the President to use force under circumstances that may occur in the future.

We would not want to bind this Nation to action that goes even further than any mutual security treaty we have today.

None of these treaties, including the security treaty we are terminating with Taiwan, authorizes or requires the President to introduce Armed Forces into hostilities.

The mutual defense treaties that we have with Japan, South Korea, and the Philippines and the treaty that we are terminating with Taiwan all use the following language:

> Each party recognizes that an armed attack on either of the parties would be dangerous to its own peace and security and declares that it would act to meet the common danger in accordance with its constitutional processes.

If my language were to use that exact language or go even further stating something to the effect that "an attack on Taiwan is considered an attack on the United States" or "the preservation of the integrity of Taiwan is vital to the national security of the United States," critics of my amendment might be on firmer ground. But my language states only that a nonpeaceful resolution of the Taiwan issue would threaten the "security interests" of the United States. This is a clear statement of fact and in no way commits in advance the United States to military action.

The United States reserves the right—even under its defense treaty obligations—to determine for itself what military action, if any, is appropriate. My amendment makes no inflexible commitment for the United States. But my language is a more realistic and a more accurate statement of U.S. interests in a peaceful resolution than a mere expression of "grave concern." And I believe that it implies more clearly that the United States does not reject the option of use of force. In other words, we are retaining the same option that the Chinese are retaining for themselves.

Still another argument against my amendment is that a PRC effort to resolve the Taiwan issue by other than peaceful means would not be a threat to U.S. security interests. I wholeheartedly disagree with this argument and my reading of American public opinion is that most Americans would disagree with it. Can you imagine the shock and the dismay in this country if the People's Republic of China were to resort to force to settle the Taiwan issue? The United States would be faced with decisions that—no matter how resolved—would affect U.S. security interests.

If Taiwan were forcibly overrun by the PRC, U.S. stature in the world would be seriously affected and the confidence of America's other allies in the region would be weakened. The people of Japan would be deeply shaken. The situation could bolster our adversaries in the region. For example, North Korea would undoubtedly be encouraged to take aggressive action against South Korea. Our security interests are clearly involved.

Certainly, I think there would be a shaking of confidence in NATO, in Israel, and with every other ally if we were unable to prevent an attack on Taiwan.

Why have I arrived at the conclusion that the words "of grave concern" do not convey to the PRC the seriousness with which the United States would view a nonpeaceful settlement of the Taiwan issue? Let me share with you my research into some of the language we have used in the past to express our interest in situations where there really was no realistic option of possible use of force.

In 1956, after the Soviet Union had intervened with force in Hungary, a State Department spokesman said that "the actions of the Soviet Union are the cause of the greatest concern." But we did nothing. We took no action.

In 1975, Secretary Kissinger said that Soviet introduction of military equipment into Angola and Cuban participation in Angola are considered "a serious matter * * * and not compatible with the spirit of relaxation of tensions."

In 1976, a State Department spokesman said the United States viewed "with gravity and concern" the North Korean slaying of two American military officers in the demilitarized zone.

Just last month, February 9, the State Department spokesman that the United States "would be seriously concerned" over a Chinese attack on Vietnam.

And just last week, the White House expressed "grave concern" over the Israeli cabinet's rejection of a U.S. invitation to a Camp David summit meeting.

In my view, expressions of gravity and concern are simply not strong enough. The term "of grave concern" is not strong enough. It does not serve in any way as a deterrent. Nor does it convey the strength of our true feelings. We need language that expresses our interests strongly and clearly while at the same time allowing the U.S. flexibility in the case of hostilities. I believe my language meets both requirements—and I urge my colleagues to adopt it.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, the language proposed by the Senator from Illinois was discussed thoroughly and at length in the committee. He presented his arguments there ably and well, just as he did now. But the concern of all of us was that this language could produce more problems than it would resolve.

The language proposed by Senator PERCY should be rejected, as it was in the committee. The language of section 114(a) as it now stands reflects a careful balance, a balance between accurately reflecting what an armed attack against Taiwan would mean, on the one hand, and, on the other, avoiding legislating an approximation of the language of the Mutual Defense Treaty, which was terminated as part of the agreement on normalization of relations with the People's Republic. The current language is a product of the most careful discussions by our colleagues, and I think it states clearly and exactly what the circumstances require.

I think that all of us are well aware that the People's Republic does not have now and will not have in the foreseeable future the capability to launch a serious attack on Taiwan. To even begin serious preparations for such an attack would risk many of the other relationships—with Japan for example—that the Chinese have put such importance on. Neither do they have the motivation for it, since it is the principle of "one China" and of the PRC being that China that is the most important to them. Furthermore, the Chinese are wholly aware of American feelings on the matter.

But to say that the United States is opposed to any settlement other than a peaceful one is quite a different matter than declaring that a settlement by force would be a threat to the security interests of the United States.

Here I should note that we have the use of code words "security interests." I think the threat to the security and the threat to the security interests brings to mind the wording of the previous treaty, that we thought that while on its face the language of Senator PERCY's amendment could be acceptable, that when one takes into account the meaning of the words and what the words indicate, the perception of those words to the other nations in that part of the world, it could indicate a great deal more than the words on their face indicate.

So, all told, our committee was of the view that this amendment should be rejected, and this is the position the committee takes on the floor.

Let me note here that our military presence in Taiwan over the past two decades and our Mutual Defense Treaty were orginally predicated on the understanding of that earlier period that our interests in Asia faced a monolithic Communist threat. We might not have been totally wrong then, but certainly now it is clear that the situation has changed radically in these decades from a primarily East-West confrontation to confrontations primarily among Communist states.

In reaching the agreement on normalization with Peking, the administration agreed to terminate the Mutual Defense Treaty with Taiwan, including the formal security commitment in article 5 of that treaty. The language introduced by Senator PERCY could easily be interpreted as reviving the concept of that security commitment. As some of our colleagues pointed out in the committee's deliberations, we canot have it both ways: We cannot at one and the same time establish relations with one Government of China and retain a security commitment to another part of China; we cannot, in other words, have a new Mutual Defense Treaty by another name.

Let us also take a different look for a moment at the wording of the Percy amendment compared to that reported out of committee. We of course do have political, economic and moral interests in a peaceful settlement of the Taiwan question. The leaders in Peking, as will their successors, have no doubts about these interests, and we will continue to assert them clearly. We would, in fact, be gravely concerned about an effort to resolve the Taiwan question by other than peaceful means. But this is not the same as stating by legislation that a nonpeaceful solution would be a threat to our security. Those words, as we all know, have a special meaning that goes beyond what is warranted by the facts.

And, as the administration has said, any attack on Taiwan would so fundamentally alter the basis on which the

United States has normalized relations with Peking that obviously the administration would at that time consult with Congress and decide upon an appropriate response. But the degree of automaticity implied by the Percy amendment is highly undesirable.

At this point and at this time, however, I believe that we have struck the right balance in the language of section 114(a) as it now stands.

Let me add one point. What we want to achieve on this subject is a clear statement, demonstrating a virtual consensus, about the American people's concerns about our friends on Taiwan. We want Peking to get the message from Congress just as it already has been given the message by the President and Ambassador Woodcock. It is clear to me that Senator PERCY's amendment would not get strong majority support. What would we have gained by language of this sort adopted by a narrow majority? The message that would come through in that case would be that a substantial minority does not care about a nonpeaceful resolution. We obviously do not want that. And it would be small comfort to Taiwan. I urge that we support the estimable language that was negotiated in the committee. It accurately and strongly reflects the American position on this subject—in a manner that is called for at this point in history.

Mr. JAVITS. 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. BENTSEN. 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. PERCY. Mr. President, I ask unanimous consent that the name of the distinguished Senator from California (Mr. HAYAKAWA) be added as a cosponsor of the pending amendment.

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

Mr. HAYAKAWA. Mr. President, inasmuch as I voted against the amendment in committee, I think I should explain why I have changed my position.

On first reading, it appeared to me that Senator PERCY's amendment was unnecessary, because it seemed to me to be covered by other aspects of the same document. But on second and third reading, and upon more mature reflection, it seems to me that I must support Senator PERCY's amendment, and therefore I rise to do so.

Mr. PERCY. I thank my distinguished colleague.

Mr. President, the senior Senator from Tennessee (Mr. BAKER), the minority leader, is necessarily absent from the Senate today on official business. Senator BAKER has authorized me, however, to make the following statement on his behalf.

Senator BAKER fully supports the Percy amendment to the Taiwan Enabling Act. When the committee voted on the security provision, he specifically asked that his proxy be withheld so that he may preserve his option to support amendments to the provision.

Although he is unable to be here for the vote, Senator BAKER hopes to be paired in support of the amendment.

I express deep appreciation to Senator BAKER for his counsel and advice and his support. Senator BAKER and I have met at some considerable length with Deputy Secretary of State Warren Christopher, have listened to his reasoning, and both Senator BAKER and I have reaffirmed our intention to go forward, because we feel that this is a point of view that I feel is shared overwhelmingly by the American people and by the Senate of the United States.

I should like to ask a question of the distinguished chairman of the Foreign Relations Committee who was present at the time of our hearings when General Jones, the chairman of the Joint Chiefs of Staff, appeared before the committee. At that time I asked General Jones to indicate whether or not an attack by force on Taiwan by the People's Republic of China would be a threat to our security interests or just a matter of grave concern to us.

General Jones replied:

> I believe that an attack on Taiwan would be not only of grave concern but would impact on our security interests. There is no question about it.

Now the Senator from Illinois does not wish in any way by offering this amendment to imply that I believe the PRC would attack and try to take Taiwan by force, because I have listened very carefully to everything that responsible officials in the Government of the People's Republic of China have said about their intentions. It seems eminently clear that they are patient and they wish to resolve this matter in an amicable and peaceful manner. It is also the judgment of the Senator from Illinois that a nonpeaceful resolution to the Taiwan issue is not at all in the interests of China.

It would be so contrary to the thrust of their intent to develop their economy and establish goods relationships with the Western world and Japan. The Senator from Illinois cannot really envision the use of force by China today or in the foreseeable future.

I was also very pleased to find that our own Chairman of the Joint Chiefs of Staff, felt that as well.

If I could find in the——

Mr. CHURCH. May I reply to the Senator?

Mr. PERCY. I will be happy to have a reply while I try to find the response that General Jones gave to our questions on that particular point. But I would be very anxious to have a reaction from our distinguished chairman as to whether he does feel that an attack on Taiwan would be more than just a matter of grave concern. While the distinguished Senator was off the floor, the Senator from Illinois reviewed a series of statements made by members of the State Department and various administrations describing U.S. feelings about particular situations. In each case, no action of any kind was taken by the United States. If I could say, the semantics of the situation are such that the signal is that a matter of grave concern does not imply that we take action; whereas, without any question, an attack upon a NATO ally, for instance, or an attack in other parts of the world where our vital interests would be threatened would certainly call for action. My amendment falls somewhere in between.

I ask my distinguished colleague if he would not agree with the Chairman of the Joint Chiefs of Staff and with the cosponsors of this amendment that a forceful attack on Taiwan would be a matter of more than grave concern, a phrase used frequently in diplomacy without action following it.

Mr. CHURCH. First, let me say that the language agreed to by the committee constitutes, in my view, a broader basis for reassurance to the people of Taiwan than the old arrangement between the United States and the Republic of China.

But as for the Senator's question, I call his attention to page 745 of the hearings where the Senator puts the following question to General Jones:

> Senator PERCY. . . . Let me put it this way for you, then. In your judgment, is it stronger to say "a threat to the security interests of the United States" rather than saying it is a "matter of grave concern" to us?
>
> General JONES. It may be stronger, but my problem with "threat to security interests" is that there is no qualifying factor there, and that our security interests are less there than in other areas of the Pacific or of the world. So, I would be concerned about the implication being far greater than intended.

So I think the record should be clear that General Jones did not call for the Percy amendment. In fact, at no time did he express any reservation about the language that is now contained in the bill.

Moreover, I believe that a careful reading of the general's testimony, as it appears here in the hearings, would convey to any Senator the fact that General Jones thought there were many other places in the Western Pacific that were of much greater importance than Taiwan to the security interests of the United States.

Now, having said that, Mr. President, let me go on to emphasize that the provisions of the bill in connection with our continuing concern for the security and well-being of the people on Taiwan go very far. If I were a citizen of Taiwan, I would be better satisfied with this congressional declaration of American policy than with the arrangement that previously existed.

I intend to speak to section 114 of the bill, but I would not want to do so while trespassing on the time of the Senator from Illinois, who presently has the floor.

I, for that reason, confine my response at this time to the answer to the question he put to me.

Mr. PERCY. Mr. President, I certainly hope that I did not imply that the Chairman of the Joint Chiefs of Staff, General Jones, supports my amendment.

The Senator from Illinois would never put the chairman of the Joint Chiefs of Staff in that position. At no time when I questioned him did I attempt to put him in the position of supporting a specific

piece of legislation. The administration, as the Senator from Illinois understood at that time, had not yet addressed itself specifically to this language, but it was wellknown that they wanted as little change as possible. The current situation is somewhat similar to the Panama Canal Treaty debate where the administration wanted as little change as possible, but the Senate of the United States found it essential in order to ratify that treaty that we have our mark or imprint on it. We had to satisfy many of the concerns that some of us had and we did change that language.

But it is understandable that the administration, after having negotiated an understanding with China, would not want to change it any more than was absolutely essential or necessary.

The Senator from Illinois knows that General Jones would have preferred that somehow I would qualify the amendment to show that our security interests in Taiwan are, for instance, less than our security interests in, let us say, Japan. But I do think that this kind of ranking does neither ourselves nor our friends any benefit whatsoever.

When Secretary of State Dean Acheson drew the defense perimeter in Asia to exclude South Korea we saw a war break out there.

So I would say that for us to issue such a ranking in legislation and say one interest is relatively more important than another would not really serve our interests.

We are simply trying to say that there are certain areas of the world where our interests are not really affected. There are other areas where they are affected and we should indicate as accurately as possible the degree of concern we might have in a particular area to deter actions harming our interests.

We are certainly today stating very clearly that our interests in the Middle East are far ahead of our interests in many other parts of the world. They are absolutely vital there. What the Soviet Union might do in some area affecting the Middle East would be highly important to us.

It is highly important that a Marxist state such as South Yemen not be permitted to increase its strength along the borders of Saudi Arabia. It is in the vital interests of the United States that we provide assistance, help, backup, and support for the position taken by Saudi Arabia now so that North Yemen not become a vulnerable spot and endanger Saudi Arabia whose interests are inextricably bound up in our own interests.

Therefore, when we come to Taiwan we simply say it would be a matter of much more than grave concern. It would be a matter involving our own security interests because of the close relationships we have with South Korea, and the close ties that we have in Japan, and the interest we have in keeping ourselves as a Pacific power, and insuring as much freedom in that area as is possible.

So the Senator from Illinois is once again gratified at the degree of support this amendment has in the cosponsors in the Senate, and that some members in the Committee on Foreign Relations, who previously had voted against it or abstained from voting, have now, after reflection, supported it.

It would be my hope, of course, that taking fully into account the agreement and understanding reached by the chairman and the distinguished minority member of the Committee on Foreign Relations, with the administration, that they would find it acceptable and would not find it contrary to our normalization of relationships, and working together in a new spirit of friendship, accord, and partnership with China.

Mr. CHURCH. Mr. President, the amendment offered by the able Senator from Illinois should be rejected by the Senate, as it was rejected by the committee. The language of section 114(a) as it now stands reflects a careful balance. It is balanced between accurately reflecting what an armed attack against Taiwan would mean, on the one hand, and, on the other, avoiding an approximation of the language of the Mutual Defense Treaty—which was terminated as part of the agreement on normalization of relations with the People's Republic.

Mr. President, let me note here that our military presence in Taiwan over the past 2 decades, and our Mutual Defense Treaty, were originally predicated on the belief of that earlier period that our interests in Asia faced a monolithic Communist threat. We neither perceived nor understood the nature of communism as well then as we do today. In the intervening years, it certainly is clear that the situation in Asia has changed radically from what was a primarily east-west confrontation to a north-south confrontation involving the Communist governments, themselves.

If you look at China now, it is not a China poised on its coastline ready to leap across the Straits of Formosa for the purpose of subjugating the island and its people. Today's China looks to the north, expressing its daily concern over the threat posed by the other titan of the Communist world, the Soviet Union; and it looks to the south, where it has just been engaged in active warfare with another Communist neighbor, Vietnam.

Before we begin to tamper with the language in this bill, it would be prudent, first of all, to consider the nature of the present threat to the people of Taiwan.

The record is clear, made so by the many statements of the leaders of the People's Republic of China, that the Peking government presently entertains no intention of attacking Taiwan.

Furthermore, we have it from no less an authority than the Chairman of our own Joint Chiefs of Staff, that mainland China, even if it were to change its mind, presently lacks the military capability of successfully invading Taiwan.

Mr. PERCY. Mr. President, will the distinguished Senator yield at that point so that I can insert in the RECORD the quotations from General Jones that I have now found that would strengthen and support that argument?

Mr. CHURCH. I am only too happy to get whatever support is offered for any argument I make. If the Senator has pruned from the testimony of General Jones that part which sustains my argument, I would be pleased to have that material inserted at this point in the RECORD.

Mr. PERCY. Mr. President, the only carefully selection would be simply to boil it down as much as possible. It does fully support the Senator's position, and confirms the fact that the distinguished chairman of the Foreign Relations Committee and the Senator from Illinois have no disagreement whatsoever about this particular point.

I have stated my own personal judgment that there is no intention on the part of China to attack Taiwan. General Jones has already affirmed that it is a problem not only of capability, but also intention, as to whether it would be in their best interests.

I quote from the top of page 741 in the hearings record, where General Jones says:

> As we look at the People's Republic of China, we see increasing problems in their military capability. We have projected levels of capability and later found they haven't achieved that capability. We don't see an acceleration in the threat and we don't see any great urgency at this moment to make decisions on additional equipment (for Taiwan).

This is certainly reassuring. It should be reassuring to the people of Taiwan and it should be reassuring to all peace-loving people that there has been no buildup of capability.

If the People's Republic of China wished to, they could build up that capability. They have great human resources and great physical resources, and if they had wanted to, they could have developed that capacity. But they have not done so.

Further with respect to their intentions, General Jones said this. Quoting from the middle of page 751, I will read the entire quotation, so we can have in the RECORD once again what General Jones said about an attack on Taiwan.

He said:

> I believe that an attack on Taiwan would be not only of grave concern but would impact on our security interests. There is no question about it.

Then he continued, importantly:

> I believe that it is unlikely—not to the point of a zero probability, but very, very unlikely—to occur. It would also not be in the best interests of the People's Republic of China. It would increase the risk of incursions by the Soviet Union from the north. It would weaken them in their relationships with Japan and the United States.
>
> So I think it is clearly not in their best interest—and not in our best interest—that they do this.

It is General Jones' firm conviction, shared by so many of us, that it is not China's intention; they have not tried to develop the capability, and it is highly unlikely that they would do this, thus endangering, I might add, not just their relationships with the United States and Japan, but also with Western Europe.

It is those relationships on which China is now staking its future development. That is really central to their development. Taiwan is not central to that development. As they have indi-

cated, they would have no objection to the institutions in Taiwan being carried on in the same way they are now, and they likened the situation there to that in Hong Kong.

So what my amendment does not arise from a concern about the intentions of the present leadership of China. I simply want to put into law an advance notice and an honest expression of opinion as to the degree of gravity with which the United States would look upon the use of force, unlikely as it might be.

I thank the distinguished Senator for yielding.

Mr. CHURCH. I thank the able Senator from Illinois for his contribution.

It appears, then, Mr. President, that we are agreed, first, that the Peking government has no present intention to resort to arms to settle the Taiwan question; and second, that even if this were not so, the mainland government does not possess the military capability, today, to successfully attack and conquer Taiwan.

Third, if the policy in Peking were to change, and an attempt were made to develop the capability necessary to successfully attack Taiwan, General Jones has told us that it would take the Chinese at least 5 years to develop the amphibious forces to carry an invading force across the 100 miles of water that separate the mainland from the island. So at the very least, we would have 5 years' notice before any attack could be launched. There does not seem to be any disagreement on that score, either.

Furthermore, Mr. President, General Jones has confirmed that the people on Taiwan have a sufficient quantity of defensive weapons today to successfully defend themselves against any attack. We have learned, I think, from the Israeli experience that there is no security guarantee that can be given by any foreign country—not even by the United States—that means as much to the successful defense of any land as the willingness and capability of its own people to defend it. Just as this is true with Israel, so it is true in the case of Taiwan.

Now, against these basic premises—first, that the mainland government has no intention of attacking Taiwan; second, that it lacks amphibious capability to invade Taiwan, and it would require at least 5 years to build the capaibility; and third, that Taiwan has the defensive arms to successfully turn back any attack—let us read the language that the committee agreed upon in section 114 of the bill. I read the language, Mr. President, simply to underscore how broad the committee's expression of interest is in the future of Taiwan, as set forth in the language of the bill.

Section 114(a) reads:

In order to achieve the objectives of this section—

It is the policy of the United States—

(1) to maintain extensive, close, and friendly relations with the people on Taiwan;

(2) to make clear that the United States' decision to establish diplomatic relations with the People's Republic of China rests on the expectation that any resolution of the Taiwan issue will be by peaceful means;

(3) to consider any effect to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States; and

(4) to provide the people on Taiwan with arms of a defensive character.

There, Mr. President, is the statement of American policy. It will be an expression of Congress. When signed by the President, it will be the law of the land.

What do we say about the action we will take to implement this policy, That is contained in part (b) of section 114, and reads as follows:

(1) the United States will maintain its capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan;

(2) the United States will assist the people on Taiwan to maintain a sufficient self-defense capability through the provision of arms of a defensive character;

(3) the President is directed to inform the Congress promptly of any threat to the security of Taiwan and any danger to the interests of the United States arising therefrom; and

And (4) the United States will act to meet any danger described in paragraph (3) of this subsection in accordance with constitutional processes and procedures established by law.

I ask you, Mr. President, how could we design language better suited to accommodate the needs of the people on Taiwan as they look to the future?

(Mr. LEVIN assumed the chair.)

Mr. CHURCH. Mischief would be done by tampering with this language. The substitution of the words contained in the Percy amendment would bring us back very close to the phraseology that was used in the old mutual security pact which will be terminated as a result of the new relationship we have established with mainland China.

Yesterday, I spoke with the President of the United States. He is prepared to accept the committee language because it is drafted in such a way that it does not infringe upon any commitment he made on behalf of the United States. The language in the pending bill will not jeopardize the normalization of our relations with Peking, which the Senator from Illinois concedes he so strongly favors.

But if we adopt the language he would substitute, reminiscent as it is of the language contained in the old Mutual Security Treaty, then we place at hazard the new relationship we seek with mainland China.

The President was deeply concerned that we not make this mistake. He told me, as he has said to others, that he is obliged to comply with the understanding reached with the People's Republic of China. If this bill contains language that goes beyond that understanding, then he has only one honorable course to follow, and that is to veto the bill.

Why should we put this new relationship at such risk when it is utterly unnecessary?

Earlier in this debate, Mr. President, I said that if I were a citizen of Taiwan, I would prefer the statement of policy contained in this bill over whatever guarantees were proffered during the period of our alliance with Taiwan. I want to tell you why I say that, Mr. President. We have normalized relations with Peking because we believe it will benefit the United States. Normal relations with a government that maintains jurisdiction over one-fourth of the human race—normal relations with the great giant of Asia—makes sense. It not only opens up new opportunities for trade that will be beneficial to our farmers and to our businesses, but it strengthens the strategic hand of the United States in Asia.

For the past 30 years, we have dealt from a position of endemic weakness in Asia, which was one of the reasons for our involvement in two costly but indecisive Asian wars. With the normalization of relations with Peking we have the opportunity to convert that position of endemic weakness into a position of strategic strength, because as our relations with the Peking Government improve, the Soviet Union must take into account the new American position in Asia.

So we have good reasons to believe, Mr. President, that not only the economic but also the strategic and political interests of the Unied States will be substantially improved by normalizing relations with the Peking government.

By the same token, the Chinese have reason to believe that their interests will also be advanced. Why is Peking interested in normalizing relations with the United States? Why did that Government make concessions to us it had never previously made in normalizing its relations with other powers?

The reason is that China has great respect for American technology. China expects that we can contribute to her own efforts to modernize. China also realizes that there may be less danger of an attack from Russia as long as she maintains friendly ties with the United States. There are many, many different considerations which led the People's Republic of China to decide to normalize relations with the United States. And all of the expectations and benefits they expect to derive from this new relationship depend upon continued peace between the mainland and Taiwan.

Not only do we put Peking on notice from the very outset that American policy rests upon the expectation of continued peace, but we go on to say that we will furnish the people on Taiwan with sufficient arms for their defense in the future. In addition, we will view any use of force as a threat to the peace and security of the western Pacific area and of grave concern to the United States.

So, Mr. President, on all counts this language is perfectly adequate. It is broader than the rather narrow obligation assumed under the old security treaty. It is terribly important that the Senate uphold this language and not tamper with it. If we adopt the amendment offered by the Senator from Illinois, we will jeopardize a relationship that rests upon an agreement reached between the President of the United States and the Government in Peking.

Furthermore, if we adopt by a split vote the language offered by the Senator

from Illinois, what have we accomplished? What kind of a message do we send? It is rather like the chairman of the board of trustees sending the hospitalized president of a corporation a get-well card, but by a vote of 6 to 5.

Is that the kind of message we want to send to Peking—that we have narrowly approved an amendment which substitutes "security interests" for "grave concern"—and that nearly half of the Senate opposed it? I do not think that furthers our interest or our purpose or, indeed, the objectives sought by the Senator from Illinois, himself.

How much better to accept satisfactory language that does the job for the people of Taiwan, and was unanimously adopted by the Foreign Relations Committee in its final vote. That is the way to send the message to Peking that we want sent; namely, that it is our expectation that there will be no resort to force in the future in the settlement of the Taiwan issue. For these reasons, Mr. President, I strongly urge the Senate to reject the Percy amendment.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. CHURCH. I am happy to yield to the able majority leader.

Mr. ROBERT C. BYRD. Mr. President, the Committee on Foreign Relations gave extensive study to the question of Taiwan's future security. The bill that was originally submitted by the administration was amended by the Committee on Foreign Relations to include language that leaves no doubt about our continuing concern for the well-being of the people of Taiwan. As the distinguished able chairman of the Foreign Relations Committee has so succinctly pointed out, the amendment agreed to in the committee makes absolutely clear, as clear as the noonday sun in a cloudless sky, to the people of the Republic of China that its new relationship with the United States would be jeopardized seriously if there were to be force used against Taiwan. As the chairman has pointed out, any effort on the part of the People's Republic to do this not only would jeopardize its new relationship with the United States, but it would be an extremely costly and counterproductive venture.

Now, Mr. President, the United States will always act in its own interest. The language clearly states that such action on the part of the PRC would be of grave concern to the United States. The Senate does not have to write any new language in this by way of an amendment to protect the United States in its use of whatever force it may need to bring to bear at some future time when its own security interest is at stake. We do not have to write that into this. That goes without saying. The United States always has that option.

Mr. President, I yield to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I feel very heavy responsibility. I drafted the original Taiwan provision and fought for it in the committee. Then Senator CHURCH and I worked out this arrangement. The only possible change in it that could be made is the one that Senator PERCY suggests.

I believe that General Jones answered that completely and the reason that I accepted Senator CHURCH's modification—I used exactly the same words that are in this amendment originally. The reason that I accepted it was that I felt that Senator CHURCH was right, one, that we should not guarantee automaticity of response; and, two, that we should grade our national security interests based upon the facts of national security. He did not put in the first rank, like South Korea, the national security of the United States as it might be jeopardized by the use of force on Taiwan. But the provisions of the section as I drew it are very, very strong respecting the protection to the people on Taiwan. Just in 1 minute, they include conditioning our normalization on the nonuse of force; second, that if use of force were tried, a threat to the peace and security of the western Pacific area would be created. That is as much as a threat to the national security interests of the United States, quite apart from the words, "grave concern." Third, that when we are implementing this, we are going to retain our capacity to resist any display of force, and too, that it is going to apply very carefully spelled out, to the Taiwanese.

But it is very important to me, and this is what I got for it: one, we would not only resist any resort to force, and this is what I got, but other forms of coercion which would jeopardize the security, or the social, or economic system of the people on Taiwan.

Now, that is the guts of it. That is what we are trying to protect. It is not the security of the people on Taiwan alone, it is their right to continue the system of government which has made them the second most successful people in the whole of Asia.

Finally, we got another paragraph at the end of this section which said, "The United States will act to meet any danger." That ties into the way we have amended paragraph 3, which is the subject of what Senator PERCY wants to change. "The United States will act to meet any danger" described in that paragraph now sought to be changed, "in accordance with constitutional processes and procedures established by law," which is exactly the way we approach NATO.

Taking the whole section together, I felt it was stronger, more effective, more particularized and even better notice to the People's Republic of China than the way I had originally drafted it; but when I did, it did contain exactly the same approach which is now sought to be reintroduced. We have added those things which make it, in my judgment, even more effective.

For those reasons, I am compelled to oppose the Percy amendment. I think the majority leader for yielding.

Mr. ROBERT C. BYRD. Mr. President, I move to lay the amendment on the table.

Mr. HELMS. Will the Senator hold that for a few minutes?

Mr. ROBERT C. BYRD. I cannot, for reasons which I shall be glad to explain. I shall withhold it for 1 minute to the Senator.

Mr. HELMS. That will not be long enough. What was the agreement made?

Mr. ROBERT C. BYRD. There is no agreement.

Mr. HELMS. Is the Senator going to move ahead and move to table when other Senators wish to speak?

Mr. ROBERT C. BYRD. There was a long time in here that I was asking Senators to please, please speak.

Mr. HELMS. This Senator has been sitting here a long time, but if the majority leader has made that judgment, fine.

Mr. ROBERT C. BYRD. Mr. President, I move to lay the amendment on the table and I ask for the yeas and nays.

I thank the Senator from North Carolina for his usual courtesy and understanding.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from North Carolina (Mr. MORGAN), and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

Mr. ROBERT C. BYRD. Mr. President, I ask for regular order.

The VICE PRESIDENT. Is there a Senator in the Chamber who has not voted?

Regular order is called for.

The result was announced—yeas 45, nays 49, as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—45

Baucus	Glenn	Nelson
Bayh	Gravel	Nunn
Bentsen	Hart	Pell
Biden	Heflin	Randolph
Bradley	Jackson	Ribicoff
Bumpers	Javits	Riegle
Burdick	Johnston	Sarbanes
Byrd, Robert C.	Kennedy	Sasser
Chiles	Leahy	Stennis
Church	Levin	Stevenson
Cranston	Magnuson	Stewart
Culver	McGovern	Talmadge
Durkin	Melcher	Tsongas
Eagleton	Metzenbaum	Williams
Exon	Muskie	Zorinsky

NAYS—49

Armstrong	Goldwater	Pressler
Bellmon	Hatch	Proxmire
Boren	Hatfield	Pryor
Boschwitz	Hayakawa	Roth
Byrd,	Heinz	Schmitt
Harry F., Jr.	Helms	Schweiker
Cannon	Hollings	Simpson
Chafee	Huddleston	Stafford
Cochran	Humphrey	Stevens
Cohen	Jepsen	Stone
Danforth	Kassebaum	Thurmond
DeConcini	Laxalt	Tower
Dole	Lugar	Wallop
Domenici	Mathias	Warner
Durenberger	McClure	Weicker
Ford	Packwood	Young
Garn	Percy	

NOT VOTING—6

Baker	Long	Morgan
Inouye	Matsunaga	Moynihan

So the motion to lay on the table amendment No. 79 was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was rejected, and I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD addressed the Chair.

The VICE PRESIDENT. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, I hope that the Senate will reconsider the vote that has just been taken.

Mr. HART. Mr. President, may we have order in the Senate?

The VICE PRESIDENT. The Senate will be in order.

Mr. CHURCH. Mr. President, the President of the United States is now in the Middle East, in an effort to win peace. I think that a vote of this kind, occurring while he is in Cairo, would send a very unfortunate message.

Just before he left yesterday, the President told me of his anxiety about Senate approval of this amendment. He said he hoped very much that the Senate would not insist upon going beyond the understanding that he had reached with the People's Republic of China, on the basis of which it became possible for both countries to normalize their relations.

I know of the concern of the People's Republic of China about substituting the words "security interests of the United States" for "grave concern." The Ambassador from Peking has raised this matter, asking me many probing questions about our motives and purposes in connection with the committee's language.

If it is the objective of the Senate to place in jeopardy the normalization of our relations with mainland China, then let it be clear to everyone that this is what we are doing with the vote just cast.

I ask the Senate, Why? The substitution of these words does not improve by one iota the measure of assurance we give to the people on Taiwan respecting their future.

This is a mischievous amendment because it insists on the use of two words borrowed from our Mutual Security Treaty with Taiwan. It thus raises the whole question of whether we will keep faith with our commitment to Peking, which forms the basis for our new relationship with Peking.

We are interfering here with what is regarded as an internal matter by the Chinese, not alone by Peking but by Taipei as well. Their proposition is that there is but one China and Taiwan is part of that China. It is a proposition subscribed to not only by Peking but by Taipei.

Now when we insert "security interests of the United States" we draw the American defense perimeter line between Taiwan and the mainland.

And I ask Senators why do it? I ask Senators what greater assurance can be given to the people on Taiwan than that which is already contained in the language of the bill?

Mr. President, before we decide upon the Percy amendment we should have a clear understanding as to the nature of the threat to which it is directed.

Earlier in the debate, the Senator from Illinois and I agreed, based on the record that was made in the hearings before the Foreign Relations Committee. We agreed, first, that presently there is no intention in Peking to attack Taiwan; second, that Peking lacks the military capability of conducting a successful attack upon Taiwan; third, that if the policy in Peking were to change it would require at least 5 years for them to obtain the amphibious fleet necessary to launch a successful attack upon Taiwan; and fourth, that Taiwan today possesses the necessary defensive weapons to turn back any attack that might be directed upon them.

Based upon those premises, what has the committee done to give assurances to the people of Taiwan as they look to the future?

If Senators will examine section 114(a) beginning on line 25 of page 13 of the bill, they will see that it is the policy of the United States, which as a part of this legislation once signed by the President, becomes the law of the land:

(1) to maintain extensive, close, and friendly relations with the people of Taiwan;

(2) to make clear that the United States' decision to establish diplomatic relations with the People's Republic of China rests on the expectation that any resolution of the Taiwan issue will be by peaceful means;

(3) to consider any effort to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States; and

(4) to provide the people on Taiwan with arms of a defensive character.

Now, Mr. President, these expressions of concern for the people on Taiwan are broader than any ever contained in the old mutual security treaty. Read the language of that treaty and you will see that it was confined to one thing, an attack, in which event it promised mutual consultation in accordance with the constitutional processes of both countries.

But this declaration promises close, extensive and friendly relations with the people on Taiwan. This declaration makes it clear that everything the Chinese expect to get from their new relationship with our country is based upon our expectation that there will be continuing peace between the mainland and the island.

Do Senators want to send a message to Peking? What kind of a message do we send to Peking on the basis of this last vote? We are telling Peking that, a margin of four votes, the Senate of the United States has decided that any future attack on Taiwan would be an attack upon the security interests of the United States. That is like the board of trustees sending a get-well message to the corporate president saying that, "We want you to get well by a vote of 5 to 4." By four votes, the Senate practically split in twain. How can we send a clear signal that way? It is not one of unity but one of division, not the kind of unanimous vote we had in the committee when we finally adopted the words now contained in the bill.

This is a pointless and self-defeating amendment to adopt. It does not advance the interests of the United States. It could put our new policy in jeopardy, and it does nothing for the people on Taiwan that is not equally well accomplished by the language already contained in the bill.

(Mr. STEWART assumed the chair.)

Mr. CHURCH. Oh, it is political, I understand that. But I think we should be concerned here with the fundamental interests of our country. For 30 years we have been pretending that the Government of China was located in Taipei; for 30 years we have imposed upon ourselves a position of endemic weakness, because we failed to acknowledge the presence of the giant of Asia.

That old policy engulfed us in two indecisive wars in Asia for which we paid very dearly. But, oh, we love our illusions, Mr. President, so much so that we were the last of the major nations finally to acknowledge the truth, that the Government of China resides in Peking, and that it is in our national interest, as other countries have found it to be in theirs, to have normal dealings with that Government.

Why put all of that in jeopardy because of political considerations, partisan considerations? I do know that the words we have added could do mischief. I do know they could put our new policy in jeopardy, and I do know that they do not add one iota to the assurances we give the people of Taiwan in the language of the bill.

So I plead with the Senate to reconsider this vote, and I do so in the name of a rational policy. We have been so long in need of one in Asia.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Ohio.

Mr. GLENN. I thank the Chair.

Since coming to the Senate I have expressed my convictions and concerns about Taiwan's security on many occasions and, as various officials can testify, to two administrations. Thus I do not oppose the Senator from Illinois' amendment because I am any less concerned about Taiwan than is he, or less concerned about the perception of a U.S. presence in East Asia, because I share fully his concern on these points.

The reason why I oppose this amendment is because I feel there is a right way and a wrong way to send this message to all parties to this new normalization process, and to insure security. I think we will have chosen the wrong way if we adopt this amednment.

This amendment does nothing to materially affect Taiwan's security. It provides no weapons. Yet it creates a serious risk of the United States being pulled into a war not of our choosing. That is the important point about this language. It creates a serious risk of being pulled into a conflict not of our choosing.

Should an incident like a raid from Taiwan or an overflight, whether inadvertent or not, of PRC air space trigger a PRC reaction, we do not have American members of the Taiwan Defense

Command present on Taiwan. We will not have a U.S. representation when shooting starts in the Straits of Taiwan. Without the presence of an American military presence in the Taiwan Defense Command, now abolished, how do we determine the facts? Do we take someone's word for it that they have been attacked? "We just had a ship sinking in the Taiwan Straits, America, come to our help. We cannot manage this. It was by a submarine, and we have no antisubmarine warfare capability. We have no method of attacking submarines."

Do we take their word for it and immediately go out to the Taiwan Straits with a U.S. carrier and start a war?

We would be hard pressed, if this amendment is approved, to go against that request from Taiwan because what we are saying is that our front line of defense is the Taiwan Strait. I do not want to see us make a decision here today that would give that judgmental factor of whether to go to war to someone else.

What if we had a couple of aircraft shot down, inadvertently or not, and maybe they are shot down by weapons that are incapable of being opposed by the weaponry that the Republic of China, previously named, has on Taiwan? They call for our air assets to come out there and help counter that threat. Would we go automatically? Are not we stating that this is the security line that we are drawing for the United States of America? Yet, that "line of containment" is not under our control?

I find it very hard to believe that we would want to do that. Yet the language that is proposed in this U.S. Senate today could be used as justification for just such a call. We would then stand before the world as going back on yet another agreement, of not living up to our commitments around the world. Such a serious situation could arise because we made a judgment now that we did not want to know what was going on, we did not want to evaluate how serious it was, we did not want to know what weapons were used, we did not want to know why the attack occurred and whether it was instigated by Taiwan, perhaps to get us involved.

We would be, in effect, ruled out from making those most important life-and-death decisions if this security language is adopted.

I do not think we want to see those decisions go into other than American hands. I do not think we want to see that at all.

We do have a moral commitment to the people of Taiwan, but it is not included in the legislation, and it does not include, to my way of thinking, a required knee-jerk American response.

Much has been made of the fact that Taiwan is strategically significant to the United States.

Mr. PERCY. Mr. President, will the Senator yield for a question?

Mr. GLENN. Not until I finish my statement. Then I would be glad to answer any questions.

As to the situation with Taiwan's strategic location, that was addressed in the committee. General Jones, Chairman of the Joint Chiefs of Staff, told the committee that from a broad strategic interest Taiwan is less significant than South Korea, Thailand, and Japan, saying, "I would place it in a position of far less strategic interest than other nations in the Pacific." That is the Chairman of our Joint Chiefs of Staff speaking of Taiwan's strategic significance.

Yet we are told by this language that we now say that our front line runs down somewhere through the Straits of Taiwan.

Admiral Snyder, former Chief of Taiwan Defense Command, now defunct, and the most forceful witness for Taiwan's strategic importance, nevertheless concluded his answer to Senator PERCY with the observation that although Taiwan is important—

> I think that as long as we can keep Clark Air Force Base in the Philippines we can get along without it.

Meaning Taiwan—

> Thus, with the recently concluded amendment to the Philippines base agreement, we retain a power projection capability from the Philippines, Japan, and our at-sea forces sufficient to exert a U.S. presence in the Western Pacific.

So from a strategic standpoint solely Taiwan is neither a vital interest nor necessary to the effective employment of U.S. military forces in the region.

This amendment denies the United States the flexibility needed to cope with an uncertain future. When Senator PERCY asked the Chairman of the Joint Chiefs of Staff about the essence of this amendment, General Jones noted that although the language may be stronger:

> My problem with threat to security interests is that there is no qualifying factor there and that our security interests are less than in other areas of the Pacific or the world. So I would be concerned about the implication being far greater than what is intended.

That is a direct quote.

Any U.S. commitment must be credible and capable of being supported by the U.S. public; otherwise, the U.S. position is further eroded.

Yet, the Lou Harris and Roper polls show that despite a slight increase in favoring the use of U.S. troops to defend Europe, Korea, and Yugoslavia since 1974, public willingness to defend Taiwan has slipped.

More importantly, as I argued in a letter I sent to Secretary Vance a short time ago, providing sufficient arms to Taiwan, thereby deterring PRC action, is to be desired, rather than overblown rhetoric from the United States which may require U.S. forces engaging in combat if we are to honor our commitment.

The last paragraph of that letter I sent to Secretary Vance makes this point:

> Like many Americans, I want better relations with the PRC, but still have concerns about the security of Taiwan. I believe Taiwan's own military capabilities, aided by the qualitative improvements I have sought—is the best security guarantee for both Taiwan and the United States, and will provide the least likelihood of automatic American involvement in situations not of our making nor under our direct control.

I would add here that I have suggested that we get going at the earliest possible time with the weapons that Taiwan needs.

Mr. President, the United States will make very serious judgments before we decide to go to war. They will be based on the situation existing at that time. The language of grave concern for that situation that will exist at that time is the language that was carefully worked out in committee. That language does not mislead anyone.

Mr. President, I would submit that the language that has been suggested in this amendment will, however, lead to much misunderstanding. Why do we want to lead Taiwan into thinking we will make a commitment to them that we are not likely to honor in the crunch? Why do we want to mislead our friends around the world into thinking we would make that kind of commitment? Why do we want to mislead the people in the People's Republic of China into thinking that we would have a knee-jerk reaction to events beyond our control, or our defense command that we would have that kind of reaction?

Such a knee-jerk reaction would be expected when it will not occur; and the world should understand we will not be making that kind of commitment.

We need to send abroad a message of our grave concern as it was expressed in the bill brought out by the committee, Mr. President; and I urge my colleagues not to seek to make a commitment which will leave others to control whether we go to war, or indicating to the people of Taiwan and the PRC, or other friends around the world, that we have a commitment that we would honor regardless of the circumstances that may occur in the future.

Mr. PERCY. Mr. President, I ask unanimous consent that the name of the distinguished Senator from North Carolina (Mr. HELMS) be added as a cosponsor of the pending amendment.

The PRESIDING OFFICER (Mr. STEWART). Without objection, it is so ordered.

Mr. PERCY. Mr. President, it is my intention, at an appropriate time, after all Senators have spoken who wish to speak on this issue, to move to lay on the table the motion to reconsider.

I think that a discussion of this issue is important. I would like to express appreciation to Senator HELMS for his cosponsorship, because I know that Senator HELMS, if I understand his feelings correctly, feels that the so-called Percy amendment is the minimum that he can accept.

I have thought very carefully how far we could go to honestly express our point of view, just as honestly as China has expressed its point of view. The officials of the People's Republic of China have been very forthright in expressing their opinion. They absolutely refused to enter into any pledge of nonuse of force, but they did provide some degree of reassurance.

Though, as I have indicated, I cannot

go beyond the language of the so-called Percy amendment, I deeply appreciate the fact that there is wide support despite varying gradations of support. Senator HELMS' support for this amendment is meaningful because it is my understanding that his own amendment goes substantially further, and that if the Percy amendment fails, he might well carry forward with that amendment and press that issue.

The question also involves how we feel about normalization, and we have differing views on that. I have made it very clear that I strongly favor normalization of relationships, providing that every possible degree of assurance is given to the people of Taiwan, and providing also that we state unequivocally what our own national interest is. Just as we expect China to forthrightly, honestly, openly, and clearly express their national interest, we also have that right, that duty, and that obligation.

I am certain also that the People's Republic of China, particularly after Vice-Premier Teng's visit here and his personal discussions with the Members of the Senate, know how strongly the American people and the Members of the Senate feel on this issue. And though the executive branch of the Government did not want any changes whatsoever, Senator CHURCH and Senator JAVITS were able to convince the executive branch that it was essential and they put together language that more clearly expressed our point of view.

As we all recall during the Panama debate, many of us indicated there was no way we could ratify that treaty without amending the language to take into account certain contingencies. The leadership of the Senate, Senators BYRD and BAKER, the majority and minority leaders, helped work out language that made it possible for many of us to vote for that treaty, though even then many in good conscience could not.

I feel that it is necessary, just as the distinguished chairman and the ranking minority member of the Foreign Relations Committee felt it necessary, to adopt language that more clearly expresses our views. I think it is necessary now for the Senate to modify the language adopted by the committee, and the modifications we have suggested are, in the judgment of many, very mild indeed.

The implication has been made that the amendment before us would require the United States of America to act, or react, in case force was used. In reading the amendment, there is nothing that requires the United States to act. The amendment leaves open the option of action. It leaves it open completely. The amendment does not authorize the President to take any action in the case of hostilities. It is very clear that we simply are sending a message, a more honest and meaningful message than in the language in the legislation before us.

I cannot perceive how this amendment undermines anything. That word "undermine" has been used occasionally.

The Senator from Illinois cannot see that it will jeopardize anything. It jeopardizes nothing. We have a responsibility to be clear in our statements. We have a responsibility to be honest with China. We have honest differences of opinion which we should express just as honestly as the Chinese express their opinions.

They do not ever hesitate to lay it right on the line.

The Vice Premier laid it right on the line to us here and we respected him more for speaking forthrightly to us and letting us know how he stood on certain issues.

When he went to Tokyo he let us know through his conversations over there exactly how he felt about the way the United States had handled the Iranian situation.

He let us know unmistakably what he intended to do in Vietnam. And though we expressed our grave concern or our deep concern, or however it was we wrung our hands about that, he said right here he intended to punish Vietnam. He moved forthrightly to fulfill that pledge, and he did so, and he did it in a way that was rather impressive to the Vietnamese forces. The Chinese forces were very impressive in the way they administered that punishment.

He was honest about what he intended to do. Certainly, I think we have that same responsibility.

I respectfully suggest to the Senator from Idaho that it is in the U.S. national interest to state our security interests and not to mislead the Chinese. It would be wrong, in my judgment, not to tell the truth and adequately express how strongly we feel.

The distinguished Senator from Ohio has said that in his judgment the use of the term "gravely concerned" adequately expresses how we feel, and adequately expresses what we might do.

I would just like to go back into history a little bit and read to the distinguished Senator from Ohio what we have said as a country in the past.

In 1956, after the Soviet Union intervened with force in Hungary, a State Department spokesman said: "The actions of the Soviet Union are the cause of the greatest concern."

Did that in any way inhibit or even impress the Soviet Union? Not one bit. They held their ground.

In 1975, Secretary Kissinger said the Soviet introduction of military equipment into Angola and Cuban participation in Angola are considered "a serious matter not compatible with the spirit of relaxation of tension." That was almost reassuring to our adversaries that the United States had rejected the possibility of action.

It is a serious matter. We have said that before. That may be a signal that we intend to wring our hands. We look on it with grave concern, but we do not really intend to do anything because they are not our security interests. Should anyone doubt that this Nation will consider action if its security interests are threatened? Is there any doubt that we should move in Europe at any time the interests of the United States there are endangered?

Mr. BIDEN. Will the Senator yield for a question on that point?

Mr. PERCY. I am happy to yield.

Mr. BIDEN. Is the Senator equating our national interest in Taiwan as equal to that in Western Europe? Is the Senator suggesting they are the same?

Mr. PERCY. The Senator from Illinois is suggesting that the interests the United States has in a peaceful resolution to the Taiwan issue, in a nation with which we have had a mutual security pact for 30 years, are greater than the interests we may have in some other more remote part of the world where we have not had that kind of close relationship.

No, the Senator from Illinois, on a matter of priorities, would certainly put Europe ahead of Taiwan. He would put the Mideast ahead of Taiwan. And probably Japan and South Korea ahead of Taiwan.

Mr. BIDEN. I would hope the Senator would do that.

Mr. PERCY. But the Senator from Illinois would feel that if there was a use of force—I have said many times on this floor that I do not anticipate at all the use of force—if there were a use of force, I would personally feel that something more than just an expression of grave concern and a verbal slap on the wrist would be required. This Nation should consider acting under those conditions. It would only be fair to notify the People's Republic of China ahead of time that we put a peaceful settlement of the Taiwan issue as a high priority.

The Senator from Illinois put the question to the Chairman of the Joint Chiefs of Staff as to how he would look upon this matter. As I quoted earlier, General Jones replied, "I believe that an attack on Taiwan would be not only of grave concern but would impact on our security interests. There is no question about it." Would my distinguished colleague feel that there should be any question about it as to whether or not an attack by force on Taiwan would be contrary to the security interests of the United States of America?

Mr. BIDEN. Did not General Jones also say that the impact of such an attack would not be significant to American security? That its impact would be minimal? I do not have the language in front of me, but my recollection is that General Jones' comments were along those lines.

Is it not also true that the language of S. 245 as it now exists does not preclude us from using force? We retain the option to determine how and when we would use force. Maybe I can repeat myself to the Senator. He seems to have been occupied.

Does the language of S. 245 as it now stands preclude the United States from using force? Do not we retain the option to use force, depending on the situation? I assume the Senator would not suggest that should the 12 million indigenous population of Taiwan rise up against the 1 billion Chinese who run the mainland that we would send the U.S. fleet steaming in to take over. Or do my friends from Illinois and Ohio suggest that under those conditions we do move in?

There are all kinds of circumstances under which we should have a variety of reaction options.

I was just handed General Jones testimony. He said:

> It may be stronger but my problem with the threat to the security interests is that there is no qualifying factor there and that our security interests are less there than they are in other areas of the Pacific or other areas of the world. So I would be concerned about the implication being far greater than that intended.

I cite that to set the record straight.

I am infringing on the Senator's time. I have a good deal more to say about this if the managers of the bill will give me the opportunity, or when I am able to get the floor in my own right. I think the question here is whether or not we will face the political realities or continue to debate the China question. I remind my friend from Illinois that when we were in grade school we debated about "Who lost China." I suggest today we never had China to lose it, and I suggest now we are about to begin a new debate. With these amendments such as Senator PERCY's, I suggest that the debate over China will begin anew. If the Senator succeeds with his amendment, we will be debating again "Who lost China." The Senator's amendment suggests that the United States, in effect, institute a two-China policy. That would be a sham. Those are not the terms we agreed to in the normalization procedure. That is what the issue is about today.

Mr. President, I support S. 245, because it enables the United States to establish a creative new relationship with the people of Taiwan that assures that island's continued security and economic well-being without compromising our diplomatic commitment to Peking.

How to achieve these twin goals has been at the heart of the issue of our China policy since 1972. How to be fair, how to shortchange neither mainland China nor Taiwan, is the problem the Senate Foreign Relations Committee has just confronted, I think successfully. It is the crux of what has troubled the American people about the recent change in the direction of our China policy.

There is a large body of opinion—both in the Nation and in this Chamber—that is skeptical about the good intentions of the Communist Government of China. Chinese leaders came to this country and denounced the Soviet Union, trying to persuade us that "the enemy of my enemy is my friend." Days after they returned to Peking, Chinese forces invaded Vietnam.

Now, I do not approve of a leader of a country coming to our shores and denouncing a leader of a third country. Nor do I approve of military invasions. And I reserve the right to share my colleagues' skepticism about the motives and intentions of the People's Republic of China. But I maintain that recognition of the Peking government—the government of nearly 1 billion people—a government that has been in power for nearly 30 years—in no way implies approval of that government's every policy or of that government's social or economic system. What we are doing is simply recognizing that the government of Peking is the legitimate and legal government of one-quarter of the world's population.

What derecognition of the Government of Taiwan implies is not abandonment of an ally and friend. Neither my colleagues in the Senate nor the American people should in any way infer that the American Government is no longer concerned with the peace and prosperity of that island's 15 million inhabitants. What the new relationship with the people of Taiwan signifies is that U.S. policy has finally come out from under the figleaf of political pretense. The recognition of Peking and the derecognition of Taipei brings our policy into the clear light of present-day reality.

To put this diplomatic event into the proper context, I think we should look back. We could look back to the Shanghai communique of 1972. But for a moment I want to look still further back—into what is for me history.

Let us go back to 1949. After the Chinese civil war in which the Communists defeated the Nationalist forces of Chiang Kai-shek, the losers took refuge on the island of Taiwan, then called Formosa. This handful of Chinese Nationalists sheltering themselves on Formosa, still maintained that their government was the legitimate government of the Chinese people. And the United States joined them in that fiction.

Because of the geopolitics of the early fifties, the United States, understandably, did not change this fiction. There was the Korean war. There was also the overpowering threat to U.S. interests posed by the Moscow-Peking alliance.

During this decade of the fifties, there were many Americans who claimed that it was the U.S. policy of the 1940's that "lost China" for us. The debate over who lost China raged for a decade. I, personally, do not believe that China was ever ours to lose. In my opinion, the real loss of China for the United States was the loss of contact with the mainland. The real loss of China for America was the loss of influence with the Peking government.

Now, I will be the first to admit that it is easier to understand that loss today than it was 30 years ago. I refer to this history only because I believe that, after 30 years of deliberate fiction, it is time to set our relationships with China and Taiwan straight. In fact, not fiction.

We created that fiction of Taiwan. And we are willing to take the responsibility for it today. We will not abandon her. We recognize the fact of her economic prosperity and we will do everything we can to protect it. We recognize the danger to her security and we will do everything we can to protect it. But we can no longer perpetuate the fiction of Taiwan's political pretensions.

The first step toward a realistic U.S. policy on China was taken by President Nixon in 1972. The Shanghai communique issued at that time stated that there is but one China. The communique never stated which was the legitimate one. But it recognized the political reality of one China.

The brilliance of the Shanghai communique was less in its clarity than in its precise area of vagueness. Its brilliance lay in what it did not define. It contained what lawyers sometimes call "creative ambiguity."

While the credit for the initiative in a realistic China policy goes to a Republican administration, there is little doubt of the courage of President Carter in concluding that process of political reality.

It is to the Senate Foreign Relations Committee, however, that the final task was given. Because it is this committee, under its new leadership, that was able to flesh out, to specify and to amend the administration proposal. In a way that gives Taiwan a fair shake.

And it is this same committee that has had the foresight to recognize that giving Taiwan a fair shake does not mean that we create another two-China political faction to replace the old one. The committee was able to draft and pass legislation that is before us today that meets the objectives of U.S. policy. Let me say it more plainly—S. 245 serves the interests of both the United States and Taiwan.

Mr. President, in the long run, the interests of both countries are best served by good relations between the United States and China. And the passage of amendments to this bill which would, in effect, create a second China would lay the basis for another 30 years of fiction, of illusion and of instability.

Therefore, Mr. President, I urge my colleagues—not to "lose China" a second time.

Mr. PERCY will the Senator yield for a question?

Mr. BIDEN. Yes. The Senator has the floor.

Mr. PERCY. The Senator from Illinois appreciates the questions and the comments which were made, but I would like to point out as I have before that my amendment does not require the United States in any manner, shape, or form to use force. It simply leaves open certain options. With this amendment, we are retaining the same options the Chinese have retained We do not preclude options, but we give a clearer signal than does "grave concern" that we intend to do something other than wring our hands.

I know that the majority leader would like to make a motion, but the Senator from Illinois has promised the senior Senator from California the right to speak at this time. If the motion will preclude the right of Senators from commenting at this time, would the Senator withhold his motion?

Mr. ROBERT C. BYRD. Mr. President, my motion would not preclude Senators from speaking on the amendment. It would not.

I ask unanimous consent that I may be permitted to withdraw the motion to reconsider.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The motion to reconsider was withdrawn.

Mr. PERCY. I thank the distinguished majority leader.

Mr. HOLLINGS and Mr. HAYAKAWA addressed the Chair.

Mr. PERCY. The Senator from Illinois has not yielded the floor.

Mr. HOLLINGS. I yield to the Senator from California and I shall speak later. I thought since the motion was withdrawn, we could move on to something else. I was going to call up an amendment. I yield the floor and shall wait until after the Senator from California has completed.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator from California will yield, I say to the Senator from Illinois that I thank him for yielding. Perhaps we could reach an up-or-down vote on his amendment quickly after the Senator from California has yielded the floor.

Mr. HAYAKAWA. Mr. President, the distinguished Senator from Idaho has said that the amendment offered by the Senator from Illinois undermines the commitment to the basis on which our relations with the people of Peking have been established. Perhaps it is an act of temerity on my part, but I should like to remind the distinguished Senator from Idaho that the President may be committed to the basis on which our relations with Peking have been established, but we in the Senate were not consulted as to that basis on which those relations were established. As everyone here will recall, those relations were established in our absence and without consultation and on a date in which consultation was impossible. Hence, I cannot see how we are similarly committed.

This is the reason that many of us in this Chamber are adding amendment after amendment to the language of the Taiwan Enabling Act. This is only one of the amendments.

Mr. President, I have heard a lot of talk about how the United States can maintain a dual relationship with the two parts of China, and an analogy with Japan's success in maintaining such a dual relationship. If Japan can maintain nongovernmental relations with Taiwan at the same time as it maintains full diplomatic relations with the mainland, why cannot we do the same? That is the argument we frequently heard. What those who argue this position ignore is that Japan felt secure about this dual relationship, because the United States had a defense treaty with Taiwan. That protection to the peace of the Pacific and, therefore, that protection which Japan's trade with both parts of China enjoyed no longer exists at this moment. In short, Japan can no longer feel as secure as she did and what Japan will do about that fact, I do not know.

I do know that the peace of the Pacific and the whole area is no longer as secure as it was when we had a defense treaty with Taiwan. I do not expect or hope ever to restore that defense treaty with Taiwan under present conditions. But the Senator from California does welcome the wording of the amendment of the distinguished Senator from Illinois, since it spells out specifically the dangers involved in this new relationship that, at the same time, treats the two Chinas as one and also treats the two Chinas as two. There are so many ambiguities in this proposed relationship that the Senator from California, for one, fully intends to vote for the amendment offered by his distinguished colleague from Illinois (Mr. PERCY). In one respect, at least, those ambiguities will be reduced if we accept Senator PERCY's excellent suggestion.

I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I am ready to vote. I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. PERCY. Mr. President, there are others who wish to speak.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair.

Mr. President, I have listened with great interest to the comment by the distinguished chairman of the Committee on Foreign Relations and others. I notice that the distinguished chairman began his argument with the suggestion that the President would be embarrassed in his Middle Eastern trip if the Senate were to take the action of approving the amendment of the Senator from Illinois. I happened to think of a note that was left for me earlier this morning by a friend from North Carolina, who stopped by. I thought something of this sort might come up on the floor, and I had a young lady type it out. Let me read it.

He said:

> One final note. I feel that the administration will try to play on the Carter trip to the Middle East in its attempt to kill the Percy amendment. They will say, "Don't embarrass the President with this slap in the face just when he is trying to negotiate a delicate treaty, et cetera." They will claim that such a move shows the parties to the Mideast treaty that the Senate and the Congress cannot be relied on to uphold the President's actions.

Well, this friend of mine was certainly prescient. He must have had a crystal ball in his pocket.

He went on to say, with respect to his earlier comment:

> This is nonsense. Why? Because there was prior consultation with the Senate prior to the President's trip—the briefing of the committee, the Begin visit, et cetera. There was none of that with Taiwan.

Mr. President, that is it in a nutshell. The President of the United States has sent the Senate a scrambled egg and has said, "Now unscramble it." If he had conferred with the Congress, or even with the Foreign Relations Committee, the Senator from North Carolina does not believe that we would be in this fix this afternoon. Certainly, I take no pleasure in resisting the legislation pending before us, but I feel in good conscience that we must do something to strengthen the defense section. As my friend from Illinois has indicated, this is the minimum insofar as the Senator from North Carolina is concerned. I am happy to cosponsor his amendment. I think, as he has indicated, that we should go farther, but I am willing to compromise on this.

In the comments by the distinguished chairman of the Committee on Foreign Relations earlier, he said, "What will we be telling Peking?" What will we be telling Peking by approval of what the distinguished chairman called a frivolous amendment by the distinguished Senator from Illinois?

I think the more important question is, what will we be telling such friends as we have left around the world if we do not do this? I might raise another question, what was the President telling the Congress when he declined to confer with Congress when he made the judgment to dump Taiwan and embrace Red China? There are all sorts of questions that we can raise and which we should raise. I, for one, do not feel that we should indulge in obfuscation. We ought to lay it all out to be seen.

The statement was made earlier, and I think by the distinguished chairman, that General Jones had assured the committee that Red China does not have the capability to boycott, blockade Taiwan.

Well, not quite, Mr. President, not quite.

Actually, what General Jones said was, and I will read from page 747:

> Now that does not mean that they could not develop that capability over a number of months, of course.

Obviously, they can. And in a number of months, not years.

Now, I wish to offend no one, but the administration has deliberately refused access to a report that I personally know is in existence and which was requested from a number of administration witnesses during the course of the committee's deliberation of this bill. It is now in my possession. It is a secret report, entitled "Consolidated Guidance Study No. 9, Taiwan's Military Requirements in a Post-Normalization Environment." It was made available to me today by a concerned citizen. In this report, high Pentagon officials are on record as knowing that Taiwan could be blockaded.

I am not going to quote from that secret report. I am not that kind of Senator. But if the distinguished chairman or any other Senator wants to see it, I will be glad to show it.

But, in any case, Mr. President, it seems to me to be rather ominous that this Senate should be debating the security of Taiwan this particular week, because it was exactly 20 years ago this week that the Dalai Lama in Tibet was forced to submit to Peking's terms with respect to Tibet's future status.

On March 9, 1959, the Dalai Lama attended a meeting of the Chinese State Council and was forced to accept various decrees including the establishment of a so-called "Preparatory Committee for the Autonomous Region of Tibet."

This action led to the exodus from Tibet of the Dalai Lama and many of his followers. From exile in India the Dalai Lama protested in April 1959 that in practice "decisions in all important matters were made by the Chinese authorities."

The Dalai Lama did not return to Tibet, but has remained in exile. Instead the Peking authorities proceeded with the communization of Tibet that led to another revolt by the people of Tibet. And all this was done under the authority of the agreement with Tibet signed in 1951 that allegedly granted them regional autonomy.

In a 17-point agreement signed in 1951 the PRC purportedly granted to Tibet regional autonomy. Does that sound familiar? It is instructive today to look at the language of this signed agreement by Peking and then the following historical record of ruthless suppression of the people of Tibet that led to the exodus of the Dalai Lama and many of his followers.

It is important to note especially articles 3, 4, 5, and 6 of this agreement, particularly as we now listen to supposedly soothing words of Teng Hsiao-ping about the future status of Taiwan. His are only words; Peking had a written agreement with Tibet and it was Chou En-lai, Teng's spiritual predecessors, who played a large role in "negotiating" this agreement.

Mr. President, I ask unanimous consent that the terms of this agreement be printed in the RECORD, that the brief chapter on the 1959 uprising in the book "Revolt in Tibet" be included, and the statement from exile of the Dalai Lama.

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

APPENDIX I

Agreement of Measures for the Peaceful Liberation of Tibet (17—point Agreement of May 23, 1951) [1]

The Tibetan nationality is one of the nationalities with a long history within the boundaries of China and, like many other nationalities, it has done its glorious duty in the course of creation and development of the great Motherland. But, over the last 100 years or more, imperialist forces penetrated into China and in consequences also penetrated into the Tibetan region and carried out all kind of deceptions and provocations. Like previous reactionary Governments, the Kuomintang reactionary Government continued to carry out a policy of oppression and sowing dissension among the nationalities, causing division and disunity among the Tibetan people. The local government of Tibet did not oppose the imperialist deception and provocation and adopted an unpatriotic attitude towards the great Motherland. Under such conditions the Tibetan nationality and people were plunged into the depths of enslavement and sufferings. In 1949 basic victory was achieved on a nation-wide scale in the Chinese people's war of liberation; the common domestic enemy of all nationalities—the Kuomintang reactionary Government—the aggressive imperialist forces—was driven out. On this basis the founding of the People's Republic of China (CPR) and (CPG) was announced.

In accordance with the Common Programme passed by the Chinese People's Political Consultative Conference (CPPCC), the CPG declared that all nationalities within the boundaries of the CPR are equal and that they shall establish unity and mutual aid and oppose imperialism and their own public enemies, so that the CPR will become a big family of fraternity and co-operation, composed of all these nationalities. Within the big family of all nationalities of the CPR, national regional autonomy shall be exercised in where areas national minorities are concentrated and all national minorities shall have freedom to develop their spoken and written languages and to preserve or reform their customs, habits and religious beliefs, and the CPG shall assist all national minorities to develop their political, economic, cultural, and educational construction work. Since then, all nationalities within the country—with the exception of those in the areas of Tibet and Taiwan—have gained liberation. Under the unified leadership of the CPG and the direct leadership of higher levels of people's governments, all national minorities have fully enjoyed the right of national equality and have exercised, or are exercising, national regional autonomy.

In order that the influences of aggressive imperialist forces in Tibet might be successfully eliminated, the unification of the territory and sovereignty of the CPR accomplished, and national defence safeguarded; in order that the Tibetan nationality and people might be freed and return to the big family of the CPR to enjoy the same rights of national equality as all other nationalities in the country and develop their political, economic, cultural and educational work, the CPG, when it ordered the People's Liberation Army (PLA) to march into Tibet, notified the local government of Tibet to send delegates to the central authorities to conduct talks for the conclusion of an agreement on measures for the peaceful liberation of Tibet. At the latter part of April 1951 the delegates with full powers of the local government of Tibet arrived in Peking. The CPG appointed representatives with full power to conduct talks on a friendly basis with the delegates with full powers of the local government of Tibet. As a result of the talks both parties agreed to establish this agreement and ensure that it be carried into effect.

(1) The Tibetan people shall unite and drive out Imperialist aggressive forces from Tibet; the Tibetan people shall return to the big family of the Motherland—the People's Republic of China.

(2) The local Government of Tibet shall actively assist the PLA to enter Tibet and consolidate the national defences.

(3) In accordance with the policy towards nationalities laid down in the Common Programme of the CPPCC, the Tibetan people have the right of exercising national regional autonomy under the unified leadership of the CPG.

(4) The central authorities will not alter the existing political system in Tibet. The central authorities also will not alter the established status functions and powers of the Dalai Lama. Officials of various ranks shall hold offices as usual.

(5) The established status, functions and powers of the Panchen Ngoerhtehni (Lama) shall be maintained.

(6) By the established status, functions and powers of the Dalai Lama and of the Panchen Ngoerhtehni are meant the status, functions and powers of the thirteenth Dalai Lama and of the ninth Panchen Ngoerhtehni when they were in friendly and amicable relations with each other.

(7) The policy of freedom of religious belief laid down in the Common Programme of the CPPCC shall be carried out. The religious beliefs, customs and habits of the Tibetan people shall be respected and lama monasteries shall be protected. The central authorities will not effect a change in the income of the monasteries.

(8) Tibetan troops shall be reorganised step by step into the PLA and become a part of the national defence forces of the CPR.

(9) The spoken and written language and school education of the Tibetan nationality shall be developed step by step in accordance with the actual condition in Tibet.

(10) Tibetan agriculture, livestock-raising, industry and commerce shall be developed step by step in accordance with the actual condition in Tibet.

(11) In matters related to various reforms in Tibet, there will be no compulsion on the part of the central authorities. The local Government of Tibet should carry out reforms of its own accord and, when the people raise demands for reform, they shall be settled by means of consultation with the leading personnel of Tibet.

(12) In so far as former pro-imperialist and pro-Kuon intang officials resolutely sever relations with imperialism and the Kumintang and do not engage in sabotage or resistance, they may continue to hold office irrespective of their past.

(13) The PLA entering Tibet shall abide by all the above mentioned policies and shall also be fair in all buying and selling and shall not arbitrarily take a needle or thread from the people.

(14) The CPG shall have centralized handling of all external affairs of the area of Tibet; and there will be peaceful co-existence with neighbouring countries and establishment and development of fair commercial and trading relations with them on the basis of equality, mutual benefit and mutual respect for territory and sovereignty.

(15) In order to ensure the implementation of this agreement, the CPG shall set up a Military and Administrative Committee and a Military Area HQ in Tibet and—apart from the personnel sent there by the CPG—shall absorb as many local Tibetan personnel as possible to take part in the work. Local Tibetan personnel taking part in the Military and Administrative Committee may include patriotic elements from the local Government of Tibet, various districts and various principal monasteries; the name-list shall be set forth after consultation between the representative designated by the CPG and various quarters concerned and shall be submitted to the GPG for appointment.

(16) Funds needed by the Military and Administrative Committee, the Military Area HQ and the PLA entering Tibet shall be provided by the CPG. The local Government of Tibet should assist the PLA in the purchase and transport of food, fodder and other daily necessities.

(17) This agreement shall come into force immediately after signatures and seals are affixed to it.

Signed and sealed by delegates of the CPG with full powers: Chief Delegate Li Wei-Han (Chairman of the Commission of Nationalities Affairs); Delegates Chang Ching-wu, Chang Kuo-hua Sun Chih-yuan. Delegates with full powers of the local Government of Tibet; Chief Delegate Kaloon Ngabou Ngawang Jugme (Ngabo Shape); Delegates Dizasak Khememey Sonam Wangdi, Khentrung Thupten Tenthar, Khenchung Thupten Lekmuun, Rimshi Samposey Tenzin Thundup.

Peking, 23rd May, 1951.

TIBETAN DISCONTENT GROWS

On April 29, 1954, the "Agreement between the Peoples' Republic of China and the Republic of India on Trade and Communications between the Tibet region of China and India" was signed in Peking, according to a Chinese communiqué, "bringing to an end the remnant privileges of the British and so

[1] The full text of the 'Agreement of the Central People's Government (CPG) and the local Government of Tibet on measures for the peaceful liberation of Tibet', was signed in Peking on May 23, 1951. The text herein was given by the New China News Agency. See also Concerning the Question of Tibet (Peking, 1959); pp. 14–10; Documents of International Affairs (London, Royal Institute of International Affairs), 1951, pp. 577–579.

establishing the relations between China and India, concerning Tibet, on a new basis". The Agreement laid down five broad principles in addition to the liquidation of the Indian claims.

According to the Agreement India accepted the principle that Tibet constituted an integral part of China, and agreed to withdraw completely within six months the Indian contingent that had been stationed for decades at Yatung and Gyantse. Peking, it was stated, would render all assistance and facilities in aiding the withdrawal of Indian troops.

India agreed also to hand over all her property in Tibet to the Chinese authorities, leaving questions of detail regarding cost and manner of payment to be worked out later. These properties included all the telegraph, public telephone, and postal establishments, together with their equipment, and twelve rest houses situated in various parts of Tibet.

The Agreement, containing six articles, related only to the two issues of trade and pilgrim traffic. China would be permitted to open three trade agencies, in New Delhi, Calcutta and Kalimpong, while India would be allowed to establish similar offices at Yatung, Gyantse and Gartok. All trade and pilgrim traffic should henceforth be confined to six specific routes along the two-thousand-mile common frontier.

The Trade Pact, as it was briefly called, was acclaimed in India and China and the five principles, outlined in the preamble, which formed the basis of the pact—mutual respect for each other's territorial integrity and sovereignty, mutual non-aggression, mutual non-interference in each other's internal affairs, equality and mutual benefit and peaceful co-existence—became known as "The Five Principles of Peaceful Co-Existence", or "Panch Shila" in India, and were later taken up at Bandung as the accepted policy of the Afro-Asian bloc.

India gained practically nothing concrete from the pact. It was rumoured in Indian official circles that Mr. Nehru had hoped to obtain a fixed delineation of the hitherto vague border between Tibet and India, so limiting China's expansionist ambitions, but if this were the case it was another diplomatic defeat for India.

In a speech delivered in India's Lok Sabha on a debate on the international situation on May 15, 1954, Acharya T. B. Kripalani, the Leader of the Opposition, said:

'Recently we have entered into a treaty with China. This treaty concerns the whole of India. It does not concern a party or a person, it affects us all. We feel that China, after it had gone Communist, committed an act of aggression in Tibet. The plea is that China had the ancient right of suzerainty. This right was out of date, old and antiquated. It was theoretical; it was never exercised or very rarely exercised and even then in theory. It had lapsed by the flux of time. . . . I consider this as much a colonial aggression on the part of China as any colonial aggression indulged in by Western nations. The definition of colonialism is that one nation by force of arms and fraud occupies the territory of another nation. . . . Whether certain nations commit aggression against other peaceful nations does not always concern us. But in this case we are intimately concerned, because China has destroyed what is called a buffer state. In international politics, when a buffer state is destroyed by a powerful nation, that nation is considered to have committed aggression against its neighbours. . . . It is also well-known that in the new map of China other border territories like Nepal, Sikkim, etc., figure. This gives us an idea of the aggressive designs of China. . . . I do not say that because China conquered Tibet we should have gone to war with it. It was possible. But we did well in not going to war. But this does not mean that we should recognize the claims of China in Tibet. We must know that it is an act of aggression against a foreign nation. It is as abominable as colonialism of any Western power. . . .'

While Prime Minister Nehru and Chou En-lai were being acclaimed throughout Asia for their magnanimous and enlightened approach to relations between nations, Tibet, which had been the object of discussion and agreement, took a radically different view. The growing bitterness against India felt by Tibetans of all classes since 1950, which they interpreted as cynical self-interest and betrayal, flared up into public demonstration inside Tibet.

Posters were printed and pasted on to walls throughout Lhasa and copies were sent to all towns and monasteries in Tibet. The text was published in the *Tibet Mirror*, issued in Kalimpong on June 1, 1954:

"To Leaders, Officials, Monks, Soldiers, Traders, Craftsmen, Agriculturists, Nomads—the People of Tibet.

'This is to alert you to the great danger threatening our common cause, the independence of Tibet, regarding which I feel compelled to speak a few words.

'1. The last edition of the *Tibet Mirror* carried translations of articles from Indian papers of a trade pact signed at Peking between India and China regarding Tibet. There was a statement that "discussion in Peking related only to procedural matters and not to the substance of the issue." Neither was there any mention of which particular treaty formed the basis of the talks. Further, no full copy of the agreement was made public.

'2. Were the talks based on the Trade Regulations of 1893 or of 1908, both of which were mentioned in regard to the Peking Trade Agreement? If so, it is a violation of the Simla Convention of 1914 whereby both of those Trade Regulations are declared revoked in Clause 7.

'3. The Peking Trade Pact refers to Tibet as "an integral part of China", and there are many mentions of the "Tibet region of China", these being terms unprecedented in the history of Tibet and also another violation of the terms of the Simla Convention, Clauses 3 and 9 of which first of all recognized the mutual independence of Tibet inasmuch as the Tibetan Government kept her existing rights, which until the time of the recent invasion of Tibet included the management of her external affairs; secondly, guaranteed the non-violation of Tibetan territory, Great Britain and China agreeing to abstain from sending their troops, stationing civil and military officers, or establishing colonies in Central Tibet.

'4. The Simla Convention was signed by the fully empowered representatives of the three Governments of Tibet, India and China, whereas the Peking Pact was concluded between India and China, *the wishes of the Government and people of Tibet being completely ignored*. This makes it clear that China wishes not only to absorb Tibet but to destroy our culture, religion and eventually our race by intermarriage, as is shown by their moves to try to get in, in addition to the two hundred and twenty thousand in the Liberation Army already in Tibet, a further two million Chinese for the so-called economic development of our country. It is only too obvious how our two neighbours are willing to come to private arrangements in favour of aggression so as to serve their own inter-Asian imperialist policies.

'5. Please read carefully the second Independent Treaty signed at Simla between Tibet and the British Government in India, on the same day, and immediately after, the Tripartite Simla Convention, as it recognized not the autonomy but the complete independence of Tibet, as follows:

' "The Government of China refusing to fix her official seal thereto and in default of which, all rights and privileges claimed by the Government of China in and with regard to Tibet, are hereby declared revoked." '

The protest, circulating in Tibetan inside a closed Tibet, evoked no sympathy or response either in India or the outside world.

What was extremely significant about its widespread circulation inside Tibet was the fact that the anti-Chinese demands were now so numerous and strongly entrenched that such could now be printed and distributed throughout the country without detection of the organizers.

The chief anti-Chinese organization involved in the demonstrations and pamphleteering was a group known as the *Mi-mang Tsong-du* (or People's Party). While nationalist and subversive, they limited themselves to public demonstrations against unpopular Chinese Communist measures and took no part in violent activities of any form. Notices appeared on the walls of buildings overnight denouncing or mocking the Chinese occupation personnel; Chinese notices were torn down or besmeared with manure; Chinese parades or demonstrations were bombarded from densely packed crowds with dried yak dung and stones, or there were cleverly organized 'silences'. When the Chinese arrested some of the more prominent and handed them over for trial to the Tibetan courts they were released shortly afterwards on 'insufficient evidence', or some other bland reason. At their own demonstrations they could number four or five thousand people, and the Chinese dared do no more than arrest some of the more extreme orators and even then, as indicated, only hand them over to the Tibetan courts with complaints.

In June 1954 the Dalai Lama received an invitation from the Chinese Government to visit Peking and other places in China. The invitation evoked an immediate protest in Tibet and there were many demonstrations to protest against the Dalai Lama leaving the country, the general suspicion being that he would not be permitted to return.

In addition to demonstrations the *Mi-mang Tsong-du* in Lhasa secretly organized a mass revolt on the day scheduled for the Dalai Lama's departure, when thousands of Tibetans were to throw themselves in the Dalai Lama's path so that he could not pass through them without having to walk over their bodies. The Chinese got word of their plans, and several days before the scheduled date of departure moved the Dalai Lama to a relative's house and from there on his way to China.

However, the Chinese were unpleasantly surprised by the intensity of the feeling shown by the Tibetans to their invitation to the Dalai Lama and gave strong assurances that he would be well treated in China. On the other hand, it did not prevent them from engineering at least two attempts on the Dalai Lama's life on his way to China. On one occasion a bridge mysteriously collapsed just after the Dalai Lama had crossed over, and the Chinese blamed Kham bandits; and on another occasion a landslide almost carried the party away.

The Panchen Lama had also been invited to visit China at the same time. For some while the Chinese had been building up the Panchen Lama's influence in Tibet, both to undermine the Dalai Lama's prestige and to seek to divide the Tibetans into two camps over the centuries-old controversy so that they could be dealt with more easily.

After Britain, China and Tibet had signed the Tripartite Treaty in 1914 and then Panchen Lama, who was very pro-Chinese, was forced to flee in 1920 to China where the Kuomingtang Party was emerging as the new government. Right away the Panchen Lama began scheming with the Kuomingtang officials to support him with money, arms and men to re-enter Tibet, but the new Kuomingtang Government was in no position to indulge in such adventures.

In 1933 the Thirteenth Dalai Lama died. During his reign it had been virtually impossible for a Chinese national, civil or military, to enter Tibet, but as it usually took several months or years to discover a reincarnation of the Dalai Lama the ageing Panchen Lama prevailed upon the Kuomingtang Government to assist him in 'liberating' Tibet. On this occasion help was given, and while the Chinese forces were converging on Tibet's eastern borders a Chinese goodwill mission was sent to Lhasa to persuade a leaderless Tibetan Government to accept a permanent Chinese delegation in Lhasa on grounds of common cultural and religious ties. As a direct result of this offensive, in 1935 a meeting was called in Lhasa and it was decided that the Panchen Lama should be allowed to re-enter Tibet accompanied by his household and a few followers, but before he could take advantage of this the Panchen Lama died in China.

When the new reincarnation of the Dalai Lama was discovered in 1938 in Amdo Province a new reincarnation of the Panchen Lama was found in that same year and in the same province. The position of this reincarnation, however, was still unsettled as there was a simultaneous discovery of two other claimants in Lhasa. According to custom the authorities in Lhasa requested the Amdo claimant to appear in Lhasa for verification of his claims, but the Chinese authorities, for obvious reasons of their own, refused to comply with this request and some years later, without consultation with Lhasa, officially installed their protégé as the new Panchen Lama. When the Kuomingtang Government was defeated and fled to Formosa the Chinese Communist Government took over the care and training of the Amdo Panchen Lama.

In 1950, 'at the request of the Panchen Lama', the Chinese ordered the People's Liberation Army into Tibet, and in 1951 the Panchen Lama was present for the talks conducted by the Chinese Communists with the Tibetan goodwill mission on the special initiative of the Peking Government. The pact which recognized China's suzerainty over Tibet acknowledged also the Amdo reincarnation as the true Panchen Lama. In 1952 the newly declared Panchen Lama, escorted by a strong force of Chinese troops, entered Lhasa, and from that time the Chinese had made every effort to build him up politically, but the Tibetan Government and people, while accepting the installation under force of circumstances, refused to recognize him as anything more than a spiritual figure. The Chinese tried by every means to override the objections of the Tibetan people and on every public occasion introduced the Panchen Lama as an equal to the Dalai Lama.

After being in China several months the Dalai Lama and Panchen Lama were invited to attend a meeting of the Chinese State Council on March 9, 1955, where they were forced to submit to a number of decisions on Tibetan affairs. One of these decisions was the establishment of a 'Preparatory Committee for the Autonomous Region of Tibet'. The Committee consisted of fifty-one members, fifteen from the Lhasa administration, ten from the 'Panchen Lama's Bureau', ten from the Chamdo 'People's Liberation Committee,' eleven from monasteries and 'People's Organizations', and five representing the Chinese Government, with the Dalai Lama being named a chairman. It was announced that the members of the Committee were appointed 'with the approval of the Chinese State Council' and the three regions of Tibet were subordinate to it. It was also stated that the chief task of the Preparatory Committee was to prepare for regional autonomy in accordance with the provisions of the Chinese Constitution, the Agreement of 1951 and the concrete circumstances of Tibet. The first meeting of this Preparatory Committee was held on April 22, 1956, and thereafter there were in the next three years twenty-seven meetings out of which the Dalai Lama was present at and presided over twenty-five. But on his arrival in India the Dalai Lama stated at Tezpur on April 15, 1959, that 'in practice, even his body had little power and decisions in all important matters were taken by the Chinese authorities'.

In China during the visit of the two Lamas the Peking Government went out of its way to show preference for the Panchen Lama on every occasion, presumably to impress upon the Dalai Lama how they were prepared to treat those who co-operated with them. If this were so the rather naive policy had exactly the opposite effect, and as the Dalai Lama went about the country, saying the proper things prepared for him by his hosts but noting particularly their attitude towards religion, the complete absorption in ruthless materialistic policies, the cynical playng off of the Panchen Lama against himself to further their own ends, he came to certain very definite conclusions in his own mind. He said nothing to anyone at the time, not even to Mr. Nehru, whom he met in Peking during the Indian Prime Minister's visit to China, and who asked him in a private conversation if there was anything India could do to help Tibet, and it was only later that I was able to find out his impressions from his family.

Meanwhile in Tibet the Tibetans were becoming uneasy at the unduly prolonged visit which seemed to confirm their suspicions that the Chinese were going to hold the Dalai Lama in China as a hostage. Demonstrations were organized in Lhasa by the Mimang Tsong-du demanding his early return, and even in Kalimpong there was a mass protest and public prayers. From Tingri in West Tibet, an area noted for its fighters, several hundred Tibetans marched to Lhasa to add their voices to the general request and also threaten armed action if the Dalai Lama were not returned immediately.

If the Chinese had ideas about the Dalai Lama they were quickly changed in view of this ominous reaction and he was permitted to return to Tibet.

Shortly after his arrival in Lhasa evidence of his new attitude to Communist China began to appear, both directly and indirectly. Immediately there was a hardening of official opposition to Chinese proposals. The move by the Chinese to have Chinese paper currency substituted for the silver Tibetan currency was flatly rejected, and the offer of economic integration with China refused. The Chinese then countered with an order that only traders with letters of credit issued by the Bank of China and negotiable in branches in India would be allowed to trade—and found themselves with a monumental leakage of Chinese silver coins being smuggled into India. They failed to elicit any enthusiasm for their project and the Preparatory Committee for the Autonomous Region of Tibet became increasingly exasperated by Tibetan excuses at inability to attend.

On the 23rd day of the Tibetan fifth month (July–August) 1955 the Dalai Lama made a public speech in Norbulinka, the summer palace. After reviewing the history of Tibet and pointing out that when there was a balanced emphasis on both religion and politics the country had prospered, but that when politics took prominence over religion to the exclusion of the latter there was national deterioration, he went on:

'At present and in the future we shall carry out many new changes both in our religious and political life, and this is the urgent task which faces us. But in what way can we make progress? Today our Tibetan people are facing many difficulties from every side. We have no strength of our own and we have no political experience. We have no means to progress in any way. It is for this reason that the Chinese Communists have sent their men here to help us in the reconstruction of Tibet. But we must recognize very clearly that the Chinese Communists have not come here to control us, or become our masters, or to oppress us. We should adopt a friendly attitude towards them.

'If the Chinese Communists have come to Tibet to help us, it is most important that they should respect the Tibetan people's own social system, culture, customs and habits, and honour the wishes of the whole people of Tibet, and not obstruct or do damage to the high principles of our nation. If the Chinese Communist personnel in Tibet do not understand the conditions, and harm or injure our people, you should immediately report the facts to the Government. The Government will certainly take steps to make them correct their ways. If the Chinese Communists do not correct their ways our Government can immediately ask for their expulsion.

'I hope all our Tibetan people will take upon themselves the responsibility for carrying out the various tasks allotted to them. For example, if the members of a family can themselves control and carry out the affairs of the family that family may be said to be a self-managed family or an independent one. A country is also in the same position as a family. I sincerely hope that the officials of the Government and the people will stand at their posts, will remain determined in their attitudes, carrying out their responsibilities and using their full strength in performing their duties.

'Today I am very pleased with the officials of the Government and the people and thank them for working extremely hard for the welfare of their district, Government and country. But there are some officials and people who have a very narrow outlook and cannot take a broad view of things. For their own selfish advancement and under the attraction of glittering gold they do not care for the good of the country and the people, they practice oppression and deceit, they give trouble to the people and harm the Government, and thus are responsible for great harm to the country. I would request such people to correct their former mistakes and, becoming new men, atone for their misdeeds in the interests of the country and the people. Besides them there are some few people who disregard their national culture and history, consider themselves to be progressive, and who have changed their ways to doing what they like in a very confused manner. I regard such ideas as mistakes. Progress cannot be attained suddenly in a confused manner and must be attained gradually in an ordered way. Again, there are Government officials who are envious of each other, create conflicts and bitterness, and cannot cooperate with each other. Because they fritter away their energies they cannot carry out the work of the administration effectively. I desire that they give up their selfish attitude and take a broad view of things, correct each other and become united together. Only by doing so can we create and develop our strength. For example, it is not possible for a single person to lift a big stone using his own strength, but if the strength of several people is pooled together it becomes very easy to lift the same stone. This is a very simple example but I know that all of you will pay special attention to this matter.

'Tibet consists of Kham, Tsang, U and Amdo, and all consist of the Tibetan people. Their spirit and way of living have such intimate connexions that they cannot be separated from each other. I hope that all of you will deeply think over this matter, love each other, and be united with each other, and not become separated from each other.

'Finally, I hope that the people of the whole of Tibet by their unity and co-opera-

tion will increase our strength and put all their energies into the construction of a new Tibet based on the unity of political life and religion.'

This outspoken speech was wildly acclaimed in Lhasa and other parts of Tibet for it marked the emergence of the Dalai Lama on the political scene in favour of a united 'Greater Tibet' without Chinese occupation, and it immediately encouraged and strengthened the hands of the anti-Chinese groups throughout the country.

Two months later the Mi-mang Tsong-du came out publicly with an even stronger declaration.

'We Tibetan people make the following appeal because we oppose the Chinese Communists who are destroying all our customs and systems, and also because of the complete breach of the Seventeen-Point Sino-Tibetan Agreements signed by them. . . .

'But speaking about the present situation in Tibet we declare that our religiou is facing a very grave crisis which has thrown us into the very deep valley of darkness and destruction. The Dalai Lama has been robbed of his political and religious powers. The future of the Tibetan nation is facing as grave a danger as a candlelight in a severe storm. The root cause of this crisis is the oppressive ways in which the Chinese Communists have been forcing Communist ideas upon the Tibetan people, the most deplorable policy of violence practised by the Chinese Communists, and the failure of the Chinese Communists to implement any of the promises made by them to the Tibetan people. In order to save our country from this dangerous future we have already, on a previous occasion, made a formal protest to the Chinese Government and the Dalai Lama.

'Formerly, under the Dalai Lama, there were Regents, Kashag and the various other Government organizations which carried out the administration of the whole of Tibet. But since the occupation of Tibet by the Chinese Communists all the former organizations of the Government have ceased to function and the Chinese Communists have established a large number of illegal organizations in their place to carry out the administration. . . . The Chinese Communists have not only increased administrative organizations but they have also established organizations such as the "Patriotic Youth League" and the "Chinese Schools", with the sole object of forcibly indoctrinating the youth of Tibet in Communism, and thus to destroy the culture and civilization of the nation. Moreover, in opposition to the will of the people the Chinese Communists have destroyed the social system of Tibet in which political and religious life are joined together, and have also destroyed the religion of the Tibetan people. Therefore we, in the name of the people of Tibet, have come forward to appeal to the Dalai Lama. We request that the Dalai Lama stop the organization of the "Patriotic Youth League", close the "Chinese Schools" and prevent the indoctrination of the Tibetan people in Communism by the Chinese Communists. We are now resolved not to accept the establishment of the proposed Regional Autonomous Government in Tibet as we already have the Government of the Dalai Lama. At the same time we also request the Chinese Communist Military Representative in Tibet to allow us to go to Peking to lodge this protest. If the Chinese Communists disregard the people's wishes, and by force, oppression and violence suppress the earnest appeal of the people, we, in the name of all the people of Tibet, are fully resolved to shed our blood and sacrifice our lives to oppose the Communists and we shall definitely not cooperate in any of the activities of the Chinese Communists in Tibet.'

THE DALAI LAMA BEARS WITNESS

(The Dalai Lama has issued four statements which have had worldwide publicity. The first went out from Tezpur, shortly after his arrival in India; the second followed almost immediately and was a refutation of Peking's charge that the Tezpur statement was issued under duress. The third was given to the press at Mussoorie nearly two months later, when news that he was getting from Tibet had confirmed his earlier appraisal of the situation in his homeland. Frequent quotations from these statements appear in the texts that follows; but the very obvious truthfulness of his testimony, his eagerness to have international inspection of the situation in Tibet and his simple belief that "the truth shall make you free", make these the most important documents yet submitted to the world on the Tibetan Question.)

THE DALAI LAMA'S STATEMENT IN TEZPUR, INDIA, ON APRIL 18, 1959

It has always been accepted that the Tibetan people are different from the Han people of China. There has always been a strong desire for independence on the part of the Tibetan people. Throughout history this has been asserted on numerous occasions. Sometimes the Chinese Government has imposed its suzerainty on Tibet and at other times Tibet has functioned as an independent country. In any event, at all times, even when the suzerainty of China was imposed. Tibet remained autonomous in control of its internal affairs.

In 1951 under pressure of the Chinese Government a 17-article agreement was made between China and Tibet. In that agreement the suzerainty of China was accepted as there was no alternative left to the Tibetans. But even in the agreement it was stated that Tibet would enjoy full autonomy. Though the control of external events were to be in the hands of the Chinese Government it was agreed that there would be no interference by the Chinese Government with Tibetan religion and customs and her internal administration. In fact, after the occupation of Tibet by Chinese armies the Tibetan Government did not enjoy any measure of autonomy, even in internal matters and the Chinese Government exercise full powers in Tibetan affairs.

In 1956 a preparatory committee was set up for Tibet with the Dalai Lama as the Chairman and the Panchen Lama as Vice-Chairman and General Chang Kuo-hua as the representative of the Chinese Government. In practice, even this body had little power and decision in all important matters were taken by the Chinese authorities. The Dalai Lama and his government tried their best to adhere to the 17-article agreement but interference of the Chinese authorities persisted. By the end of 1955 a struggle had started in Kham Province and this assumed serious proportions in 1956. In the consequential struggle, Chinese armed forces destroyed a large number of monasteries.

Many Lamas were killed and a large number of monks and officials were taken and employed on the construction of roads in China and interference in the exercise of religious freedom increased.

The relation of the Tibetans with China became openly strained from the early part of February 1959. The Dalai Lama had agreed a month in advance to attend a cultural show in the Chinese headquarters and the date was suddenly fixed for the 10th of March. The people of Lhasa became apprehensive that some harm might be done to the Dalai Lama and as result about 10,000 people gathered around the Dalai Lama's summer palace at Norbue Lingka and physically prevented the Dalai Lama from attending the function.

Thereafter the people themselves decided to raise a bodyguard for the protection of the Dalai Lama. Large crowds of Tibetans went about the streets of Lhasa demonstrating against Chinese rule in Tibet. Two days later thousands of Tibetan women held demonstrations protesting against the Chinese authorities. In spite of this demonstraion from the people the Dalai Lama and his government endeavoured to maintain friendly relations with the Chinese and tried to carry out negotiations with the Chinese representatives as to how best to bring about peace in Tibet and assuage the people's anxiety.

While these negotiations were being carried out reinforcements arrived to strengthen the Chinese garrisons in Lhasa and Tibet. On the 17th of March, two or three mortar shells were fired in the direction of Norbu Lingka Palace. Fortunately the shells fell in a nearby pond.

After this, the advisers became alive to the danger to the person of the Dalai Lama and in those difficult circumstances it became imperative for the Dalai Lama, members of his family and his high officials to leave Lhasa.

The Dalai Lama would like to state categorically that he left Lhasa and Tibet and came to India of his own free will and not under duress.

It was due to the loyalty and affectionate support of his people that the Dalia Lama was able to find his way through a route which is quite arduous. The route which the Dalai Lama took involved crossing Kyichu and Tsang-po rivers and making his way through Loka area, Yarlung valley and Psonadzong before reaching the Indian frontier at Kanseymane near to Chuttanmu.

On March 29, 1959 the Dalai Lama sent emissaries to cross the Indo-Tibetan border requesting the government of India's permission to enter India and seek asylum there. The Dalai Lama is extremely grateful to the people and government of India for their spontaneous and general welcome as well as asylum granted to him and his followers.

India and Tibet have religious, cultural and trade links over a thousand years and for the Tibetans it has always been a land of enlightment having given birth to Lord Buddha. The Dalai Lama is deeply touched by kind greetings extended to him on his safe arrival in India by Prime Minister Jawaharalal Nehru and his colleagues in the government of India. The Dalai Lama has already sent a reply to this message of greeting.

Ever since the Dalai Lama entered at Kanzeymane near Chuttanmu he has experienced in full measure the respect and hospitality extended to him by the people of Kameng Frontier Division of the Northeast Frontier Agency and the Dalai Lama would like to state how the Government of India's officers posted there has spared no effort in making his stay and journey through this extremely well-administered part of India as comfortable as possible.

The Dalai Lama will now be proceeding to Mussoorie which he hopes to reach in the next few days. The Dalai Lama will give thought to his future plans and if necessary give expression to them as soon as he has had a chance to rest and reflect on recent events.

His country and people have passed through an extremely difficult period and all that the Dalai Lama wishes to say at the moment is to express his sincere regret at the tragedy which has overtaken Tibet and fervently hope that these troubles will be over soon without any more bloodshed.

As the Dalai Lama and the spiritual head of all Buddhists in Tibet, his foremost concern is the well-being of his people and in

insuring perpetual flourishing of his sacred religion and freedom of his country.

While expressing once again thankfulness at his safe arrival in India the Dalai Lama would like to take this opportunity to communicate to all his friends, well wishers and devotees in India and abroad his sincere gratitude for many messages of sympathies and concern with which they have flooded him.

STATEMENT BY THE DALAI LAMA MADE ON APRIL 22, 1959

On April 18, I issued a statement at Tezpur. I did not wish to follow it up with another statement at this stage. However I have seen a New China News Agency report implying that I was not responsible for this earlier statement. I wish to make it clear that the earlier statement was issued under my authority and indicated my view and I stand by it. I am making this brief statement to correct the wrong impression created by the New China News Agency's report and do not propose to state anything more at present.

TEXT OF THE DALAI LAMA'S STATEMENT OF JUNE 20, 1959 AT MUSSOORIE, INDIA

Ever since my arrival in India I have been receiving almost every day sad and distressing news of the suffering and inhuman treatment of my people. I have heard almost daily with a heavy heart of the increasing agony and affliction, their harassment and persecution and of the terrible deportation and execution of innocent men. These have made me realize forcibly that the time has manifestly arrived when in the interests of my people and religion and to save them from the danger of near annihilation, I must not keep silent any longer but must frankly and plainly tell the world the truth about Tibet and appeal to the conscience of all peace-loving and civilized nations.

To understand and appreciate the significance and implication of the recent tragic happenings in Tibet, it is necessary to refer to the main events which have occurred in the country since 1950.

It is recognized by every independent observer that Tibet had virtually been independent by enjoying and exercising all rights of sovereignty whether internal or external. This has also been implicitly admitted by the Communist Government of China for the very structure, terms and conditions of the so-called agreement of 1951 conclusively show that it was an agreement between two independent and sovereign States. It follows, therefore, that when the Chinese armies violated the territorial integrity of Tibet they were committing a flagrant act of aggression. The agreement which followed the invasion of Tibet was also thrust upon its people and Government by the threat of arms. It was never accepted by them of their own free will. The consent of the Government was secured under duress and at the point of the bayonet.

My representatives were compelled to sign the agreement under threat of further military operations against Tibet by the invading armies of China leading to utter ravage and ruin of the country. Even the Tibetan seal which was affixed to the agreement was not the seal of my representatives but a seal copied and fabricated by the Chinese authorities in Peking and kept in their possession ever since.

While I and my Government did not voluntarily accept the agreement we were obliged to acquiesce in it and decided to abide by the terms and conditions in order to save my people and country from the danger of total destruction. It was, however, clear from the very beginning that the Chinese had no intentions of carrying out the agreement.

Although they had solemnly undertaken to maintain my status and power as the Dalai Lama, they did not lose any opportunity to undermine my authority and sow dissension among my people. In fact, they compelled me, situated as I was, to dismiss my Prime Ministers under threat of their execution without trial, because they had in all honesty and sincerity resisted the unjustified usurpations of power by representatives of the Chinese Government in Tibet.

Far from carrying out the agreement they began deliberately to pursue a course of policy which was diametrically opposed to the terms and conditions which they had themselves laid down. Thus commenced a reign of terror which finds few parallels in the history of Tibet. Forced labour and compulsory exactions, a systematic persecution of the people, plunder and confiscation of property belonging to individuals and monasteries and execution of certain leading men in Tibet, these are the glorious achievements of the Chinese rule in Tibet.

During all this time, patiently and sincerely I endeavoured to appease my people and to calm down their feelings and at the same time tried my best to persuade the Chinese authorities in Lhasa to adopt a policy of conciliation and friendliness. In spite of repeated failures I persisted in this policy till the last day when it became impossible for me to render any useful service to my people by remaining in Tibet. It is in these circumstances that I was obliged to leave my country in order to save it from further danger and disaster.

I wish to make it clear that I have made these assertions against the Chinese officials in Tibet in the full knowledge of their gravity because I know them to be true. Perhaps the Peking Government is not fully aware of the facts of the situation.

But if it is not prepared to accept these statements let it agree to an investigation on the point by an international commission. On our part I and my Government will readily agree to abide by the verdict of such an impartial body.

It is necessary for me to add that before I visited India in 1956 it had become increasingly clear to me that my policy of amity and tolerance had totally failed to create any impression on the representatives of the Chinese Government in Tibet.

Indeed they had frustrated every measure adopted by me to remove the bitter resentment felt by my people and to bring about a peaceful atmosphere in the country for the purpose of carrying out the necessary reforms. As I was unable to do anything for the benefit of my people I had practically made up my mind when I came to India not to return to Tibet until there was a manifest change in the attitude of the Chinese authorities. I therefore sought the advice of the Prime Minister of India who has always shown me unfailing kindness and consideration. After his talk with the Chinese Prime Minister and on the strength of the assurances given by him on behalf of China, Mr. Nehru advised me to change my decision.

I followed his advice and returned to Tibet in the hope that conditions would change substantially for the better and I have no doubt that my hopes would have been realized if the Chinese authorities had on their part carried out the assurances which the Chinese Prime Minister had given to the Prime Minister of India.

It was, however, painfully clear soon after my return that the representatives of the Chinese Government had no intention to adhere to their promises. The natural and inevitable result was that the situation steadily grew worse until it became impossible to control the spontaneous upsurge of my people against the tyranny and oppression of the Chinese authorities.

At this point I wish to emphasize that I and my Government have never been opposed to the reforms which are necessary in the social, economic and political systems prevailing in Tibet.

We have no desire to disguise the fact that ours is an ancient society and that we must introduce immediate changes in the interests of the people of Tibet. In fact, during the last nine years several reforms were proposed by me and my Government but every time these measures were strenuously opposed by the Chinese in spite of popular demand for them, with the result that nothing was done for the betterment of the social and economic conditions of the people.

In particular it was my earnest desire that the system of land tenure should be radically changed without further delay and the large landed estates acquired by the State on payment of compensation for distribution amongst the tillers of the soil. But the Chinese authorities deliberately put every obstacle in the way of carrying out this just and reasonable reform. I desire to lay stress on the fact that we, as firm believers in Buddhism, welcome change and progress consistently with the genius of our people and the rich tradition of our country.

But the people of Tibet will stoutly resist any victimization, sacrilege and plunder in the name of reforms—a policy which is now being enforced by the representatives of the Chinese Government in Lhasa.

I have attempted to present a clear and unvarnished picture of the situation in Tibet. I have endeavoured to tell the entire civilized world the real truth about Tibet, the truth which must ultimately prevail, however strong the forces of evil may appear to be today. I also wish to declare that we, Buddhists, firmly and steadfastly believe in peace and desire to live in peace with all the peoples and countries of the world. Although recent actions and policies of the Chinese authorities in Tibet have created strong feelings of bitterness and resentment against the Government of China, we Tibetans, lay and monk alike, do not cherish any feelings of enmity and hatred against the great Chinese people.

We wish to live in peace and ask for peace and goodwill from all the countries of the world. I and my Government are, therefore fully prepared to welcome a peaceful and amicable solution of the present tragic problem, provided that such a solution guarantees the preservation of the rights and powers which Tibet has enjoyed and exercised without any interference prior to 1950.

We must also insist on the creation of a favourable climate by the immediate adoption of the essential measures as a condition precedent to negotiations for a peaceful settlement. We ask for peace and for a peaceful settlement but we must also ask for the maintenance of the status and the rights of our State and people.

To you gentlemen of the Press I and my people owe a great debt of gratitude for all that you have done to assist us in our struggle for survival and freedom. Your sympathy and support has given us courage and strengthened our determination. I confidently hope that you will continue to lend that weight of your influence to the cause of peace and freedom for which the people of Tibet are fighting today.

Mr. HELMS. Mr. President, some people are saying "Why, Senator, do you bring all this up?"

Well, if we do not learn from history, we are going to remain ignorant. If we do not know now what we are dealing with and if we do not describe it clearly, then we deserve what we will get.

But the problem is that our friends and allies on Taiwan are going to be getting something they do not deserve.

I repeat that it is important to note especially articles 3, 4, 5, and 6 of the agreement I referred to a moment ago, the so-called Agreement of Measures for the Peaceful Liberation of Tibet, particularly as we now listen to supposedly soothing words about how we have taken care of everything.

After all, we had that cuddly little panda bear Vice President Teng here not long ago, and we fawned over him—about as cute and cuddly as a rabid panda bear.

But when are we going to learn what we are dealing with, Mr. President, and when are we going to start acting like Americans?

I find myself more and more appalled as we back up and back up and say, "Oh, we must not offend this Communist nation, or that one; we must appease and we must coexist."

Mr. PERCY. Will the Senator yield for a question?

Mr. HELMS. Yes.

Mr. PERCY. The distinguished Senator from North Carolina used a phrase, "When are we going to start acting like Americans?"

That brings to mind, I would tend to think, the times we have really defined our national interests, we have really stood for something, and our standing for something made a difference.

Mr. HELMS. Exactly.

Mr. PERCY. In human history.

Mr. HELMS. The Senator is exactly right.

Mr. PERCY. In the history of the world as to whether we have a free Europe. Our standing for something could make a difference as to whether there is an Israel or not.

I think the problem is the U.S. decline in the opinion of the world. It is because we have not acted as the world has learned to respect Americans for acting in the past.

It brings to mind what kind of development we are going to have in the Gulf area now. We have a pattern developing in the gulf area.

South Yemen, moved from being a British colony, oriented in and tipped heavily toward the Labor Party unions, to what is now classified as Marxist. North Yemen has had three presidents in the last 2 years, two of them assassinated. The feeling is rather strong that the South Yemenites had something to do with at least one of those assassinations.

They want to change the North Yemen Government. They want to, just like North Vietnam, just like North Korea, they want to unify it, the Yemenites, and bring them all together under one flag, as long as it is red.

Mr. HELMS. That is right.

Mr. PERCY. They are very clear about what they want to do.

Mr. HELMS. Once again the distinguished Senator is right.

Mr. PERCY. And if they cannot get it by killing the chief executive officers of the country, then they start harassing him in three different places on the borders, as they are doing right at this very minute.

Now, the Soviet Union is not equivocating about what they are doing. They are supplying equipment, manpower, and training.

The Government of North Yemen has a large population, 6½ million. But of that, a million are in Saudi Arabia.

What would happen if South Yemen took over North Yemen? What would happen? The men up there would be held hostage because their families would be down in North Yemen and the men are up in Saudi Arabia.

This would cause concern on the part of the Saudi Arabians because they also saw Afghanistan fall. They see the beginning of a pattern, and they are worried about what we are going to do. They wonder when we are going to start acting like Americans.

Are our vital interests concerned in the gulf area? You bet they are.

Mr. HELMS. You bet they are.

Mr. PERCY. This country can be brought to its knees economically overnight, and do not think our adversaries do not have that in mind.

Khrushchev said quite honestly, "We're going to bury you." He did not mean they are going to take the risk of fighting us. They have been through a war. They lost 20 million people. They found a much easier way to do it. It is to just create a little chaos. A little trouble starts in Iran—throw in the chaos, ferment the thing. Get the Cubans to do it. After all, they are sending a million dollars a day to them—eating all that sugar, smoking all those cigars. Why not have the Cubans do something for them?

So they are waiting around in South Yemen to see whether they are needed. They are down there training forces in South Yemen today. When are we going to start acting like Americans?

All the people in the world are standing there waiting to see what the United States of America is going to do in the Middle East, in the Persian Gulf, in the Indian Ocean, and in Europe. The People's Republic of China has criticized us for not fighting, in a sense, for what we believe in and for what they conceive to be our mutuality of interests, including our deep mutual concern about the intentions and the capabilities of the Soviet Union. Therefore, I think they will understand if we make it very clear how we feel about Taiwan, how we feel about these 17 million people, how we have had for 30 years, how we feel about the representations we have made: That we intend to keep up the cultural and educational exchanges; that we intend to keep up Taiwan's defense capability.

I wonder whether I can read something to my distinguished colleague. This is what the President of the United States has said. I read now from the Presidential document for the week ending Friday, February 16, 1979, put out by the White House, the administration of Jimmy Carter, an interview with the President. This is what the President said about this issue, and I quote directly:

> There's nothing to prohibit a future President or a future Congress, if we feel that Taiwan is unnecessarily endangered, from interposing the American Pacific Fleet between the island and the Mainland. And there's certainly nothing to prevent a future President or Congress from even going to war, if they choose, to protect the people of Taiwan, or to protect any other people in the country [world] that we look on with favor. So, we still have complete flexibility to deal with that kind of conjectural possibility if we choose.

When the President expressed himself forthrightly as to what options were available to the people of the United States, I did not hear the People's Republic of China say that we had gone so far that we had jeopardized this relationship. Not at all.

We simply want to change a couple of words. The words "grave concern," history has demonstrated, send one kind of signal—of inaction, wringing our hands, and doing nothing. We want to send the right kind of signal. It is not put in the strong terms that the President used.

The Senator from Illinois used words so moderate that the distinguished Senator from North Carolina feels that it is the absolute minimum we can do. We simply identify a peaceful resolution of the Taiwan issue as in our security interests.

The Senator from Illinois stated this in open testimony at the Foreign Relations Committee hearings, and the original wording of the distinguished Senator from New York was even stronger. On reflection, he felt that he should back off from that. I have many times commended him and Senator CHURCH for taking the initiative, the congressional initiative, and going much further than the administration had originally thought acceptable. The administration will thank us some day, as they will for the congressional position with respect to the Panama Canal.

When the distinguished Senator says, "When are we going to start acting like Americans?" we had better start today. The whole process of leadership is eroding. John Connally knows that; Texas knows it; America knows it.

We had better start acting like Americans, unequivocally stating what we think is in our security interests and sending unmistakable signals as to what we might consider necessary. All options are open as to how we would act. The whole range is available.

The Senator from Illinois is quite willing to have a degree of ambiguity there, because it is in our interest to have it vague, as long as the language is strong enough to convey that we would consider taking action.

We cannot leave Taiwan out of that perimeter of security interests. When the President of the United States says that the option is open to send our fleet right in those straits, the Congress should be free to make a strong statement as well.

If we just say "grave concern," we are not sending that signal. We are not reflecting what the President has said forthrightly. We are not reflecting at all what I consider to be the mood of the Congress of the United States, particularly the Senate.

I thank my distinguished colleague for yielding. Is that what the Senator had in mind when he said, "When are we going to begin acting like Americans?"

Mr. BIDEN. Mr. President, will the Senator from North Carolina yield for 30 seconds?

Mr. HELMS. I yield.

Mr. BIDEN. I suggest that America will start acting like Americans want it to act when we start to act in our self-interest and stop engaging in hyperbole which is a breast-beating exercise in machismo. I suggest that when we start acting in our self-interest, we will be acting like Americans.

Mr. HELMS. Mr. President, I never have heard the Senator from Illinois speak more eloquently. I commend him.

I say to the Senator that I went to one of the hotels on Tuesday evening to attend the annual dinner of the Veterans of Foreign Wars. Each year, the VFW has an oratorical contest, and there is a winner from each State. The winner this year was a young lady from Illinois, and she sounded almost like the distinguished Senator from Illinois in her presentation.

The last thing she said was:

> Remember that the last four letters of "American" are i-c-a-n—I can.

I think this is what the Senator from Illinois is talking about.

But let us speak in a bipartisan spirit. I recall John Kennedy in the confrontation with respect to Soviet missiles in Cuba. He stood eyeball to eyeball, and in effect he said, "I can and we will"; and the Soviets backed off.

Here we are haggling over the mildest sort of change in the language. I say this with no disrespect to the distinguished Senator from New York, my friend, or to the distinguished chairman of the committee, Mr. CHURCH. I simply think that the language of the Senator from Illinois is the absolute minimum we should do in connection with our friends and allies in Taiwan.

Reference was made yesterday and just a few moments ago to the effect that Taiwan had insisted that there be one China and that Taiwan be that one China, while Peking was insisting the same thing on the other side. That simply is not so, Mr. President. I read into the RECORD yesterday the history of Taiwan's position on that: An article by a distinguished professor at the University of Maryland, Hungdah Chiu, who reviewed, item by item and year by year, the position of the Republic of China (Taiwan), showing that Taiwan had the position of one China with two governments.

Anyone who wants to reject that in order to be consistent has to say, "Oh, well, you cannot have two Governments of Korea or two Governments of Germany." I do not think any Senator is going to seriously suggest that.

But at least let us be fair to Taiwan in what we say in terms of historical fact. I do not think Taiwan has gotten a fair shake.

Mr. President, I issue the invitation again to any Senator who wants to see a document marked "Secret" by the Pentagon, which I have in my hand here. I will not divulge it to the media; but with any Senator, who doubts the accuracy of what I have said about General Jones' testimony with respect to the capability of the People's Republic of China to blockade Taiwan, I will be glad to share this secret document. I am not going to say what it says but it is marked here and on several other places. It is marked to show exactly what the Pentagon said before the President of the United States in secret, and I use these words advisedly, sold Taiwan down the river.

That is why the Senator from North Carolina feels so strongly about this. We get doubletalk.

We got doubletalk on the Panama Canal. Last year I heard one thing in my office from certain military officers, and then the same officers would appear in public before a committee and they would couch their language so carefully to give the opposite impression. I remember one of our distinguished colleagues became furious with me when I suggested that this was happening.

It has happened again here. Everything that the Pentagon drafted for its own edification with respect to this matter shows that concern about the capability of Peking, and now we are told, "Oh, no, they don't have capability to blockade Taiwan."

(Mr. FORD assumed the chair.)

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. HELMS. I am delighted to yield to my friend.

Mr. GOLDWATER. It is not that I want to dispute the integrity of my good friend, General Jones, but to point out that men in uniform occasionally can be inconsistent. Does the Senator remember General Jones about 2 years ago stating that we really did not need the B-1? And now he says that we need another penetrating bomber? That is in a matter of a year or a year and a half.

I also ask the Senator another question I think that has a bearing on this, because I believe the Senator from Delaware made an approach to it. Why should we have an interest in Taiwan that would require the kind of language that the Senator from Illinois has proposed and which the Senate has obviously agreed to? I do not think that was discussed in the Foreign Relations Committee, although I am not a member of that committee as the Senator is. It is something that Americans forget that our central point of foreign interest in this country for about 101 or 102 years has been the Pacific, not Europe, not South America, not Africa, but the periphery of the Pacific. We bought Alaska in 1867. We acquired Hawaii a year or year and a half later. Why? Because those men over 100 years ago had the commonsense to realize that Europe even then was pretty much through as a developing continent or a developing nation. I suggest that when any country reaches its frontiers, reaches its boundaries it can only recede and go backward, and that is what Europe had started to do then.

So we moved into the Pacific. We recognized then that if there were going to be a part of this world that in the lifetime of our Republic, an extended one hopefully, would become important it would be those countries around the Pacific, and that has proven true. The great shining spots of the economy of the world are not in Europe. They are around the Pacific. They are the countries that are developing. They are the countries that are contributing vast amounts of money in helping us and helping themselves.

And so the question always intrigues me when someone says what is so important about the Pacific and about Taiwan?

Let us take a look at it: Here we have made a deal with the Republic of China, even though this same body last September passed, without any dissenting vote, that the President of the United States should come to us before we did anything about stabbing Taiwan in the back. That is the way I put it. I think the Senator from North Carolina expressed it in another way. He did not do it.

Now we have given a hand up to the Red Chinese. I will never know why a man who has devoted his lifetime, supposedly, to human rights would want to crawl in bed with an organization that murdered 50 million people. I think that is part of what the Senator is saying about being an American.

Mr. HELMS. That is it exactly. That is a minimum of 50 million, I say to the Senator.

Mr. GOLDWATER. All right. I want to get back to this subject of the Pacific to try to explain why Taiwan is so doggone important to us, the United States of America.

We built one of the finest airbases on Taiwan that has ever been built in this world. It will take the weight of any aircraft yet built and any aircraft that we are going to build in the foreseeable future. Taiwan has two good ports, one excellent port on the southern tip, that can handle the ships of our fleet and the ships also, I might say, of the Soviet fleet.

Let us say that we did not have this kind of language that the Senator from Illinois has put in. Let us say that Taiwan is sort of "We are not going to get any help from our old friends in the United States. We better take another look at the Soviet Union," and they say to the Soviets, "We are interested in trade with you always but we would like you to consider the possible use of our harbors, the possible use of this beautiful airbase for protection purposes."

I happen to have been all through the Island of Quemoy. I have been all over that area. I have flown over it. I have been through it. I have to say I would hate to be the commanding general that is given the order to take Quemoy. I think I would ask for leave and relaxation some place, but that is beside the point.

Once the Soviets move in there, and they are liable to do it if we do not make this language pretty strong, they might go into Camranh Bay and like the secret document the Senator has, I cannot divulge any more than they might go into Camranh Bay. If the Senator asks me sometime I will tell him a little more, but I cannot say it here.

What is next? Singapore. Where is the Pacific? Gone. Every country in the Pacific and the perimeter of the Pacific depends on the Strait of Malacca.

Now let us move over there. People say why are we all excited about the fall of Afghanistan and the revolution, so-called, in Iran? I have known the shah for many, many years, and I remember asking him, "Why do you want to buy all these helicopters in a country that borders on Russia that now has over 3,000 of them?" He said, "I am not worried about Russia. I am worried about the day Afghanistan falls," and he says, "Mark my word, it is going to fall, and when it falls it will fall from Soviet influence," and that gives them an open door across that vast desert of western Pakistan, and I know something about it. I used to fly over that in World War II, and there is nothing out there, nothing to stop the Russians from building railroads, highways, down to the Indian Ocean, which they have been wanting to do all of their history.

Now they are going to do it. They are going to circumvent the former Straits of Iran. They are going to go through Afghanistan which is now theirs for the asking. They are going to go across Pakistan whether Pakistan likes it or not, and they cannot do much about it. And they will establish ports on the Indian Ocean.

The distinguished Senator from Illinois has described what has been going on in the Horn of Africa. We have lost that through our stupidity and our weakness. And he said, "When are we going to act like Americans?" When we get a little guts right here?

Mr. HELMS. Right.

Mr. GOLDWATER. That is when we are going to start.

Now what happens when the Russians own the Indian Ocean, which I happen to think is the strategic focal point of the whole world today?

We have not done much about Diego Garcia. We sat in here and argued about it, a little old atoll about 12 miles long; we want to spend enough money to deepen the harbor. We do not have to depend on Subic Bay which is 4,000 miles away. We cannot have a place out in the middle of the ocean where we can put ships and put aircraft.

But we have not done much about it. What we are talking about now is the connection of the Indian Ocean with the Pacific through the Strait of Malacca.

When you ask what importance is that—and we are getting now to the real nub of it—the Strait of Malacca is a very narrow strait; it is a very shallow strait. A couple of tankers strategically sunk in that strait could stop traffic through it. This would mean oil would have to go either about 7,500 miles further or we would see the stoppage of all oil from the Middle East to our friends around the Pacific.

So we say—friends in this organization I have heard them say, "Why are we interested in the Pacific? Why do we need language like the language of the Senator from Illinois? Why do we have to put something in this bill that we are talking about," which, I have to say, is a lot better than we started off with, and I intend to vote for it, but I will vote for it with a much better conscience if we have the language that Senator PERCY proposes in it. We have got to give this world some indication that we are not going to sit over here and back away from everything that is done to us.

When the distinguished Senator from Idaho got up I could not think of a better argument for the proposal of the Senator from Illinois than the fact that he said we are making the Red Chinese mad. I do not care if we, and I do not give a damn if we, make them mad. I would like to make them real mad. It is when they change their spots that I might change mine a little bit.

I just want to thank the Senator for allowing me to ask that long question. I think it is what he expected of me; is that not right?

Mr. HELMS. I am delighted, and I appreciate the Senator's reply, as I always do. He is a very courageous man who has stood fast on his principles, and he knows of my support.

Mr. President, I am not going to take much more time. I just want to say again if any Senator has any doubt that the administration was working and planning—and I quote the Senator's words—"to sell out Taiwan," even during the closing days of the last session when this Senate and the House of Representatives were voting almost unanimously for the Dole amendment. I think there were four votes against it over in the House and none in the Senate—all anyone needs to do is to look at this document and they will see that the administration was making plans to sell out Taiwan, over the reservations and the concerns, of the Joint Chiefs of Staff, about the capability of the People's Republic of China, which I prefer to call Communist China, to throttle Taiwan.

The point is, Mr. President, that we cannot unscramble an egg, and yet that is what we are trying to do here. I know it must appear to some that the Senator from North Carolina is being a little heavyhanded with his friend from New York (Mr. JAVITS) and his friend from Idaho (Mr. CHURCH). But that is not my intent. I know they did the best they could with what they had. But the problem is you cannot make a silk purse out of a sow's ear, and my feeling is we ought to acknowledge, as many have on both sides of the aisle, that we have been had on this proposition. Therefore, we ought to strengthen the security section, at the minimum, to what the Senator from Illinois proposes and, for this Senator's part, I will be willing to let her go, as the saying is.

But if we are going to reject even such a modest change as proposed by the Senator from Illinois, then I think perhaps we ought to debate this thing for a pretty good while, and we ought to vote and vote and vote on some amendments so that we can properly ventilate it.

This I do not want to do. But if the State Department wants to get this over with, let them say, "OK; we will live with the Percy amendment." I guarantee you that the Senator from North Carolina will cooperate with anybody in shutting this thing down.

But there has been too much said about Taiwan that is not so. There has been so much done to Taiwan which should never have been done that I, in good conscience, as just one Senator, cannot keep silent. I love nothing better than comity. I have great love and respect for my colleagues, even those with whom I disagree with most strongly.

But we have come to the place where right is right, and as that little girl from Illinois said, the last four letters of "American" are "I can." This Senate can, and this Senate should, and I hope this Senate will.

I yield to my friend from——

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. HUMPHREY. Mr. President, I believe the Senator yielded to me.

The PRESIDING OFFICER. Does the Senator from North Carolina yield?

Mr. HELMS. I yield to the Senator from New Hampshire.

The PRESIDING OFFICER. Does he yield for a question or does he yield the floor?

Mr. HELMS. I will find that out when I find it out. The Senator asked me if I would yield and I said, yes.

The PRESIDING OFFICER. Yield for a question?

Mr. HELMS. Is the Chair going to impose that strict a rule?

The PRESIDING OFFICER. Well, there have been several Senators standing wanting recognition. The Senator attempted to yield the floor. If the Senator yielded for a question——

Mr. HELMS. I believe that the RECORD will show that I was attempting to yield to my friend from New Hampshire. 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. 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. I yield to the Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I want to wholeheartedly associate myself with the amendment offered by the Senator from Illinois, and the fine remarks buttressing those of the Senator from Illinois offered by the Senator from North Carolina, the Senator from Arizona, the Senator from California, and others.

I find it incredibly ironic that at a time when the United States of America has in force a mutual defense treaty with the Republic of China, we should be quibbling so about the security section of the Taiwan enabling bill. To be perfectly honest, I would like to see the security section made even stronger than has been proposed by the Senator from Illinois, with all due respect to him, but perhaps it is the best we can do. I would like to see some honor put back in that section.

In my opinion, all that is being attempted here is to firm up some wobbly gums a little bit; to firm up those wobbly gums sufficiently so that in the future we cannot so readily speak out of both sides of our mouth on this sort of issue.

I think the fact that we are today quib-

bling about the security section of the Taiwan enabling bill, on the one hand, while on the other we have in force a mutual defense treaty, indicates that some fundamental change has taken place in the relationship between the United States and the Republic of China, and, of course, indeed, a fundamental change has taken place. Indeed, a fundamental change is embodied in S. 245.

The very essence of S. 245, Mr. President, is the tacit acknowledgment by the Senate and by the United States of America of the contention of the People's Republic of China that Taiwan is but a rebellious province of the PRC.

I reject that, and I hope a majority of the Members of this body will reject that dishonest contention. The People's Republic of China has never ruled Taiwan. The 17 million people on Taiwan are free, and they want to remain free. They do not want to be governed by the Communist Government of the People's Republic of China.

Why can we not aid them in that desire a little bit? A couple of weeks ago President Carter, in his speech at Georgia Tech, made four main points, one of which was this: "We shall stand by our friends."

Well, let us do it. Let us put into practice what we say. We have suffered a terrible loss in respect, in credibility in this world, in the last several weeks and the last several years, and we will continue to suffer that loss as long as we continue to act in this perfidious, cowardly, stupid manner.

If we acknowledge to the People's Republic of China that indeed they own Taiwan, it is only a matter of time before they attempt to take what we have told them they own, by one means or another. I happen to believe that the most likely course of action by the Communists will be an economic boycott of the Republic of China, and I am supporting some legislation in an amendment which I understand will be introduced before this discussion is over that will at least help prevent that kind of economic boycott.

But at the same time, while I consider that to be the main threat, I do not for a minute underestimate the potential for direct military action against Taiwan by the People's Republic. Why should they hesitate to do that? Did they hesitate to roll their army into Vietnam? Not for a moment did they hesitate, even at a very crucial time in the evolvement of the new relationship between the United States and the People's Republic of China. They did not hesitate a moment; and to my way of thinking they would not hesitate a moment, if they thought they could get away with it, from direct aggression against Taiwan.

It has been said in this Chamber today that the People's Republic of China does not have the capability, and will not have for perhaps 5 years, of engaging in a waterborne invasion of Taiwan. Perhaps that is so, but I am not in the least comforted by that, because 5 years goes by very quickly. And at least they do have today the capability of blockading Taiwan by submarines, and that would be very devastating for Taiwan, and would, in my opinion, call for the United States to interpose its naval forces to prevent that.

In my opinion, the People's Republic of China will show no hesitation, if it thinks it can get away with it, in engaging in military aggression against Taiwan.

In today's New York Times there is an article which I should like to read, to make it a part of the RECORD, about what are perhaps the first, certainly early Chinese overtures to this country to provide military weapons to the People's Republic of China. Not incidentally, I have an amendment which I hope to offer to S. 245 before the discussion is closed which will make it impossible for the People's Republic of China to obtain military materiel from this country. After all, we do not sell it to the Soviet Union; we do not sell it to any of the members of the Warsaw Pact countries; and we should not, if we have any sense at all left—and I am not sure we have, frankly—sell it to the People's Republic of China.

Some people argue that we ought to build up the PRC as a counterpoise to the Soviet Union; but let us remember that 20 years ago the U.S.S.R. and the PRC were fast friends. Twenty years or 10 years from now they may be fast friends again; and I hope, for the sake of the future of this country, we do not build up a second Communist power.

The New York Times article, under the heading "China Showing Interest in Buying U.S. War Planes," written by Fox Butterfield, reads as follows:

HONG KONG, March 7.—China has quietly expressed interest in buying American military planes and associated technology, and may make a formal request to Washington within a few months, knowledgeable sources in the aircraft industry have disclosed.

Such an overture would run counter to the policy of the Carter Administration to refrain from selling arms to either the Soviet Union or China, in order to avoid the appearance of favoring one over the other. But the Administration has said it would not object to allies of the United States making such sales to China, and Peking is negotiating with Britain to buy the Harrier jet fighter.

That, parenthetically, Mr. President, for those who are not aware of it, and I suspect most in this room are, is a vertical takeoff fighter which requires only the shortest of runways, one whose bases could be changed on very short notice—for instance, to move them closer to the coastline of the People's Republic of China.

Resuming the quotation:

According to an aviation industry representative who recently visited China, the Chinese have shown a particular interest in buying the Lockheed C-130, a versatile four-engine military transport, and the Lockheed P-3C antisubmarine patrol plane. The Chinese also reportedly expressed interest in advanced electronic equipment produced by McDonnell Douglas, which makes the new F-15 Eagle fighter and the highly effective but older F-1 Phantom.

Last month Fang Yi, China's Deputy Prime Minister for science and technology, visited the headquarters of Lockheed and McDonnell Douglas, ostensibly—

Ostensibly, I emphasize—

to inspect their commercial airliners, the Lockheed Tristar and the McDonnell Douglas DC-9 and DC-10. But he was reported to be surprisingly well informed about the companies' military planes.

Representatives of the two manufacturers have made several trips to China in recent months to discuss sales of commercial airliners, and during one visit, a Chinese official asked a Lockheed representative how to negotiate with the Pentagon for a military order. "We told them they could buy the L-100, the civilian version of the C-130," the American said, "but they indicated they would like the C-130 itself."

He said the Chinese were aware of President Carter's prohibition on arms sales to Peking but seemed to hope that the normalization of relations between the United States and China might lead to a relaxation of the ban.

Another possible motive behind a Chinese request to buy United States warplanes is that even if Washington was to turn it down, the overture could help give Moscow the impression that there was a growing Chinese-American alliance. The recent trip to the United States by Deng Xiaoping, China's senior Deputy Prime Minister, and his stop in Tokyo to brief the Japanese on his visit, may also have been designed with this purpose in mind.

Whatever Peking's motivation, a direct request to buy American military aircraft could prove very embarrassing to President Carter, particularly after China's invasion of Vietnam.

Peking has moved slowly to buy weapons abroad and has been extremely cautious about committing its scarce foreign exchange reserves to military purchases. Analysts here, for example, say reports last fall that Peking had sought $700 million worth of French antitank and antiaircraft missiles were premature and that no contracts had been signed.

One reason for delays is that the modernization of China's antiquated armed forces has been given the lowest priority in Peking's ambitious economic development program.

This could change, however, because of China's experience in Vietnam, where Chinese commanders may have discovered they were at a disadvantage because they lacked the modern field radios, fighter planes and missiles the Vietnamese had.

China has had considerable difficulty developing its own aircraft industry. Most of its 5,000 planes are outdated Russian Mig-17's, plus a few Mig-21's. There is also a Chinese-built version of the Mig-21 called the Shenyang F-9, but Peking has reportedly had trouble keeping the plane in operation because of faulty design.

I commend the Senator from Illinois for trying to firm up the security section of the Taiwan enabling bill. To my way of thinking, there is little to allay our fears that the Chinese on the mainland will not continue in the future in their military adventurism such as they have shown in recent weeks. As the Senator from Illinois has said, we wish to arrest the decline of the United States, the decline in our respect and credibility, the decline in our ability to effect events. We are going to have to make it clear where we stand in this world.

Mr. President, I wish we could erect on that wall right behind you a giant map of the world with a light behind each country, each nation, and switch off one by one the light behind each country which has disappeared into the darkness of communism since World War II. I think if we could do that it would be so dramatic that there would be no question about whether or not the Senate would agree to the amendment offered by the Senator from Illinois.

Things are going to hell in a handbasket. They really and truly are. We are going to have to take a stand in the world. We are going to have to exert some leadership if we really care about passing on to our children the kind of world we want to see them inherit.

Russian Communists, like Nature itself, abhor a vacuum. Every place we have allowed a vacuum to form, Russians move to fill it preceded, perhaps, by the Cubans, but they come nonetheless.

The future of America is at stake—not just the future of Taiwan but the future of America.

I invite my colleagues in this body to support the Senator from Illinois in his attempt to modestly stiffen, modestly strengthen, the security section of this bill which, in any case, will fall far short of the mutual defense treaty which the President proposes unilaterally to terminate at the end of this year, and in which I hope he will fail.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. TSONGAS. Thank you, Mr. President.

I would like to present perhaps a different New England view or position. The Senator from Illinois said it was time that we began to act like Americans. I would like to give my personal perspective on that issue.

In the summer of 1964 I was coming back from my service in the Peace Corps to go to law school. I thought I had spent those 2 years acting like an American who recognizes the world that exists, not the world that we cast in our own rhetoric.

In that same summer, in this same Chamber, the U.S. Senate voted the Tonkin Gulf resolution. As a result of that action, 55,000 Americans, most of them my age, are no longer alive.

In my naivete at that point I could not understand how that was possible. I sat here and listened to the heady jingoism or listened to the dynamics that result from power, and I understand why 15 years ago we moved in that direction.

If I do anything in this body, Mr. President, it will be to try to make this body recognize that the world has changed. You can do what you want with all your rhetoric, but it is the next generation that will pay that price.

There is one basic foreign policy flaw in this Senate. That is that this body as a whole views the world in East-West terms. There are only two parts of the world: Those who are for us and those who are for them.

Whether or not that was true in the 1940's and 1950's is arguable. It is not true today. It was not true in the 1960's. There is a third world that, frankly, does not give a damn on which side of the ideological split they end up. Their major motivation is nationalism, and they did not give up colonialism from the French, the British, the Belgians, or whoever, to take on the Soviets.

If you were a resident of those countries you would have exactly the same attitude.

But we do not recognize that. We impose our ideology on the Third World. The problem with that approach is not only is it based on an unreality, but it just does not work.

There is something so psychologically enjoyable to get up and rant and rave about this country or that country falling to the Soviets. I lived in the Third World. I have seen the Soviets in the Third World. They are hopelessly inept. The only way we have any viable Soviet success is totally based on the capacity of this country not to know what it is doing.

It seems to me it is about time we acted in what are the best interests of this country in not falling into the hands of the Soviets.

How is it possible when we talk about acting like Americans that we, as a supposedly advanced, educated, intelligent society, could not have recognized China for 30 years?

It is very easy. It is the same rationale that says we do not recognize Angola today. We do not learn from the past. We continue to repeat the mistakes.

How is it that we as a country that talks about human rights, dignity, and justice could have a long history of supporting leaders not based on their policies at home but based on their willingness to mouth the appropriate ideological rhetoric?

I do not know whether we are going to learn anything. I do not know whether my service here is going to advance the cause. But I would suggest that it is about time we deal with the world as it sees itself and not try to impose an American view, not only because it is right but because it works. There is the next generation whose existence and stability is dependent upon the Senate coming to that awareness.

ORDER VITIATING ORDER FOR SESSION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I hope that the Senate will reach a vote shortly, up or down, on the amendment by Mr. PERCY. I ask unanimous consent that the order for a Senate session on tomorrow be vitiated.

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

TAIWAN ENABLING ACT

The Senate resumed consideration of the bill.

Mr. JAVITS. Mr. President, I do not expect to speak more than a few minutes, I might reassure the majority leader.

I must say, as one Senator, that I sat here with great satisfaction and heard our newer Members express their views. I say to them: That is what this place, gentlemen, is all about. You are here because you bring a new quality, a new freshness, a new set of ideas to liven us all up. I hope you keep it up.

Now, as to the measure that we are debating, Mr. President, I had to pinch myself to be sure I was awake. After all, none of these gentlemen invented this security provision for Taiwan. I did. When I invented it, I did not propose to do Taiwan in. I proposed to help and save Taiwan.

I am mortified, and I do not think I did very well, frankly, that we could not get a unanimous vote in this Chamber. That is what really counts. Who is going to be terribly impressed at 47 to 45? You cannot even approve a treaty with that vote.

Let us hear all these strong words about how we Americans are going to stand up when we have a draft up here, or when we increase the defense budget 10 percent, or when we impose wage and price controls or gas rationing. That is what the world is looking at us for. You can utter all the brave words you like; you can write them in this resolution. It means absolutely nothing. It is not what we say. That has been our trouble: We have said too much; we have not done anything.

Sure, this provision is more modest than it should be, but it was made more modest in order to get the greatest consensus behind a unilateral policy which said, "Listen, People's Republic of China, we are recognizing you, but lay off Taiwan."

I am satisfied that these words say it, "Lay off Taiwan."

Why do I say that? I am not given to asking you to take my word for anything. I should like to show very briefly why.

The things which are not in my formulation which are in here now seemed to me to far preponderate over this concatenation of words on whether we say "a threat to the peace and security of the Western Pacific area and of grave concern to the United States" or whether we say the same thing, "a threat to the peace and security of the Western Pacific area and to the security interests of the United States."

I wrote those words originally. But when you look at what we gain, when we want to say to the People's Republic of China, hands off Taiwan, this is what we gain:

We gain, one, an absolute condition that we are recognizing the People's Republic based upon the fact that it will not seek to resolve the Taiwan issue by force. That is the real guts of this thing. Right now, for the next years, that is what they are more afraid of than they are that we will interpose our Navy between Taiwan and the mainland. We did that before under General Eisenhower, and we did not have such a resolution at that time.

Second, we gain what to me is the most important part of this thing. That is, the naked force, the naked boycott, the naked blockade is not nearly as important to me as what will, and these Chinese are very clever, what will jeopardize the security or the social or economic system of the people of Taiwan. That is what we are seeking to preserve. That is in here now. It was not in here before.

Finally, we put the word, a very important word, in the self-defense capability, which we would equip. That is doing things. The word is "sufficient." That is that they have enough to defend themselves, whatever it took. That to me also, in security terms, was a very important word.

Finally, and very importantly, if the Members will look on page 15, lines 1 to 4, we used the very same provisions which are in the NATO Treaty.

The United States will act to meet any danger described in paragraph (3) of this subsection in accordance with constitutional processes and procedures established by law.

Now, frankly, as I say, if I knew we were going to get into this hassle, with such close votes, I really would have been appalled before I drafted and dealt with this thing. It has happened. We are here. We have the result. But the key to what we shall do will depend on what we have in the Pacific. We agree here in this provision to maintain our capacity to resist any resort to force, with what we have in the Pacific and our will to use it. We sent a carrier from Subic Bay to the Persian Gulf and we stopped it. Now, I believe—I do not know, but I believe we have sent a carrier to off the Yemen coast and we have not stopped it. That is what really counts.

So I hope, and the message we send is to the people of the United States—they are the people who have to back what will make this really effective, whatever form of words we use. Because I hoped that we could get the greatest amount of consensus upon this provision as it was and because of the very sharp division which has developed here over these words, I felt it my duty to explain why I considered the whole provision far more important than these words. I hope very much that we do sustain the language of the agreement that we have arrived at with the other side and that that is a substantial vote. That is the best way to give notice, especially if it has behind it our will to implement what we are writing.

Mr. ROBERT C. BYRD. Vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. PERCY. Mr. President, I should like to respond to the ranking minority member of the Committee on Foreign Relations and ask a question of the chairman.

Senator JAVITS indicated that the resolution is more modest than it should be. I agree with that. I have fully taken into account, however, the overall job that was done and have persistently and steadily expressed appreciation to both of my colleagues on the Foreign Relations Committee for what they did accomplish. It was my feeling, however, that, good as that job was, we could make it just a little bit better.

The Senator from Illinois, for better than 12 years, has seen the Senator from New York take his pencil and carefully change a couple of words and get quick agreement on it. The Senator from Illinois felt there should not be much dispute over this particular point.

Mr. CHURCH. May I just say to the Senator that it is just a question of judgment as to how close we have come to the brink. I think the committee language brought us right to the brink. If you stand right at the brink of the Grand Canyon, you get a magnificent view. If you take one more step, you are in trouble. This is the difference between our two positions. We disagree on how close we have approached the brink.

Mr. PERCY. I appreciate that. It is a question of judgment. It is the judgment of the Senator from Illinois that we can just inch forward a little bit and get a clearer picture of the whole canyon, not fall over the precipice, and not jeopardize anything.

I persistently and steadily worked toward normalization and will continue to do so. I have a deep respect for many of the accomplishments of China and certainly the commonality of interests that we share in certain areas of security important to the United States.

The question the Senator from Illinois would like to ask the chairman of the Foreign Relations Committee——

Mr. SARBANES. Will the Senator yield on the point he just made?

Mr. PERCY. Yes, of course.

Mr. SARBANES. I think the difference with respect to the judgment call to which the Senator from Illinois and the Senator from Illinois referred earlier, is that if the Senator from Illinois is wrong, it is not within our power to control the situation. If his language goes too far, normalization will have been lost. On the other hand, the language in the committee bill and the assurances that the United States is making thereunder and the action we will take are within our control. We can act on the basis of the committee's language without the amendment by the Senator from Illinois, in order to meet our commitments with respect to the people on Taiwan. That is a critical difference. There is no gamble, from our perspective, with the committee's language, because how we act pursuant to it is within our control and we do not need the Senator's proposed amendment to act differently.

With the Senator's amendment, there is a gamble, because the reaction to it as it may affect normalization is not within our control.

That is the essential difference in the judgment call being made here on the floor of the Senate with respect to the Senator's amendment.

Mr. PERCY. This amendment was offered and fully discussed publicly in committee.

After the amendment was defeated, I discussed it with two members of the Chinese diplomatic mission to see whether there was any adverse reaction. I said that we were trying to express in the language of this amendment exactly what we had been saying to the Vice Premier when he visited the Senate and was in the United States.

There has been ample time for the Chinese mission, now the members of the Chinese Embassy, to contact Members of the Senate to express their concern about this and say why they feel we should not be expressing this point of view and whether or not it would jeopardize normalization of relations.

The Senator from Illinois to this date has not had any direct indication, nor has any spokesman for the administration been able to express anything other than their own concerns about what might possibly be a reaction.

But, as I have said, the People's Republic of China has not hesitated to express itself forthrightly and honestly and they have taken their chances on jeopardizing our relationship and it was their judgment that plain speaking would not harm our relations.

So far, everything they have done, whether it is an invasion of Vietnam or whether it was a criticism of the policy of the U.S. Government, with respect to Iran, has had some degree of risk, but they were honest and forthright and laid it on the line.

I think most of us had respect for them doing that. I would just hope they would be fair enough to respect us for being frank. In the Senator from Illinois' relationship with them I have found them eminently fair.

We have simply agreed to disagree on some issues, and in interpretation of certain events transpiring.

All the amendment does is simply state what has already been stated by many Members of Congress and much more strongly by the President of the United States in his interviews with the press. It is certainly more forcefully and strongly stated by language that has been developed by others in the Senate of the United States.

The language offered in this amendment is, as one Member of the Senate said, the mildest language, in his judgment, we could adopt to honestly express our views.

The Senator from Illinois understands there was one other Senator, my distinguished colleague from Iowa, who might wish to speak at this time. If so, I am happy to yield to the distinguished Senator whatever time he feels desirable, taking into account that there is a desire now to get the vote underway.

The PRESIDING OFFICER. Is the Senator from Illinois yielding the floor?

Mr. PERCY. I am happy to.

The PRESIDING OFFICER. The Senator from Iowa is recognized in his own right.

Mr. JEPSEN. I thank the Chair.

Mr. President, I have heard the distinguished Senator from Idaho say today, "What kind of a message are we sending?"

I have heard the distinguished Senator from Maryland say, "We are taking a chance by changing two words."

I have one question. We are taking a chance with what and with whom? What kind of a chance are we taking when Secretary Blumenthal was in Peking telling the whole world China was an aggressor shortly after our recognition?

I think that is of somewhat greater magnitude—we talk about taking a chance—something more than what we are talking about here with strengthening a couple of words.

I do not think we should say the Senate of the United States is fouling things up. The administration seems to have an exclusive right on that.

A friend of mine went out to the Theodore Roosevelt Memorial Island the other day to enjoy some winter solitude. It is one of his favorite places in Washington.

It is the island in the middle of the Potomac across from the Kennedy Center. Dedicated as a wildlife refuge, it features a huge, concrete plaza dominated by an enormous statue of Teddy, his arm raised in exclamation, flanked

by giant tablets bearing inscriptions of Roosevelt quotations.

Anyway, when he was out there, he was sitting there alone, and suddenly a high-pitched and rasping voice said, "Young man, you there."

He looked up. It was the statue that was talking. The statue of Teddy Roosevelt.

Teddy said:

Don't be alarmed, I'm perfectly harmless, I assure you. I simply get lonely from time to time and need someone to talk to. I get particularly hungry for news of the outside world. Tell me, what's going on out there? I've been out of touch for months.

My friend said:

Well, let's see, last week President Carter went to Mexico on a state visit and was insulted by the President of Mexico, our embassy was captured by leftist rebels and the staff had to be rescued by supporters of a right wing religious nut, and our ambassador to Afghanistan was kidnapped and murdered.

Teddy Roosevelt said:

Thunderation! Where did the President send the fleet first? It would be a difficult choice. I suppose I'd start with Mexico. An affront to the President is an attack on the American flag. Is that what he did? Did he send the fleet steaming into Vera Cruz, or did he just send a punitive expedition over the border?

My friend said:

Neither. He answered the insult by telling an assembled luncheon gathering about a case of diarrhea he once had while in Mexico.

Teddy said:

At a luncheon, you say? Well, not the kind of revenge I'd have taken but it's something, anyway. I'll wager he took stronger action against the cheeky beggars who took over our embassy in Iran. Send in a company of marines to occupy the country, did he? Hang the offenders in a public square as an example to others?

No, he sent a sharp note to the Soviet Union, saying that if it didn't stop stirring up the natives against us, we were going to get mad.

Teddy said:

Am I missing something? Is the Marine Corps ill? What did he do about our murdered ambassador, send a telegram of apology to the heathen who did it?

He said:

No. He expressed dismay and surprise that the kidnapping was handled so badly by Afghanistani authorities.

Well, he said:

I know I always advocated talking softly, but I don't understand what is going on with this situation.

My friend said:

Well, he's in a difficult position. We need oil from most of these countries and if we're not nice to them they won't sell it to us, we'll have to give up our lifestyle of snowmobiles and campers and two cars to a family and one person to a car.

He said:

That is certainly a sad commentary on what's happened to the country. If that had been the attitude when I was President, we wouldn't own the Panama Canal today.

My friend said:

Mr. Roosevelt, sir, can you sit down? I've got something to tell you.

I say to the Members of the Senate that there is a message today that is bouncing off the mountain tops, that is echoing from the valleys and ringing from the hearts of all freedom-loving people throughout the world. They are saying, "America, where are you?"

Recently, leaders of the European nations met in Guadeloupe. According to this administration and press reports, everything seemed rosy. But then the leader of France went back and disassociated himself from American policies—the policy of now you see it, now you do not.

In an interview last Friday, I was told by representatives of the German Bundestag that they were worried that "the United States is going to leave us high and dry and directly facing the hordes of Russian military might all by ourselves"; that this was causing the German Government to begin to think about making book with Russia. But the simple fact of life is that America no longer has the conviction and the will to stand up to those of the left in the world, to those who, through acts of terror and intimidation, are bent on destroying the ability and the will of freedom-loving nations to stand firm against the worldwide conflict being practiced by those who would like to see America on her knees.

I think this amendment we are talking about today is really a drop in the bucket, but at least it is something. It is a ray of hope. It is a glimmer. It is a response to the call that many countries and freedom-loving people around the world are expressing, and that is, "America, where are you?"

I hope that this distinguished body—which I understand will vote on this matter in a few moments—in its wisdom will vote "aye" on this amendment. It will be the first indication in some months that there are people in this country, 100 Members in the Senate, who do represent collectively all the people of the United States of America, who are hungering for leadership, who are desirous that we do take a stand and tell the world: "Yes, we accept the responsibility of being the leaders of freedom around world: "Yes; we accept the responsibility of being the Nation that must keep the peace."

I assure Senators that if we do not assume that and accept and continue in that role, there will not be peace and there will not be freedom, and someday, perhaps, there will not be an America. So I am going to vote for this.

I thank the Senator from Illinois for yielding time.

Mr. JACKSON. Vote.

Mr. PERCY addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from Illinois yield?

Mr. PERCY. I yield.

Mr. ROBERT C. BYRD. Will the Senator let the Senate come to a vote on his amendment? Several Senators have plane reservations and need to leave. If we could vote now, it would be my plan, after Senator HOLLINGS calls up an amendment which he says will be accepted, to go over until Monday—if the Senator will let us vote now.

Mr. PERCY. The Senator feels that a vote could come in 5 minutes. I have one question to ask the chairman.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote occur, up or down, on the amendment within 5 minutes.

Mr. PERCY. Better say 10 minutes.

Mr. ROBERT C. BYRD. Not later than 10 minutes.

The PRESIDING OFFICER (Mr. BUMPERS). Is there objection? The Chair hears none, and it is so ordered.

Mr. PERCY. Mr. President, the question I wanted to ask the distinguished chairman relates really to a comment that he made earlier. I have made a notation about the comment—that you can understand the politics of this.

I hope there is no implication in that that politics is involved. The Senator from Illinois, first of all, deeply believes that, whenever possible, there should be a bipartisan foreign policy and will adhere in every conceivable way to trying to leave partisanship out of policy. It is confusing enough without partisanship.

Second, I have just checked to see whether we have received much mail on this. We have not received as much as we got in an hour on the Panama Canal. I cannot recall when anybody has spoken to me about it, except Taiwanese living in Illinois who are concerned about their rights on the island of Taiwan. As a majority, they do not have the rights they feel they should have, and they hope someone will speak up for that. We have expressed in the hearings our feelings on that issue.

Was there some implication the Senator from Illinois did not get as to what the politics were that are involved here?

Mr. CHURCH. The Senator knows that I am aware of his role in the committee, and I have never known him not to place the national interest first. I am sure he does so in this case.

As I mentioned earlier, this is a judgment call. The Senator from Illinois would not knowingly or purposefully offer this amendment in the expectation that its approval would lead to a dissolution of the ties that now have been established between Washington and Peking.

Mr. PERCY. I thank my distinguished colleague. I value his friendship and his judgment.

If there were any political aspect to this, I must be blind, because I cannot see it. It does not seem to be an issue of great public interest, and it certainly was not during my visit to Illinois.

It is a matter of deep personal conviction that we should express ourselves, so that we gain respect by saying exactly what we mean and saying it as forthrightly and honestly and openly as other nations have. That is the concern I have.

In all the relationships that the Senator from Illinois has been able to establish through the years in business or in public life, the central core always has been the mutuality of interest. Can both sides gain by this relationship?

The term "brinkmanship" has been used: Are we on the brink of possibly go-

ing over the precipice or losing this? For the life of me, I cannot see how we could; because, basically, from the standpoint of the United States, it is in our national interest that normalization proceed. We should have diplomatic relationships at the highest level. We should have every conceivable kind of relationship—cultural, economic, every other aspect of interrelationships between the largest nation on Earth, 900 million people, and the most powerful nation on Earth, the United States of America, economically, militarily, and we hope politically, certainly in the Mideast now, as we use our influence there to bring peace.

I believe it is in our interest to go forward with normalization and I am strongly for it. But I also believe normalization is in the interest of the People's Republic of China.

The Chinese are not going to let something go down the drain simply because they might object to our using or prefer us not to use words other than "of grave concern." I cannot imagine they would permit that to endanger our entire relationship.

For them, normalization is a very good thing, because it gives them full diplomatic relations with the United States of America. It opens up to them the kind of contacts they need to advance themselves into the future. They have been open and forthright about saying that they want that technical know-how, that they want that contact between our peoples, that they want that relationship for their educational institutions. In the end, it is going to be beneficial to them. If there are benefits to the United States and to the People's Republic of China, this relationship will go forward.

All the Senator from Illinois is saying in this amendment is:

> Let us honestly express our interests in a peaceful resolution of the Taiwan issue. Let us speak clearly. The administration did not get verbal commitment from the People's Republic of China that they would not use force. The Chinese have left that option open. Let us not fail to be just as forthright and clear in what we say as to how important we consider the people on Taiwan.

So it is not just a question of semantics or just a couple of words. It is an intention of a people and it is to make absolutely certain that we express how strongly we feel about this matter.

Again I commend my distinguished colleagues for the work they have done on this matter. In no sense would the Senator from Illinois, by changing a few words, try in any way to detract from the very good job they have done, in the best tradition of the U.S. Senate, in conjunction with the executive branch. They have worked out excellent language that I feel is not modified in principle at all but simply improved and somewhat strengthened and placed on the solid foundation they have built with respect to the relationship between the People's Republic of China and the United States of America.

Mr. President, I have no further comments to make, and I am ready for the vote.

● Mr. KENNEDY. Mr. President, after very careful deliberation, the committee incorporated section 114 designed to help insure the security of the people on Taiwan. As agreed by the committee, this section makes very clear the interest of the United States in the future security, prosperity, and welfare of Taiwan.

We must act to support that interest, consistent with the fundamental decision to recognize Peking as the sole legal Government of China. But we must remember that the primary assurance of Taiwan's security rests with the capability of its own people to defend themselves. It rests with the readiness of the Chinese on both sides of the Taiwan Strait to resolve their differences by peaceful means.

Senator PERCY's amendment does not add to that assurance. It runs the risk of antagonizing the People's Republic of China without increasing the security of Taiwan by one iota. It reduces our future flexibility in determining whether and to what extent our interests in Taiwan are actually jeopardized.

Moreover, the amendment suggests that our security interests in Taiwan are equivalent to our security interests in Japan, Korea, or other close allies. The Joint Chiefs of Staff differ with this view, as is clear from the committee hearings. General Jones, the Chairman of the JCS, told the committee that his concern with Senator PERCY's language is "that our security interests (in Taiwan) are less than in other areas of the Pacific or the world."

I agree with General Jones.

But more fundamentally, I believe that the committee's language represents good policy as well as a fair political compromise. Senator PERCY's amendment would be a step back from that policy and would undermine that compromise. I urge the Senate to reject this amendment.●

Mr. CHURCH. Mr. President, I hope, upon reconsideration, that the Senate will reject the amendment offered by the Senator from Illinois.

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

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 Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from North Carolina (Mr. MORGAN), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

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

On this vote, the Senator from Nevada (Mr. CANNON) is paired with the Senator from Hawaii (Mr. INOUYE).

If present and voting, the Senator from Nevada would vote "yea" and the Senator from Hawaii would vote "no."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

The VICE PRESIDENT. Will Senators please clear the well?

Are there any Senators who have not yet voted?

The result was announced—yeas 42, nays 50, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—42

Armstrong	Hatch	Randolph
Belimon	Hatfield	Roth
Boren	Hayakawa	Schmitt
Boschwitz	Heinz	Schweiker
Byrd, Harry F., Jr.	Helms	Simpson
Cochran	Hollings	Stevens
Cohen	Humphrey	Stone
Danforth	Jepsen	Thurmond
DeConcini	Laxalt	Tower
Dole	Lugar	Wallop
Domenici	McClure	Warner
Durenberger	Packwood	Weicker
Garn	Percy	Young
Goldwater	Pressler	
	Proxmire	

NAYS—50

Baucus	Glenn	Muskie
Bayh	Hart	Nelson
Bentsen	Heflin	Nunn
Biden	Huddleston	Pell
Bradley	Jackson	Pryor
Bumpers	Javits	Ribicoff
Burdick	Johnston	Riegle
Byrd, Robert C.	Kassebaum	Sarbanes
Chafee	Kennedy	Sasser
Chiles	Leahy	Stafford
Church	Levin	Stennis
Cranston	Magnuson	Stevenson
Culver	Mathias	Stewart
Durkin	McGovern	Tsongas
Eagleton	Melcher	Williams
Exon	Metzenbaum	Zorinsky
Ford	Moynihan	

NOT VOTING—8

Baker	Inouye	Morgan
Cannon	Long	Talmadge
Gravel	Matsunaga	

So the amendment (No. 79) was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The Senator from South Carolina. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from South Carolina yield?

Mr. STEVENS. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. BUMPERS). Senators will please retire to the cloakroom. The Senate will not resume until there is order in the Chamber. Please retire to the cloakroom to continue conversations.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from South Carolina yield to me?

Mr. HOLLINGS. Yes, I yield.

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today, but Senators who may wish to call up amendments, and have voice votes thereon—some amendments will be accepted—the Senate will continue to do business until such amendments have been disposed of.

UNANIMOUS CONSENT AGREEMENT TO VOTE ON PASSAGE NO LATER THAN 5 P.M. TUESDAY, MARCH 13, 1979, AND TIME-LIMITATION AGREEMENT ON AMENDMENTS

Mr. President, I ask unanimous consent—and I have cleared this with Mr.

HELMS and Mr. STEVENS and with other Senators—that a vote on passage of the legislation occur no later than 5 p.m. on Tuesday next, with the proviso that there be 1 hour on each of three amendments by Mr. HELMS, that time be equally divided in accordance with the usual form.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be 1 hour on any amendment to be equally divided in accordance with the usual form, other than the amendment by Mr. HOLLINGS which, I understand, is going to be accepted.

Mr. HOLLINGS. I hope so.

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

UP AMENDMENT NO. 32

(Purpose: To establish the Joint Commission on Security and Cooperation in East Asia.)

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from South Carolina.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes an unprinted amendment numbered 32:

At the bottom of page 22, insert the following:

Title V—

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

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

The amendment is as follows:

At the bottom of page 22, insert the following:

TITLE V—JOINT COMMISSION ON SECURITY AND COOPERATION IN EAST ASIA

SEC. 501. (a) There is established a joint congressional commission known as the Joint Commission on Security and Cooperation in East Asia (hereinafter in this title referred to as the "Joint Commission") to exist for a period of three years, which period shall begin upon the date of enactment of this Act.

(b) The Joint Commission shall monitor—

(1) the implementation of the provisions of this Act;

(2) the operation and procedures of the Institute;

(3) the legal and technical aspects of the continuing relationship between the United States and the people on Taiwan; and

(4) the implementation of the policies of the United States concerning security and cooperation in East Asia.

(c)(1) The Joint Commission shall be composed of twelve members. Of the members provided for under the preceding sentence—

(A) six shall be Members of the House of Representatives to be appointed by the Speaker of the House of Representatives, four of whom shall be selected from the majority party, and two of whom shall be selected, upon the recommendation of the Minority Leader of the House of Representatives, from the minority party; and

(B) six shall be Members of the Senate to be appointed by the President pro tempore of the Senate, four of whom shall be selected, upon the recommendation of the Majority Leader of the Senate, from the majority party, and two of whom shall be selected, upon the recommendation of the Minority Leader of the Senate, from the minority party.

(2) In each odd-numbered Congress, the Speaker of the House of Representatives shall designate one of the Members of the House of Representatives selected under paragraph (1)(A) as Chairman of the Joint Commission, and the President pro tempore of the Senate shall designate one of the Members of the Senate selected under paragraph (1)(B) as Vice Chairman of the Joint Commission. In each even-numbered Congress, the President pro tempore of the Senate shall designate one of the Members of the Senate selected under paragraph (1)(B) as Chairman of the Joint Commission, and the Speaker of the House of Representatives shall designate one of the Members of the House of Representatives selected under paragraph (1)(A) as Vice Chairman of the Joint Commission.

(d)(1) Members of the Joint Commission shall serve without compensation but shall be entitled to reimbursement for travel, subsistence, and other neecssary expenses incurred by them in carrying out the duties of the Joint Commission.

(2) The Joint Commission may appoint and fix the pay of such staff personnel as it deems desirable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates.

(e) The Joint Commission may, in carrying out its duties under this title, sit and act at such times and places, hold such hearings, take such testimony, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it deems necessary. Subpenas may be issued over the signature of the Chairman of the Joint Commission or any member designated by him, and may be served by any person designated by the Chairman or such member. The Chairman of the Joint Commission, or any member designated by him, may administer oaths to any witness.

(f)(1) The Joint Commission shall prepare and transmit a semiannual report to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the President on—

(A) the progress achieved by the United States in maintaining full and unimpeded cultural, commercial, and other relations with the people on Taiwan, and

(B) the legal and technical problems arising from the maintenance of such relations, together with recommendations for legislation to resolve such problems and recommendations for strengthening such relations and for carrying out the commitment of the United States to human rights in East Asia.

(2) The Joint Commission shall provide information to Members of the House of Representatives and the Senate as requested.

(g)(1) There are authorized to be appropriated to the Joint Commission for each fiscal year and to remain available until expended, $550,000 to assist in meeting the expenses of the Joint Commission for the purpose of carrying out the provisions of this title. Such appropriations shall be disbursed by the Secretary of the Senate on vouchers approved by the Chairman of the Joint Commission, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

(2) For each fiscal year for which an appropriation is made the Joint Commission shall submit to the Congress a report on its expenditures under such appropriation.

(3) For purposes of section 502(b) of the Mutual Security Act of 1954, the Joint Commission shall be deemed to be a joint committee of the Congress and shall be entitled to the use of funds in accordance with the provisions of such section.

On page 23, line 1, strike out "TITLE V" and insert in lieu thereof "TITLE VI".

On page 23, line 2, strike out "SEC. 501." and insert in lieu thereof "SEC. 601.".

On page 23, line 4, strike out "SEC. 502." and insert in lieu thereof "SEC. 602.".

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the Senator. Mr. President, for the further information of Senators, the order for tomorrow has been vitiated. There will be no meeting of the Senate tomorrow. The Senate will come in at 11 o'clock on Monday.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of my amendment: The Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. DECONCINI), the Senator from Indiana (Mr. BAYH), the Senator from Oklahoma (Mr. BOREN), the Senator from Illinois (Mr. PERCY), and the Senator from Alabama (Mr. STEWART).

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

Mr. HOLLINGS. Mr. President, this is the amendment establishing an oversight commission with respect to Taiwan.

Let me first, before we get into the debate, commend the Committee on Foreign Relations, and particularly Senators CHURCH and JAVITS, for the excellent job that they have done so far in taking a rather casual, inadequate administration bill and substantially improving it by recognizing the agencies and instrumentalities on Taiwan, by providing that when dealing with the institute, it would be dealt with as an instrumentality of the government, by providing for privileges and immunities, and by spelling out that other than peaceful means employed against Taiwan would be of great concern to the United States. On the latter, by a tie vote here on two occasions, we have expressed really the United States sense that a threat to our security would be involved.

Mr. President, with those improvements, the bill has been substantially improved. Though I do not minimize in any way the hard work done by the Foreign Relations Committee with the poor bill submitted to them, frankly, what we really are engaged in is one of the most fraudulent shams that you could possibly conceive. We could not find anywhere else a precedent for calling the Government an institute and the institute a government.

We wondered about the covert activities of the CIA. They might not have worked well in Iran, but they are working extremely well right now participating in designing this covert operation. So we are saying the Government is going to work with the government in Taiwan, and it is not the Government, but it is the people, and it isn't the public, but it is our tax money—and around and around in a circle it goes. I cannot get over the very strong feeling that this is pure sham, and not in the best interests of the people of the United States. But I

am trying to be realistic in trying to work out of this situation the best we can.

We heard earlier—and I guess this is the best way to get to the point with respect to the need for a commission—in the statement of my distinguished colleague from North Carolina, of a secret report of how Taiwan could be successfully blockaded by the People's Republic of China. That has not concerned me as much as the economic squeeze and strangulation of the people by embargo or economic means—and that is far, far easier, Mr. President, than any kind of military action to blockade.

I am not minimizing in any sense the concern that Senators might have over a military blockade, but that is not really my primary concern. I had expressed this concern for several weeks when I was first briefed on the subject of Taiwan by the State Department, and then later an article appeared, written by a distinguished former ambassador and foreign service officer of the U.S. Government, Ambassador William J. Porter, and published in the Christian Science Monitor of January 10, 1978. I ask unanimous consent to have this piece printed in its entirety in the RECORD at this point.

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

[From the Christian Science Monitor, Jan. 10, 1979]

WHAT CARTER GETS UNITED STATES INTO

(By William J. Porter)

PEOPLE'S REPUBLIC OF CHINA

Administrative Notice to Shippers—Certificates of Control and Clearance

(To ease congestion in the ports of the People's Republic of China (PRC), and to facilitate the importation and exportation of merchandise, all shippers are hereby notified that shipments to and from the PRC, including the province of Taiwan, must be accompanied by a Certificate of Control and Clearance (CCC) stating the nature of the cargo and its port of destination.

(These certificates may be obtained from the consular section of any Embassy of the PRC or at any Chinese port on the mainland.)

The thrust of this imaginary "Notice" should be clear. It is intended to bring into view sovereign authority which the Peking government may choose to assert, and which the United States is no longer in a position to dispute once the Carter administration recognized Peking's hegemony over Taiwan.

The White House has informed the public that all details of the arrangement with the PRC have been revealed—with no mention of safeguards against the possibility of such regulatory measures. There are, of course, several additional areas in which Peking may choose to exercise its sovereign authority without fear of anything but remonstrance from the Americans. The example cited above begs a specific question. Would the United States accept such PRC regulations if applied to vessels carrying defensive weapons to "the province of Taiwan" during and after the period in which the U.S.-Taiwan mutual defense treaty remains valid?

Apparently such serious possibilities were not properly considered or negotiated before the recognition of the PRC, which indicates the hasty nature of the President's decision. We are, of course, assured by those who approve the manner in which the event was manipulated that it would not be in the interest of the PRC to take such action. But such optimism is not convincing because it presumes to judge in advance solutions which a very self-centered communist power may find expedient. The public and Congress are certainly due an explanation as to why Mr. Carter, Mr. Brzezinski and Mr. Vance did not make an effort to obtain necessary assurances concerning actual and possible problems relating to the matter. Let us note here that Mr. Teng and his friends avoided that error: They protected their own interests and preserved all their options very well.

Another embarrassing example of unseasoned diplomacy in this matter was the eagerness with which Mr. Carter used to his own advantage an alleged statement of approval of the recognition by Mr. Brezhnev. The Washington Post, which may be thinking of establishing a Peking edition, headlined Mr. B's "very positive" message on the subject, as related in glowing terms by the President. Moscow, however, corrected the White House version very quickly in a statement to the effect that the account did not represent Mr. Brezhnev's message correctly.

The PRC recognition fits into a rather disorderly ensemble, other elements of which are the Camp David debacle, the oil price rise which need not have happened, and the looming Rhodesian disaster in all of which current U.S. diplomatic techniques figured prominently. Two years in office would seem sufficient to impress our leaders with the obvious fact that in these complicated matters the desire for publicity should not be allowed to overwhelm the need for thoroughness.

The best we can hope for now is that, when he next visits the Far East, Mr. Vance will be able to tidy up the unhappy position in which the U.S. finds itself. The statement from Peking on Dec. 24 is not encouraging, however, stressing as it does the view that the PRC alone, and no one else, including the U.S. is qualified to handle the problem of Taiwan. It made even clearer, if that was necessary, the PRC's belief that it is in no way obligated to accommodate the United States or Taiwan and that Mr. Carter's expectations are therefore illusory.

Mr. HOLLINGS. Some of our commercial colleagues in Japan, asked whether or not the Japanese would adhere to that kind of activity taken by the People's Republic, answered "Yes."

What is that activity? The activity, my friends, is not a military blockade, but rather the very simple device of issuing a public notice in the Journal of Commerce that, due to the congested conditions in the port facilities of the People's Republic of China, vessels entering the sovereign water of the PRC would have to obtain an anchorage license to do business.

So any captain of a ship, not wanting to be turned back after his long trip, would apply for the license, and the rest is very obvious: If you do not like the way they do business, there will be no license. If you think they need a lesson, there isn't much the captain can do except accept or go back. I am not criticizing the People's Republic at this point, or addressing their action in Vietnam, but we do know that we are now dealing with a people that are willing to give lessons; and if they wanted to give a lesson to any particular commercial entity that was not doing business the way they thought business should be conducted, there would be no license; there would be a general economic squeeze, and I venture to say that in a matter of months or at most a few years, that $7.2 billion of business done by the United States of America with Taiwan, export and import, would all of a sudden be dried up, and then you would have the strangulation of Taiwan. We heard earlier from one of our colleagues that we tried to impress our way in Vietnam, and I agree with him; but we learned a lesson there that the American way was not always accepted.

But there are areas where the American way is fully accepted, and in Taiwan it is accepted: The commercial, free enterprise, competitive, capitalistic system.

That is exactly why we have misgivings when we see our State Department use that nice State Department language of art, "grave concern." Because the State Department leaves a lot to be desired by way of mind and by way of commonsense.

They really barreled on Taiwan and took a friend, one of the best friends we have ever had, and treated them, I should say, as persona non grata. The State Department came up and gave certain "advice" on how Taiwan should sell their U.S. property to the Saudis. That advice was not taken. Incidentally, I will join in the Twin Oaks bill later on. That will be a different amendment.

That advice to sell was not taken by our friends on Taiwan, those who had accepted our way and whom we helped prosper economically, and who we helped build militarily in every sense. They did everything we asked them to do and we with them. They then allowed that the property of the Taiwanese in Washington would immediately be the property of the People's Republic of China.

Of course, we know historically the People's Republic of China in this century had neither control nor jurisdiction of these properties. We were hearing a little earlier about the little cuddly bear, Teng Hsiao-ping. Well, I do not know that the gentleman has ever had the chance to visit Taiwan, though we here in the United States have had that opportunity. I do not know anyone in the PRC government, including Mr. Teng, who has ever been to Taiwan. They do not have control there and have not had jurisdiction. To come out now and say these properties will go to the PRC is just an un-American way to do business.

The way they admonish their ambassador to not even attend a news conference is another thing. I can go down a list or a bill of particulars. But nothing presents it more dramatically than the scurrilous piece of legislation sent over here which shows the total disregard from what was being said publicly. They were saying publicly they want continued cultural, educational, and commercial relationships in the full.

As was stated here a little while ago, on February 16 the President even talked about the security, and how a later President could go to war to protect that security. We know that the President insisted on sending arms. I know not what the purpose of the arms was to be, except to protect the people of Taiwan. And I know of no threat at this particular moment that the United States is concerned about other than the military threat of the People's Republic of China at and against Taiwan.

So we were concerned about the security, our President was concerned about the security, but that has been a no-no word all afternoon. And we see a total disregard of the security pact which we have at this very minute. We have given notification of termination by the end of this year, in accordance with the treaty, but we do have a solemn treaty with the Taiwanese, a security pact. When the Senator from Maryland and everyone else gets upset when we begin to regard that, when we begin to acknowledge that, when we begin to show a little nationalism here on the floor of the Senate, I do not intend to be lectured by those who claim to see the real world. about the nationalism in the other countries.

I do not know where the nationalism of the people of South Vietnam ever was. We gave 56,000 lives trying to develop it.

There is a lot to be said about nationalism. We learned that people do not like foreigners. We learned that in the People's Republic of China, in Iran, and in France, when they kicked NATO out. We learned that the world around. We have had many lessons about the consideration they have for foreigners.

But when we try to talk and clarify "grave concern" or what it means, then we get blamed for inexact language, and we should go with nebulous nonsense, with a frightened stance, and without speaking clearly.

I want to add one more comment with respect to Vietnam. I respect my colleague from Massachusetts and his dedication to the Peace Corps and his comments with respect to Vietnam. Others have also commented on that.

I remember that commitment. We will obviously not have time to argue it at this time. The Senator from Delaware and others were asking about commitments, whether or not the commitment to Taiwan was as good as the commitment to Western Europe. My answer is yes.

The commitment with Vietnam, and I participated in the debate on the floor, was one of the finer commitments that went along with the Peace Corps.

I happened to be in on the innovation of that institution. There we were doing away with the image of the ugly American, to go to the undeveloped and those countries which wanted help from an advanced nation and say, "Yes, we will help you in medicine with doctors; in langauge we will help you with teachers, in mathematics, we will help you with instructors, and if you want to build bridges, we will send Peace Corps members there."

And, yes, we were not only committed to our white Caucasian heritage, to Western European culture, but we were just as committed irrespective of race in the Far East.

The commitment in Vietnam was the commitment of the white man for the yellow man, the commitment of the richest nation for the poorest nation, the commitment of the developed for the undeveloped, the commitment of the privileged for the underprivileged.

People forget that, too, as if it was not carried through. But it had the highest sense of commitment from President Kennedy, President Eisenhower, President Johnson, and many others. A lot of us would be glad to debate that particular commitment some time.

But, yes, to the people of Taiwan I feel we should have a commitment.

What makes it a tremendous frustration to us all is the government itself. I make no commitment to Quemoy and Matsu. This is why we all have a consternation, frustration, and confusion in trying to actually treat a country that is not a country or will not act like a country.

I cannot get anyone on Taiwan to come forward and ask for self-determination. I have discussed this with the Secretary of State and all the people who have come to brief me, asking why do they not have a plebiscite under the United Nations to see whether they want to join the mainland, whether they want to become an independent entity, or whether they want to go back to the Japanese.

Again, back in Vietnam we gave 56,000 for the right of self-determination. That is the kind of commitment I would do for those people as a people, with their own way of life, with a confused heritage.

Taiwan was settled by the Dutch and the Portuguese. The name "Formosa" means "beautiful island" in the Portuguese language. It was a refuge for the Ching Dynasty and then it was taken over by the Manchus, and then conquered in the Sino-Japanese War in 1895. Then they had the Japanese heritage up until the end of World War II when our Western culture was developed there.

I cannot make up the minds, and I have no intention of making up the minds, of the people of Taiwan. They can expect certain measured judgments to be made since there is no language which will trigger us. We do believe in their security but we do not believe in their claim to mainland China. That was a charade and that, too, was a sham. I think the sooner they developed and have a free election the better the Senator from South Carolina is going to feel. In the meanwhile, while we do not consider it a country, and we are not proud of abandoning friends, but the friends will not organize a country, then what do we do? We try to maintain relationships as if they were a country and as if they were still our friends, or in the President's expression, continue cultural, educational, and commercial relations.

In looking at that $7.2 billion worth of business that we have, our ninth largest trading partner, I can tell you quite candidly that these relations cannot happen under this institute.

That would be like delivering lettuce by way of a rabbit. That institute is not going to represent the United States of America. It will represent the very, very fuzzy and impolite and discourteous conduct of our own State Department.

I say that advisedly, knowing how the State Department came to the Foreign Relations Committee and how they came to our appropriations State-Justice-Commerce subcommittee with the bum's rush. There is no better way to describe it: they tried to treat their own representatives just the same way they treated the Taiwanese.

So we are told—take the President's bill and if you make one amendment, we are going to veto it.

They came to me and said, either take the transfer of funds and give them immediately or, come the 1st of March, there will be riots and there will be bloodshed down in Taipei, and you will be responsible for it.

When you are dealing with that kind of mind and incapacity, and stupidity, then what you ought to do is try to give them counsel and care. I will never forget when I first came here, I was told that Washington was the first insane asylum run by the inmates. Not necessarily, but if you were looking for one institution, you could go find it in the personage of the State Department and the way they conduct some of our affairs from time to time.

I have the highest regard individually for the distinguished Secretary of State and many of the officers. I have been a supporter of their endeavors to get better management principles and so on. There is a lot to be admired, do not misunderstand. But they have certain ones from time to time who just go way off the deep end. This is one of those cases.

With that institute, they do not have any idea of doing exactly what the Congress intends. The people of Taiwan know that. The commercial interests in the United States know that. And to a man, they have said, "If you can get some kind of oversight commission similar to what we had with the Helsinki agreements, then it would stabilize Taiwan materially, safeguard the commercial enterprise, and assist the whole relationship between Taiwan and the United States of America."

I have just come back from the NATO conference, and I have followed the Helsinki Agreement. We traveled and I learned its tremendous value in Czechoslovakia, where my distinguished senior colleague on the Foreign Relations Committee, the present manager of the bill (Mr. PELL) served, in Prague. The dissonant movement of 1977 made certain contacts with us and that is their only hope—not the agreement itself, but the Oversight Commission, the Helsinki Commission, composed of Members from Congress and from the executive branch. They can get to and speak to and correspond with and try to help the cause of freedom in East Europe.

I think if we have a commission, the administration does not want to have any executive branch members; I well understand that. They do not want to have an institute. They do not want to have any relations. In fact, I am not nonplussed at that at all. Their idea of an institute was to end the relationship. You would never hear any more than a one-line report of something from time to time, but that would phase out Taiwan and then they would move on to greater things. Then we would have a black eye in the Far East about keeping our word and being true to our representations and true to freedom. We would have lost our credibility because, assuredly, Mr. President, this is exactly

what happened in the way the President conducted the business on the Taiwan score.

We had asked, we had signed into law last year our desire for consultation. We did not get consultation.

Everyone had heard of the great objection that we had from our strongest ally in the Far East, Japan, how they were totally disregarded in the Shanghai communique and the visitation of Mr. Kissinger and President Nixon, and assuredly we all knew that we should not disregard them in that fashion again. But again we awakened them in the middle of the night and told them that the Taiwan security pact was gone. They have always had a war party in Japan. Now they will have greater persuation, greater weight for their arguments. They can say, "You know, we have a security pact with the Government of the United States, but you can see how a President can do what he wants to. He can call you up in the middle of the night and say, 'That is the end of that.' We had better start moving."

This President, who has great concerns about nuclear proliferation and what have you, sure lost the battle on that one, because I can tell you now that if you live in Japan, you had better worry and wonder, under this administration, when it comes to a security pact.

Then Israel. That is where the gentleman will be on Saturday. If he gives them a promise of a security pact, I hope the Knesset, I hope the Prime Minister, do not break out laughing about the security pact, because they have every right to say, "Mr. President, that is what you gave to Taiwan and without any consultation, for reasons of greater interest that you had at the moment, you changed a 30-year policy with a call in the middle of the night. We love your security pact, but we would rather have greater assurances than that."

That hurts my feelings, to have our country conduct its business in this fashion. I think it not only hurts our feelings here in the United States; I think it hurts the feelings of all of our friends. It raises serious doubts.

We have spent billions upon billions of dollars to try to establish confidence and friendship, through all the economic instrumentalities—foreign military sales, Peace Corps endeavor, and everything else—to say "You can count on the moral force of the freedom-loving nation, the United States of America, and we shall always stand for that." Then we turn and, bam, bam, it's over.

We did not do as Canada did. Canada said they took note of the PRC's claim to sovereignty over Taiwan. They did not recognize, and they got relations with the People's Republic. Our friends, the British, acknowledged, but they did not recognize, and they got relations.

But rather than just acknowledge, we allowed that Chinese transcript to be written with the word "recognize" and they can continue to say "recognize."

I am back to my little economic notice in the Journal of Commerce. Yes, with that recognizing of the People's Republic as sovereign, we cannot interfere with sovereignty. That is what the whole argument was with respect to the Panama Canal Treaties. So we do not interrupt sovereignty and we have no standing.

Then they come around and say, "Why can't we handle the property in court?" We have no standing in our own court of public opinion, much less the legal courts. I am trying to get standing in the court of world opinion, not any technical titles and that kind of thing. I am trying to build America, and I am not ashamed of it, when I talk as I do on the floor of the U.S. Senate.

I feel very strongly about this commercial approach to the problem that we have, because, with all the language and nuances, whether it is "grave concern" or "security" or whether it is this or that, it depends on the implementation of this particular piece of legislation. I welcome the assiduous concern and attention that we have had for the bill itself by the House Foreign Affairs Committee and our Senate Foreign Relations Committee. If we can formalize that concern in the form of an oversight commission, then we can bring immediate stability to the dark clouds and trouble on the horizon of where we go from here with Taiwan.

No. 1, Taiwan will not be forgotten. No. 2, there will be contact. No. 3, there will be oversight. And number four, we at the appropriations level are going to follow with good intent the intent of the full Congress, House and Senate, on this particular score.

I appreciate the adjustments that the managers of the bill have made in order to accept this amendment. As I understand, the amendment will be accepted. I agreed then that we would not require a rollcall.

I have agreed to amend that original version to provide for a three-year duration of the commission. I am a believer in sunset legislation. The commission does not have to go on, but I would think within 3 years we would approve it. I do not mind being put on trial with this particular idea. I would have hoped that the validity, the efficacy, the need and the power of an oversight commission would have proved itself to all men of good will and good intent with respect to our involvement in Taiwan and that it would be renewed, perhaps, at that time.

I cannot foresee whether I will be there to renew it or not. I will watch that government over there to see whether they have the right of self-determination.

I guess I am recognizing the People's Republic. I am a realist. I have no bone to pick with them. If they can pick up Taiwan by bamboozling the President of the United States, because they know how to use their power, and we have lost the ability to use ours, that will be a sad ending.

But this little bit of oversight power we have in a national people's body, the Congress of the United States—where we can see that we do act like Americans, as the distinguished Senator from North Carolina pointed out so appropriately earlier this afternoon—can help us keep watch, keep vigilant, keep involved, and hopefully bring a measure of hope and pride where otherwise we would have none.

Mr. President, I am glad to yield the floor at this time.

Mr. HELMS. Did the Senator yield to me or did he yield the floor?

Mr. HOLLINGS. I yielded the floor.

Mr. HELMS. Mr. President, I have heard the distinguished Senator from South Carolina speak on many occasions and I always enjoy him and admire his eloquence. But I think he has risen to new heights today.

I commend him not only on what he said, but on the amendment that he has proposed and which, as he knows, I am cosponsoring with him.

Mr. President, I rise to join the distinguished Senator from South Carolina in his concern for monitoring our policy in China. I strongly support his idea of a Commission on Security and Economic Cooperation in Asia. Indeed, the Senator from North Carolina proposed a similarly-named commission based on the Helsinki commission model on January 29. The version of the Senator from South Carolina is a broader proposal and I am pleased to be a cosponsor.

The idea of Helsinki-type monitoring is particularly relevant to this bill, because Congress must become aware of the meaning of "peaceful unification" of Taiwan into the mainland. I recently requested the Far Eastern Law Division of the Library of Congress, under the competent direction of Dr. T. T. "Shaw" Hsia to prepare a report on recent developments related to human rights in the People's Republic of China. This was accomplished in a most scholarly and balanced manner, and has been printed as a committee document by the Committee on Foreign Relations. I believe that a copy is on every Senators desk, and I commend it highly. It will make a fine starting point for the proposed commission.

I also want to refer again to the excellent study on human rights in the People's Republic of China prepared by the Institute on American Relations which I placed in the RECORD during the debate on the Woodcock nomination. It is an excellent and deeply moving report.

Mr. President, the recognition of the Government of mainland China by President Carter has raised a great amount of anxiety over the future of the island province of Taiwan, and the Government of the Republic of China which is located there in Taipei. Despite assurances by President Carter that the mainland government is pledged not to use force against the Government of Taipei, recent statements by Chinese Vice-Premier Teng Hsiao-ping that he would not rule out the use of force as the ultimate sanction to induce negotiations have unveiled the ultimate goal.

The question is whether there are any circumstances whatsoever under which U.S. policy would like to see the peaceful unification of Taiwan with any Communist government on the mainland. The issue raises larger questions about our belief in the nature of freedom and our willingness to see any group of peoples in the world lose their right of self-determination. It is scarcely conceiv-

able—at least to this Senator—that any people living in the relative freedom of life on Taiwan would willingly choose to be absorbed into a Communist society, even if such a fate took place peacefully.

Teng's threat that force must be reserved as the ultimate sanction to induce the Government of the Republic of China to negotiate indicates that a policy of pressure will be followed, one that doubtless will include diplomatic, economic, and psychological efforts to isolate Taiwan, to restrict its freedom of action in international activities, and to destroy its economy. Taiwan cannot be said to have a choice if its freedom is strangled "peacefully" in a silken noose.

Similarly, Taiwan's choice cannot be said to be free if it is threatened militarily by a buildup of the kind of forces and armaments directed at military invasion, particularly if these forces are concentrated in regions adjacent to the Taiwan Straits. In part, Taiwan's ability to respond will depend upon the United States; but a great deal will depend upon the actions of the Peking government.

There are those who say, hopefully, that Peking will never invade because it would disrupt relations with Japan and the United States. But no one can predict under what future circumstances Peking might decide to act.

The fact remains that the Peking Government has the worst—let me repeat for the purpose of emphasis—the worst human rights record in history, one that surpasses even the graphic descriptions of witnesses to the Cambodian tragedy. A study prepared for the Senate in 1971 estimated that as many as 64 million Chinese died during the Communist programs of liquidation and purge.

Even today, Chinese Communist officials estimate that between 5 and 10 percent of the Chinese people suffer "the dictatorship of the proletariat" in forced labor camps. With a population of 900 million, 5 to 10 percent in forced labor camps is a number equivalent to one-quarter to one-half of the population of the United States. So that, Mr. President, is what we confront.

Those who are not in the forced labor camps live continually in the fear that they, too, might fall under surveillance or "dictatorship." Legal protections are virtually nonexistent; men and women are incarcerated by party directive (the Gang of Four being the most notorious examples).

Personal mobility is restricted not only by the poverty and failure of the Chinese economic system under communism, but also by one of the most restrictive systems of rationing basic daily necessities in the world. Indeed, the very rights which we hold to be fundamental to the nature of man are rigorously suppressed, including the following:

First. The rights of family. The Chinese sense of family runs very deep, based upon the Confucian ideal of respect for one's ancestors. The party has worked very hard to break down this tradition. The liberation of women, most of whom do manual work in the fields, has placed great stress on the family unit. Parents have no control over the education of their children. Millions of so-called educated youth have been sent from urban centers to remote villages for permanent settlement. Restrictions on marriageable ages forced separation of married couples to job assignments hundreds of miles apart, and public pressures on individual women for abortion and contraception further erode marital rights and privacy.

Second. The rights of religion. Millions of Chinese were adherents of the Buddhist, Taoist, Moslem, and Christian faiths before 1949, and millions more were active followers of the ethical precepts of Confucius. The thousands of temples have been closed, many have been destroyed. A mere handful of religious buildings are kept open for the inspection of foreigners, but no Chinese citizen would dare to enter. Attendance at religious rites would result in job loss, discrimination, surveillance, decrease in rations, and perhaps even a trip to the labor camps.

Third. The rights of labor. No Chinese may join an independent trade union, much less enter upon a strike. Wages in China have been raised only twice in 20 years. A worker has no right to select his job or his assignment.

Fourth. The rights of property. Needless to say, the right to hold private property has completely disappeared, including peasants who may have owned only 2 or 3 acres. Forced collectivization was imposed on all agriculture. Property rights are the foundation of human liberties, and they are nonexistent in Communist China.

Fifth. The rights of political expression. There is only one party in China. There is not even an organized network of dissenters, such as in the Soviet Union. The recent, brief flowering of big character posters, under the careful guidance of party officals, shows that free political expression on the mainland is nonexistent.

Sixth. The rights of economic-self determination. Anyone who advocates personal or private enterprise, no matter how insignificant, is considered a "capitalist roader." No individual may attempt to establish his own economic self-sufficiency outside of the collective plan.

Seventh. The rights of due process. Legal rights simply do not exist in China, and the recent calls for the establishment of legal procedures only points up the fact that, for 20 years, citizens have been at the mercy of party directives, as interpreted by local officials. There is not even a criminal code, much less a code for political offenders.

Mr. President, it is the hope of many that the total absence of human rights, as generally understood in the West, will be ameliorated as time goes by. The emergence of Teng as the strong man in China after the death of Mao has given an indication that there might be evolution toward a better situation. But no one knows how long the adherents of Teng will hold power. The historical record give little confidence that the situation will change for the better permanently. It is far too soon to decide.

All of these reasons are reasons why we should not be in haste to consign the people on Taiwan to the benevolence of the Peking regime. After all, the Republic of China has not ceased to be a legitimate government merely because the United States has withdrawn its Ambassador. It remains in control of a significant part of the territory of China. I believe that it is generally accepted under international law that a country cannot be "de-recognized." A new government may be recognized once it has de facto control of territory. But once it is recognized, it is recognized as long as it has that control. The withdrawal of ambassadors is a separate act that has no bearing on recognition.

Indeed, nations may withdraw ambassadors and go to war with each other, without any implication that their opponents no longer exercise sovereignty over such territory as they control. In fact, quite the opposite is implied.

However, since the administration has chosen to withdraw the U.S. Ambassador from Taiwan and to recognize Peking as the sole government of China, in defiance of reality and international law, special steps should be taken by Congress to safeguard the human rights of the Chinese people who are under the Government of the Republic of China on Taiwan. Neither that Government nor the people cease to exist because of the President's action. It is up to Congress to monitor the human rights situation on the mainland and any potential military buildup which would threaten Taiwan.

The PRESIDING OFFICER (Mr. BRADLEY). The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate having this time to also associate myself with the remarks of the distinguished Senator from North Carolina and to express my viewpoint that I have always enjoyed the comments that he makes, even when I disagree with him, which is not very often. I have a deep and very firm regard for him.

Mr. President, I ask unanimous consent that I may be added as a cosponsor on his amendment.

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

Mr. PELL. Mr. President, I appreciated very much the kind words of the Senator from South Carolina.

As cochairman of the Commission on Security and Cooperation in Europe, the so-called Helsinki Commission, I am familiar with the operations of joint commissions of this sort.

Our commission deals with a different problem, however. It deals with a treaty that is multinational in scope and with a treaty that is really a set of pious intentions.

There are very few, if any, specific commitments in that treaty. It is a question of aspirations and intentions.

Now, this commission would deal with one country—or, no longer a country, an area, whatever we wish to call it—and it is a commission that has a different composition. It is not evenly divided between the parties as is the Helsinki Commission, and it does not have members of the executive branch on it.

Personally, I would have qualms about the enactment of this legislation. However, on behalf of the Foreign Relations Committee, we accept the amendment with the proviso that the words "to exist for a period of 3 years, which period shall begin after date of enactment of this act" added onto section 501(a).

I understand that language is in the bill.

Mr. HOLLINGS. That is correct. That is the way the amendment is reported.

Mr. PELL. Before accepting it, I would defer to the ranking minority manager of the bill.

Mr. JAVITS. Mr. President, as I understand it, this commission is a commission composed of Members of Congress and is limited for a period of 3 years.

In a sense, it tends to deal with the jurisdiction which should be that of the Foreign Relations Committee and, I think they call it, the Foreign Affairs Committee in the House.

But in view of the unusual circumstances which are here involved and the fact that we will be going to conference with the House, I see no objection to accepting it.

Mr. HOLLINGS. Wait a minute.

Mr. President, I do not know what this conference with the House is all about. I want to make the record perfectly clear. I have talked and worked in good faith with Senator CHURCH and the director, and others, of the Foreign Relations Committee.

I was told last week they would agree to this amendment. I was told today they would agree to this amendment, and I do not want any monkeyshines in conference. If the Senator wants to have a full vote, I can get an overwhelming vote for this commission. I do not want to act as though this is a little sop to make a political record for the Senator from South Carolina.

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

Mr. HOLLINGS. I yield.

Mr. JAVITS. I hope the Senator will not jump at conclusions so fast about sops, and so on. The Senator is welcome to his vote, and I will vote with him. But what is so great about that?

Mr. President, this says that six members would be Members of the House of Representatives, to be appointed by the Speaker.

Mr. HOLLINGS. Right.

Mr. JAVITS. All I had in mind was that they would have an opportunity to examine this and see if it is agreeable to them, too. That is their pigeon, not ours.

Mr. HOLLINGS. I agree with that.

Mr. JAVITS. I have no quarrel with the Senator or his provision, and I wish the Senator would not jump at conclusions about me so fast. I am not given to giving sops or receiving them.

Mr. HOLLINGS. Well, I have been asked by the committee's staff member for three sops within the last hour with respect to the Helms amendment; and when I heard the Senator speak the way he did, I could not think of it as anything other than a sop; because it was said, "If we go along, will you do this, and if we go along, will you do that?"

I am trying to do a substantive thing. I am trying to carry out the intent of the Foreign Relations Committee and the intent of Congress.

As the Senator says, the House could disagree and turn it down. I thought I had the leader of the bill; I thought I had Senator CHURCH. But when I hear someone say, "I don't know about this. Helsinki is different," and someone else says something about weak words when we get to conference, that is why I react the way I do.

Mr. PELL. Mr. President, when we go to conference, no matter whether we think it is different or not, or whether we personally agree or do not agree, we have an obligation to have the act prevail. If I am in that conference, that is my intent, whether I agree or not.

Mr. HOLLINGS. I appreciate the Senator acknowledging that, because we get shaky in the saddle.

I have worked with conference committees, and there is one particular committee in the Senate that has a very common habit—the Finance Committee—of taking any and all amendments.

So I say to the Senator that he should not act as though I am acting strangely, because I have seen this done, and some here are members of the Finance Committee. They will take the amendments and say, "Senator, we'll let you make your talk, but we're not going to stand for that 5 minutes in the conference."

I just wanted that understood clearly. While I agreed to a voice vote and waited to the end, to be courteous to everybody, we can get into this debate and debate all Monday and all Monday night and make absolutely sure that it is brought home to my colleagues. I have been working with Senator GLENN and his staff. We put this amendment off, trying to work it out, in deference to the unanimous vote of the Foreign Relations Committee, in being accommodating and being realistic, and wanting support, also.

But it has to be understood that it is not a political move. We intend, and have those on the House side who fully intend, to keep it there.

Mr. JAVITS. The amendment is acceptable to me, period.

Mr. PELL. Mr. President, I move the acceptance of the amendment of the Senator from South Carolina.

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

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. PELL. 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. HOLLINGS. 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. 33

(Purpose: To construe the Taiwan Enabling Act with respect to the continued membership of the people on Taiwan in certain international organizations)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS) proposes an unprinted amendment numbered 33:

On page 15, between lines 4 and 5, insert the following:

SEC. 115. Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of the people on Taiwan from continued membership in any international financial institution or any other international organization.

Mr. HOLLINGS. Mr. President, I do not know at this point whether this amendment is acceptable to the Foreign Relations Committee. It is worded in the negative. I reworded it from the original amendment I had, with the understanding that what we want is that nothing be done by the Congress of the United States in this particular bill to rue out membership by the people of Taiwan in the World Bank, in the Asian Development Bank, and the International Monetary Fund.

There was a UPI report relative to the visit of our distinguished Secretary of the Treasury to the People's Republic of China, to the effect that the authorities there were pressuring him to help bring about the dismissal of the people of Taiwan from the World Bank and these other international institutions.

That is of tremendous concern to those who want to continue the constancy and uninhibited commercial relations between the United States and the people of Taiwan. I thought that should be spelled out at least in the sense that it is certain that we do not want to evict them from these institutions. Many of the guarantees, many of the business relationships we have, and many of the construction and trade agreements and everything else are based on those guarantees and loans by the Asian Development Bank, the International Monetary Fund, and the World Bank.

I will wait to hear whether we will debate it further and what the disposition of the Foreign Relations Committee is.

Mr. CHURCH. Mr. President, I think this amendment belongs in the bill, and I am happy to accept it.

Mr. HOLLINGS. I thank the distinguished chairman of the Foreign Relations Committee.

Mr. JAVITS. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 34

Mr. McCLURE. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 34.

Mr. McCLURE. 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 15, line 4, insert a new section as follows:

"Nothing in this Act, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency, commission or department to make a finding of fact or determination of law under the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978, to deny an export license application or to revoke an existing export license for nuclear exports to the people on Taiwan.

Mr. McCLURE. Mr. President, this amendment deals with the provisions of S. 245 and the current status of Taiwan and their relationship to continued, uninterrupted cooperation with Taiwan in the peaceful uses of atomic energy under the Atomic Energy Act and the Nuclear Nonproliferation Act of 1978. I have reviewed the actions of the Foreign Relations Committee and the reported bill, as they may bear on such continued, uninterrupted cooperation, and I am convinced that further clarification and perfection of the bill to insure that cooperation is appropriate and, in fact, may be absolutely necessary. I am anxious to work closely with you and the committee to that end.

Nuclear power development on Taiwan under the 1972 Agreement for Cooperation with the United States has been aggressively pursued. Taiwan has an advanced nuclear power research program and it is becoming increasingly dependent on nuclear power for electric generation. Six nuclear power reactors are in various stages of design, construction, and operation, and they will provide over 10,000 Mwe power by mid-1985. Four additional reactors are scheduled to begin operation later in the 1980's, and nuclear power by 1990 will provide about 50 percent of Taiwan's electrical capacity. Also, pending before the Nuclear Regulatory Commission at this time are seven license applications for two reactors (pending for almost a year), critically required fuel and other materials. Obviously, then, continued, uninterrupted U.S. cooperation is an essential element of Taiwan's economic future, as well as our good-faith relationship with the Taiwan people. Also, as you know, the United States has played a key role in the development of this nuclear power capacity within the context of a renewed commitment to peaceful uses only of nuclear power, and strict adherence to nonproliferation requirements, in the context of our mutual nonproliferation objectives. Continued, uninterrupted cooperation, therefore, is absolutely essential for both Taiwan and the United States.

I reviewed and analyzed in detail the reported bill, S. 245, after it was reported, and I was convinced that, in the absence of further amendment and additional legislative history, the U.S. cooperation with Taiwan in peaceful uses of atomic energy could be interrupted and seriously jeopardized. I based that conclusion, not on the failure of the committee to address responsibly the general legal situation, but rather on the intricacies and complexities of our domestic licensing law in the Nuclear Regulatory Commission under the Nuclear Nonproliferation Act of 1978. I also based that conclusion on the January 30, 1979 Memorandum to the Nuclear Regulatory Commission's General Counsel on the subject of "Legal Issues Arising from the United States' New China Policy" and the Nuclear Regulatory Commission's General Counsel's letter of February 15, 1979 to House Foreign Affairs Committee Chairman Zablocki on the same subject. In fact, I want to commend the Foreign Relations Committee for concerted efforts to deal constructively and responsibility with the virtual Gordian knot of legal technicalities resulting from the administration's actions in recognizing the People's Republic of China as the sole legal authority for mainland China and Taiwan, and derecognizing the Republic of China.

The possibility of difficulties under the adopted bill flow from the very specific findings of fact and law that must be made by the Nuclear Regulatory Commission under the Nuclear Nonproliferation Act. As was demonstrated graphically in the Tarapur, India, export case last year, and may be repeated again on the next export license for Tarapur now pending in the Nuclear Regulatory Commission, those required findings of fact and law can and have been rejected on both narrow legal technicalities and virtually unbounded speculation. My strong opinions on the Tarapur case and the outright rejection of the clear congressional intent for continued exports to India under phase I safeguards was documented in my testimony before the Foreign Relations Committee on May 24, 1978 in the hearing on that case. For instance, I am convinced that the recognition of the People's Republic of China as the sole legal authority for Taiwan, as well as the mainland, and the arguable U.S. position that the People's Republic of China eventually and ultimately will be constituted as de facto, as well as de jure governmental authority on Taiwan, could and probably would be argued as the basis for rejection of the required findings for the pending reactor and fuel licenses. Also, the legal arrangements under the bill for the American Institute on Taiwan and its nongovernmental, corporate counterpart in Taiwan probably would be argued as not satisfying the exact requirements for the specific findings of fact and law. Additionally, there are a series of sensitive matters related to our formal cooperation with Taiwan dealing with exports and nonproliferation that must be covered fully under the reported bill, but which also could be jeopardized in the Nuclear Regulatory Commission in the absence of further clarification and perfection of the bill. I have taken the liberty of sharing these views with several senior administration officials in the nuclear power area, and they share my conclusions and very serious concern about continued, uninterrupted cooperation with Taiwan.

It obviously would be extremely unfortunate if Congress enacted a statute which generally purports to preserve all of our ongoing commercial, cultural and other relationships with Taiwan, but was immediately followed by an effective legal embargo on nuclear exports. We already have experienced that same unfortunate result with India after passage of the Nuclear Nonproliferation Act last year, and we also had an extended legal embargo of our European allies in EURATOM, under the act. Recognizing the critical and immediate importance of this matter, and its extreme sensitivity, I am convinced that we must act to insure that the enacted bill directly preserves, as a matter of clearly predictable law, our nuclear cooperation with Taiwan. As I mentioned, I have concluded that an amendment will be appropriate and probably necessary to achieve that goal.

Mr. President, once I concluded that action was appropriate on this issue, I approached last week the chairman of the Foreign Relations Committee, my colleague from Idaho, with my conclusions and recommendations. We have proceeded over the last week to work closely and cooperatively together on this issue, with the State Department and our respective staffs to develop a mutually-agreeable approach to resolving the issue. The pending amendment is the product of our cooperative efforts. I thank him, his committee staff, and the State Department for their assistance and cooperation in fashioning the required clarification and perfection of the bill on this issue.

Let me turn now to the details of the amendment. The effect of the amendment will be to state expressly in the statute that this act is intended to and shall be construed in any administrative or judicial proceeding as providing the full legal basis, in terms of the continuing legal relationships betweeen the United States and the people on Taiwan, to satisfy all statutory requirements and criteria for nuclear exports under the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978, and thereby insure the continued legal basis for full, uninterrupted cooperation in the peaceful uses of atomic energy between the United States and the people on Taiwan pursuant to the 1972 Agreement for Cooperation, as amended, and any other applicable agreements, notwithstanding: First. The President's action in extending diplomatic recognition to the People's

Republic of China, the President's action in withdrawing diplomatic recognition from the Republic of China, and attendant circumstances; nor, second, the operation of any specific provisions of this Act, such as those dealing with the American Institute on Taiwan or its counterpart instrumentality representing the people on Taiwan. That effect is achieved by stating affirmatively that the facts of the People's Republic of China recognition and the derecognition of the Republic of China, and attendant facts shall be legally irrelevant in any proceeding dealing with nuclear exports and other forms of cooperation under the Atomic Energy Act and the Nuclear Nonproliferation Act, and also that the procedures under S. 245 for continued cooperation with Taiwan through the American Institute on Taiwan and its counterpart instrumentality shall satisfy the procedural requirements of those acts.

The Amendment also states that nothing in S. 245 on the facts of the status changes for the People's Republic of China or the Republic of China can be used as a legal basis to deny an export license application, revoke an existing license, or disapprove other authorized forms of cooperation. These parallel affirmative and negative formulations in the Amendment will leave no room for the types of interpretation suggested in the Nuclear Regulatory Commission's General Counsel's Memorandum of January 30, 1979 or his letter of February 15, 1979. Also, this formulation should foreclose as a matter of law the type of creative misinterpretation which formed the basis for the opinion of Commissioners Bradford and Galinsky in the Tarapur case last year.

Several additional matters are relevant at this point. This Amendment and the related provisions of the bill will insure full, continued cooperation with Taiwan. That cooperation legally can include government-to-government transfers under section 54, 64, and 111 of the Atomic Energy Act (section 301 of the Nuclear Nonproliferation Act), technology transfers under section 57B (section 302 of the Nuclear Nonproliferation Act), subsequent arrangements under section 131 (section 303 of the Nuclear Nonproliferation Act), export licensing under sections 126, 127, 128, 129, 130, and 109 (sections 304 through 309 of the Nuclear Nonproliferation Act), and other authorized forms of cooperation under the provisions of the Atomic Energy Act and the Nuclear Nonproliferation Act.

All of these specific forms of cooperation shall continue through and by the American Institute on Taiwan and the counterpart instrumentality on Taiwan. The legally-satisfactory, specific procedures for that cooperation, pursaunt to this amendment and the other provisions of this bill, will be in the following form:

SUMMARY OF NUCLEAR EXPORT PROCEDURES APPLICABLE TO THE PEOPLE ON TAIWAN UNDER S. 245

Section 101 (a) provides that whenever any law, regulation, or order the U.S. refers or relates to a foreign "nation", or uses another such similar term, such term shall include, and such law, regulation or order shall apply with respect to, the People on Taiwan. In this regard the Foreign Relations Committee report on the Act (Report No. 96-7, 96th Congress, 1st session) indicates that Section 101 (a) continues the eligibility of the people on Taiwan under the Atomic Energy Act of 1954.

The Atomic Energy Act of 1954, as most recently amended by the Nuclear Non-Proliferation Act of 1978 (NNPA), contains numerous provisions relating to nuclear cooperation with foreign "nations". For example, Section 123 of the Atomic Energy Act, as amended, requires an agreement for cooperation with a "nation" before certain specified cooperation may be undertaken. Section 127 establishes criteria that must be met by nations for nuclear export. Such provisions, under Section 101 (a) of the Taiwan Enabling Act (TEA), would be applicable to the people on Taiwan.

Section 104 of the proposed TEA confirms that all treaties and other international agreements entered into between the U.S. and the government recognized as the Republic of China prior to January 1, 1979, and in force until December 31, 1978, shall continue in force unless and until terminated in accordance with law. In accordance with this provision, the agreement for cooperation with Taiwan and any other applicable international agreements in the nuclear field continue in force. Under Section 123 of the Atomic Energy Act, as amended, agreements for cooperation are prerequisite for certain nuclear cooperation. Section 405(a) of the NNPA of 1978 confirms the authority to continue coperation under agreements entered into prior to enactment of that Act. Section 104 of S. 245 makes clear this applies in the case of Taiwan.

Section 105 of the proposed TEA provides for the continuance of programs, transactions and other relations with respect to the people on Taiwan in accordance with applicable laws in the U.S. The Foreign Relations Committee report makes clear that this will assure continuation of authority for nuclear exports. Thus, this provision reconfirms that nuclear programs, transaction and relations with Taiwan may continue in accordance with law.

Section 106 (a) of the proposed TEA provides that programs, transactions, and other relations shall, in the manner and to the extent directed by the President be carried out or through the American Institute in Taiwan (AIT). In connection with this provision, it is anticipated that the President will direct that nuclear programs, transactions and other relations be carried out by or through the AIT.

Section 108 of the TEA empowers the AIT, in the manner and to the extent directed by the President, to enter into, perform, enforce, or have in force agreements or arrangements relative to the people on Taiwan. In connection with this provision, it is anticipated that the President will direct that agreements or arrangements in the nuclear field be entered into, performed, enforced or considered to be in force by all through the AIT. Thus, pursuant to this section (and to Section 405 (a) of the NNPA, mentioned above), the current nuclear cooperation agreement with Taiwan remains in force and valid authority for exports thereunder. Further, Section 404 (a) of the NNPA requires the President to seek to renegotiate such agreements. Section 108 of S. 245 makes clear that the AIT may conduct such renegotiation. Further the AIT will be able to perform, on behalf of the U.S. or any Department or Agency or enforce agreements or other arrangements relative to the people of Taiwan.

Section 109 of the proposed TEA provides that any performance, communication, assurance, undertaking or other action on behalf of the people on Taiwan shall be rendered, in the manner and to the extent directed by the President, through an instrumentality established by the people on Taiwan. In connection with this Section, it is noted that Taiwan has announced the establishment of the Coordination Council for North American Affairs (CCNAA) to act as this instrumentality. It is anticipated that the President will direct that performance, communication, assurances, undertakings and other actions in the nuclear area be rendered or provided to or received or accepted from the CCNAA. Proposed Section 109 authorizes this to be done on behalf of the U.S. or any department or agency. Thus, assurance that a proposed export is subject to the U.S.-Taiwan Agreement for Cooperation may be provided by and received from the CCNAA. Further, any clarification or assurance required during the process of export license applications would be obtained from the CCNAA.

Section 401(c) of the proposed TEA indicates that agreements and transactions made by or through the Institute shall be subject to the same congressional notification, review and approval requirements and procedure as if such agreements are made by or through the Department or Agency of the U.S. on behalf of which the Institute is acting. The Senate Foreign Relations Committee report indicates that this provision insures that procedures parallel to currently applicable procedures for agreements for cooperation under Section 123 of the Atomic Energy Act will apply.

Within this framework, the same procedures established by the NNPA, the Nuclear Regulatory Commission's regulations contained in 10 CFR Part 110, and the Executive branch procedures published at 43 Federal Register 25326-30 will apply. These procedures are described in Chapter IX of the First Annual Report of the President to the Congress pursuant to Section 601 of the NNPA.

The procedural variance in the application of the procedures is that we envisage that the CCNAA will act, in all respects, on behalf of the people on Taiwan in the export process. To the extent that the USG must deal with, seek assurances from, or receive assurances from the CCNAA, the USG will act through the AIT.

Thus, the export licensing process for source or special nuclear material or production or utilization facilities would be as follows:

The process is initiated when the U.S. company that is either the shipper of the source or special nuclear material or the exporter of the production or utilization facility submits an application for an export license to the NRC. The Commission then requests the Executive branch analysis and judgment provided for in Section 126 of the Atomic Energy Act, as amended.

In preparing this judgment, the Executive branch would seek, in accordance with Section 1 (c) of Part B of the Executive Branch Procedures, confirmation that the export would be subject to the terms and conditions of the U.S.-Taiwan Agreement for Cooperation, that the consignee is authorized to receive the export, and that adequate physical security measures will be maintained. Since it is the task of the Department of Energy to obtain this confirmation, the Department of Energy would submit the request to the AIT which would transmit it to the CCNAA. The confirmation of the CCNAA on behalf of the people of Taiwan would be transmitted back to the Department of Energy by the AIT and would in all respects satisfy the requirements of law.

The Executive branch judgment and analysis would deal with the criteria specified by law and would, in addition, transmit to the NRC this confirmation.

When the NRC receives the Executive branch judgment and analysis, the export license application would, in all respects, be treated as any other similar application. If during the course of either NRC or Executive

branch consideration of an export license application concerning Taiwan there arose a need to seek further assurances or obtain further information, the request would be transmitted by the Department of State through the AIT to the CCNAA, which would provide the necessary assurances or information.

The procedure that I have outlined here is the complete and adequate basis for the Nuclear Regulatory Commission to make all the findings with regard to the continuation of the Agreement for Cooperation under section 123, including section 126a(2) and section 53a and section 103d requirements of the Atomic Energy Act of 1954, as amended, along with other relevant sections of that act. Therefore, it is clear to me that the full intent of the Senate in adopting this amendment is to insure that the 1972 Agreement for Cooperation with Taiwan, as amended, has been and remains fully in force. Furthermore, the Tri-Lateral Agreement between the United States, the IAEA, and the Taiwan authorities is fully preserved by this amendment and the act and remains fully in force.

On the basis of the content of the Taiwan Enabling Act, it is my belief and clear understanding that the Nuclear Regulatory Commission can make all of the necessary findings without the required amendment to the Nuclear Regulatory Commission regulations once the President has used his authority under the act to direct the appropriate procedure.

The continued approval of exports to the people of Taiwan is not dependent upon the continuation of the IAEA Tri-Lateral Agreement for Cooperation with the United States and Taiwan because the safeguards necessary to satisfy Criterion 1 of section 128 of the Atomic Energy Act of 1954, as amended, can be met under the Bi-Lateral Agreement for Cooperation between the United States and Taiwan. This is so because Criterion 1 in the statute only requires that the IAEA safeguards or their equivalent must be maintained. Fully equivalent safeguards may be provided by and carried out under the control of the American Institute on Taiwan with Nuclear Regulatory Commission or Department of Energy personnel for satisfying the requirements of the Nuclear Regulatory Commission. This approach should be wholly adequate to maintain adequate safeguards over U.S. exports and technology in the unlikely event that the IAEA Tri-Lateral Agreement is suspended.

In case there is any doubt, it is my belief and intent that the amendment makes it clear that physical security inspections pursuant to IAEA procedures and required by Criterion III of section 127 of the Atomic Energy Act of 1954, as amended, can be met through assurances and inspections provided by the American Institute on Taiwan and that the Nuclear Regulatory Commission should find those assurances and inspections by the American Institute on Taiwan to be acceptable for meeting the requirements of the Atomic Energy Act of 1954, as amended.

I have also considered the requirement for the Nuclear Regulatory Commission to find that an export is not inimicable to the common defense and security of the United States in approving exports, and I have, in drafting the amendment, clearly intended to address that issue. It is my intent that the Nuclear Regulatory Commission shall not consider that extension of recognition of the People's Republic of China or the absence of diplomatic relations between the people on Taiwan and the United States as cause for establishing any differences in circumstances per se for its findings on the issue of inimicality to the common defense and security of the United States with regard to nuclear exports to the people on Taiwan.

It is also my intent by offering this amendment that the scope of the amendment not only apply to export licenses and applications, but also any other authorized form of cooperation with the people on Taiwan in the peaceful uses of atomic energy pursuant to both the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978. For instance, the amendment contemplates that there will be no change in law or circumstance with regard to processing applications for government-to-government transfer, technology transfers and subsequent arrangements among others.

● Mr. STONE. Mr. President, I respectfully request to join as a cosponsor of the amendment offered by the distinguished Senator from Idaho. This amendment makes absolutely clear that the ending of formal, diplomatic relations between the United States and the Republic of China and the enactment of pending legislation shall not, in any way, interfere with the present procedures, agreements, or arrangements in the future between the United States and the Republic of China with respect to cooperation in the peaceful uses of atomic energy pursuant to the Atomic Energy Act of 1954.

Mr. President, while S. 245 and the committee report, as reported by the Senate Foreign Relations Committee make clear that the Republic of China will constitute a "nation" under the Atomic Energy Act of 1954 and would be eligible for continued full cooperation under that act, S. 245 establishes such an unusual and unprecedented framework for the relationship between our country and another country; namely, the Republic of China, that I think this amendment is necessary to remove any ambiguity as to the intention of Congress that the Nuclear Regulatory Commission proceed as usual in considering present and future nuclear export arrangements between the United States and the Republic of China and that neither the President's action in recognizing the People's Republic of China nor the absence of diplomatic relations between the Republic of China and the United States shall be legally relevant in any proceedings or procedures pursuant to the Atomic Energy Act.

Mr. President, my concern about this matter is evidenced by a letter which I wrote to the Chairman of the Nuclear Regulatory Commission, to which I have not yet received a reply. I ask that the text of my letter be printed at this point in the RECORD.

The letter follows:

FEBRUARY 14, 1979.

Chairman JOSEPH HENDRIE,
U.S. Nuclear Regulatory Commission, Washington, D.C.

DEAR CHAIRMAN HENDRIE: The Senate Foreign Relations Committee is soon to markup the Administration's proposed legislation under which commercial relations with the Republic of China are to be continued. This draft legislation in Title I is designed to implement the President's stated intent that all existing commercial relations are to be continued. However, in view of the importance of American nuclear exports to the Taiwan economy and to our nuclear industry, I should like to receive the specific assurance of the Commission that under this proposal nuclear export licensing will continue in accordance with the existing Agreement for Cooperation between the United States and the Republic of China on Taiwan, and that the U.S. commitment to the reliable supply of nuclear goods and services under this Agreement is promptly reaffirmed. For this reason, I am soliciting your early agreement to the following:

That Taiwan, or that the People of Taiwan, meet the criteria and standards required for nuclear cooperation under the Nuclear Non-Proliferation Act of 1978;

That the Nuclear Regulatory Commission will be able to resume nuclear export licensing under the existing Agreement immediately following passage of the Administration's enabling legislation;

That the Commission does not foresee any legal problems under the Atomic Energy Act that may require a legislative solution to permit continued nuclear cooperation with the People of Taiwan.

Your early response to these inquiries will be greatly appreciated.

Most cordially,

RICHARD (DICK) STONE.●

Mr. McCLURE. Mr. President, will the floor manager of the bill, the chairman of the committee, agree with me that the provisions of S. 245 before the Senate are intended to continue the full cooperation in the peaceful uses of atomic energy, pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978, which existed before January 1, 1979?

Mr. CHURCH. I agree completely that the provisions of the bill are intended to achieve that result, and I would invite the attention of my colleague to the following passages in the Foreign Relations Committee report on the bill. In the discussion of subsection 101(a), on page 23 of the report, it is expressly stated that the people on Taiwan will constitute a "nation" under the Atomic Energy Act of 1954, thus continuing the eligibility of the people on Taiwan for full cooperation under that act, and, as a result, the Nuclear Nonproliferation Act. The discussion of section 105, on page 25, makes specific reference to the assured continuation of authority for nuclear exports.

The discussion of section 109, on page 27, discusses as an example how the Arms Export Control Act is intended to operate, under the provisions of this bill, through the American Institute on Taiwan and the counterpart instrumentality established by the people on Taiwan. The procedures for the Arms Export Control Act would be analogous to those for the Nuclear Nonproliferation Act, and would

be intended to satisfy the requirements of the latter act. Also, the discussion of subsection 401(c), on page 39, expressly states that the procedures of section 123 of the Atomic Energy Act, which was amended by the Nuclear Nonproliferation Act, for review and approval of agreements for cooperation in the peaceful uses of atomic energy shall continue to apply to such agreements with the people on Taiwan by or through the American Institute on Taiwan. In summary, it is the committee's clear intent that the provisions of the bill apply directly to the cooperation with the people on Taiwan in the peaceful uses of atomic energy and assure the predictable continuation of that cooperation.

Mr. McCLURE. The House Foreign Affairs Committee report on the companion legislation, H.R. 2479, on page 10, indicates that—

> The bill does not affect the future resolution of legal issues based on changed circumstances; it simply makes the fact of derecognition irrelevant to the resolution of those issues. For example, under this section, the Nuclear Regulatory Commission will be able to make the required findings and determinations under the Atomic Energy Act of 1954, as amended, in order to permit continued nuclear exports to Taiwan, and derecognition will not constitute a basis for not making those findings and determinations. At the same time, nothing in this bill will prevent the Commission from taking into account subsequent changes in circumstances in its application of the statutory criteria.

Also, the House report on page 8 states that—

> In other words, derecognition is to be legally irrelevant in deciding issues involving Taiwan under United States law. In particular, this section preserves the rights and obligations of Taiwan under United States law.

Is it correct to say that the intent of the Foreign Relations Committee and the provisions of S. 245 are consistent with that expressed House Committee position.

Mr. CHURCH. Yes; the committee intends that the provisions of S. 245 will lead to the same result in that regard, as the expressed House committee position. In effect, the operation of this bill is intended to satisfy fully the procedural requirements of the Atomic Energy Act and the Nuclear Nonproliferation Act, and further, the facts of the President's action in recognizing the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States or the lack of recognition by the United States, and the attendant circumstances thereto will be legally irrelevant in any administrative or judicial proceeding dealing with nuclear export license applications or other authorized forms of cooperation in the peaceful uses of atomic energy with the people on Taiwan. So, this bill and our intent are consistent with the House companion bill and the House committee position in this regard.

Mr. McCLURE. With regard to the specific, step-by-step procedures for nuclear exports and other authorized forms of cooperation in atomic energy, would you agree that the provisions of this bill provde all of the necessary authority to continue those exports and other authorized forms, and further that those procedures under the provisions of this bill are intended to satisfy the requirements of the Atomic Energy Act and the Nuclear Nonproliferation Act?

Mr. CHURCH. Yes; S. 245 clearly provides the authorities necessary for the U.S. Government and the people on Taiwan to continue procedurally that cooperation, including nuclear exports and other authorized forms, by and through the American Institute on Taiwan and the counterpart instrumentality established by the people on Taiwan. Further, it is the clear intent of the bill that those procedures by and through the Institute and the counterpart instrumentality shall satisfy any procedural requirements of the Atomic Energy Act or the Nuclear Nonproliferation Act for such cooperation, as mentioned earlier. Procedurally, this is how it would be done.

SUMMARY OF NUCLEAR EXPORT PROCEDURES APPLICABLE TO THE PEOPLE ON TAIWAN UNDER S. 245

Section 101(a) provides that whenever any law, regulation, or order the United States refers or relates to a foreign "nation," or uses another such similar term, such term shall include, and such law, regulation or order shall apply with respect to, the people on Taiwan. In this regard the Foreign Relations Committee report on the Act (Report No. 96-7, 96th Congress, 1st session) indicates that section 101(a) continues the eligibility of the people on Taiwan under the Atomic Energy Act of 1954.

The Atomic Energy Act of 1954, as most recently amended by the Nuclear Nonproliferation Act of 1978 (NNPA), contains numerous provisions relating to nuclear cooperation with foreign "nations." For example, section 123 of the Atomic Energy Act, as amended, requires an agreement for cooperation with a "nation" before certain specified cooperation may be undertaken. Section 127 establishes criteria that must be met by nations for nuclear export. Such provisions, under section 101(a) of the Taiwan Enabling Act (TEA), would be applicable to the people on Taiwan.

Section 104 of the proposed TEA confirms that all treaties and other international agreements entered into between the United States and the government recognized as the Republic of China prior to January 1, 1979, and in force until December 31, 1978, shall continue in force unless and until terminated in accordance with law. In accordance with this provision, the agreement for cooperation with Taiwan and any other applicable international agreements in the nuclear field continue in force. Under section 123 of the Atomic Energy Act, as amended, agreements for cooperation are prerequisite for certain nuclear cooperation. Section 405(a) of the NNPA of 1978 confirms the authority to continue cooperation under agreements entered into prior to enactment of that act. Section 104 of S. 245 makes clear this applies in the case of Taiwan.

Section 105 of the proposed TEA provides for the continuance of programs, transactions and other relations with respect to the people on Taiwan in accordance with applicable laws in the United States. The Foreign Relations Committee report makes clear that this will assure continuation of authority for nuclear exports. Thus, this provision reconfirms that nuclear programs, transactions, and relations with Taiwan may continue in accordance with law.

Section 106(a) of the proposed TEA provides that programs, transactions, and other relations shall, in the manner and to the extent directed by the President be carried out or through the American Institute in Taiwan (AIT). In connection with this provision, it is anticipated that the President will direct that nuclear programs, transactions, and other relations be carried out by or through the AIT.

Section 108 of the TEA empowers the AIT, in the manner and to the extent directed by the President, to enter into, perform, enforce, or have in force agreements or arrangements relative to the people on Taiwan. In connection with this provision, it is anticipated that the President will direct that agreements or arrangements in the nuclear field be entered into, performed, enforced, or considered to be in force by all through the AIT. Thus, pursuant to this section (and to section 405(a) of the NNPA, mentioned above), the current nuclear cooperation agreement with Taiwan remains in force and valid authority for exports thereunder. Further, section 404(a) of the NNPA requires the President to seek to renegotiate such agreements. Section 108 of S. 245 makes clear that the AIT may conduct such renegotiation. Further the AIT will be able to perform, on behalf of the United States or any department or agency or enforce agreements or other arrangements relative to the people on Taiwan.

Section 109 of the proposed TEA provides that any performance, communication assurance, undertaking or other action on behalf of the people on Taiwan shall be rendered, in the manner and to the extent directed by the President, through an instrumentality established by the people on Taiwan. In connection with this section, it is noted that Taiwan has announced the establishment of the Coordination Council for North American Affairs (CCNAA) to act as this instrumentality. It is anticipated that the President will direct that performance, communication, assurances, undertakings, and other actions in the nuclear area be rendered or provided to or received or accepted from the CCNAA. Proposed section 109 authorizes this to be done on behalf of the United States or any department or agency. Thus, assurance that a proposed export is subject to the United States-Taiwan Agreement for Cooperation may be provided by and received from the CCNAA. Further, any clarification or assurance required during the process of export license applications would be obtained from the CCNAA.

Section 401(c) of the proposed TEA indicates that agreements and transactions made by or through the Institute shall be subject to the same congres-

sional notification, review and approval requirements and procedure as if such agreements are made by or through the department or agency of the United States on behalf of which the Institute is acting. The Senate Foreign Relations Committee report indicates that this provision insures that procedures parallel to currently applicable procedures for agreements for cooperation under section 123 of the Atomic Energy Act will apply.

Within this framework, the same procedures established by the NNPA, the Nuclear Regulatory Commission's regulations contained in 10 CFR part 110, and the executive branch procedures published at 43 Federal Register 25326–30 will apply. These procedures are described in chapter IX of the First Annual Report of the President to the Congress pursuant to section 601 of the NNPA.

The procedural variance in the application of the procedures is that we envisage that the CCNAA will act, in all respects, on behalf of the people on Taiwan in the export process. To the extent that the USG must deal with, seek assurances from, or receive assurances from the CCNAA, the USG will act through the AIT.

Thus, the export licensing process for source or special nuclear material or production or utilization facilities would be as follows:

The process is initiated when the U.S. company that is either the shipper of the source or special nuclear material or the exporter of the production or utilization facility submits an application for an export license to the NRC. The Commission then requests the executive branch analysis and judgment provided for in section 126 of the Atomic Energy Act, as amended.

In preparing this judgment, the executive branch would seek, in accordance with section 1(c) of part B of the executive branch procedures, confirmation that the export would be subject to the terms and conditions of the United States-Taiwan Agreement for Cooperation, that the consignee is authorized to receive the export, and that adequate physical security measures will be maintained. Since it is the task of the Department of Energy to obtain this confirmation, the Department of Energy would submit the request to the AIT which would transmit it to the CCNAA. The confirmation of the CCNAA on behalf of the people on Taiwan would be transmitted back to the Department of Energy by the AIT and would in all respects satisfy the requirements of law.

The executive branch judgment and analysis would deal with the criteria specified by law and would, in addition, transmit to the NRC this confirmation.

When the NRC receives the executive branch judgment and analysis, the export license application would, in all respects, be treated as any other similar application. If during the course of either NRC or executive branch consideration of an export license application concerning Taiwan there arose a need to seek further assurances or obtain further information, the request would be transmitted by the Department of State through the AIT to the CCNAA, which would provide the necessary assurances or information.

At this point in the RECORD, I ask unanimous consent to include a letter from the Department of State confirming the administration's intent to proceed in the manner I have outlined. Again, these procedures are intended, as a matter of law, to satisfy all of the Atomic Energy Act and the Nuclear Nonproliferation Act procedural requirements for continued cooperation.

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

DEPARTMENT OF STATE,
Washington, D.C., March 8, 1979.

Hon. FRANK CHURCH,
Chairman, Foreign Relations Committee, U. S. Senate.

DEAR MR. CHAIRMAN:

This letter is in response to your request for a description of how the Administration expects the proposed Taiwan Enabling Act, S. 245, to be implemented with respect to the processing of nuclear exports. The Department has prepared the enclosed summary document to clarify this matter.

I believe this explanation shows that, under the pending bill, the absence of diplomatic relations will be irrelevant to continued nuclear exports to Taiwan. Apart from the involvement of the American Institute in Taiwan and the Coordination Council for North American Affairs in the procedures, nuclear exports will proceed on the same basis as prior to U.S. normalization of relations with the People's Republic of China.

I hope the enclosed explanation will be helpful to the Senate in its consideration of the proposed legislation.

Sincerely,

DOUGLAS J. BENNET,
Assistant Secretary for Congressional Relations.

SUMMARY OF NUCLEAR EXPORT PROCEDURES APPLICABLE TO THE PEOPLE ON TAIWAN UNDER S. 245

Under the U.S. Atomic Energy Act of 1954, as most recently amended by the Nuclear Non-Proliferation Act of 1978 (NNPA), an "agreement for cooperation" is a prerequisite for the export of nuclear reactors and fuel. Such agreements are concluded in accordance with a procedure established by section 123 of the Atomic Energy Act. Actual exports of reactors and fuel pursuant to such agreements are licensed by the Nuclear Regulatory Commission, after it has received the judgment of the Executive branch on whether the license should be issued. This licensing is done in accordance with substantive export licensing criteria established by law and under procedures established by law, regulations, and Executive branch department and agency procedures.

The United States entered into a nuclear cooperation agreement with the Republic of China in 1955. This agreement, as amended, was superseded by an agreement that entered into force in 1972 and was amended in 1974. Exports of nuclear reactors and fuel have been licensed under these agreements.

With respect to the authority for continued nuclear exports to Taiwan, section 101(a) of the proposed Taiwan Enabling Act S. 245, provides that whenever any law, regulation, or order the U.S. refers or relates to a foreign "nation", or uses another such similar term, such term shall include, and such law, regulation or order shall apply with respect to, the people on Taiwan. In this regard, the Foreign Relations Committee report (Report No. 96–7, 96th Congress, 1st session) indicates that section 101(a) continues the eligibility of the people on Taiwan under the Atomic Energy Act.

Section 104 of S. 245 confirms that all treaties and other international agreements entered into between the U.S. and the government recognized as the Republic of China prior to January 1, 1979, and in force until December 31, 1978, shall continue in force unless and until terminated in accordance with law.

Section 105 of S. 245 provides for the continuance of programs, transactions and other relations with respect to the people on Taiwan in accordance with applicable laws in the U.S. The Foreign Relations Committee report makes clear that this will assure continuation of authority for nuclear exports.

Section 106(a) of S. 245 provides that U.S. Government programs, transactions and other relations with respect to the people on Taiwan shall, in the manner and to the extent directed by the President be carried out by or through the American Institute in Taiwan (AIT).

Section 108 of S. 245 empowers the AIT, in the manner and to the extent directed by the President, to enter into, perform, enforce, or have in force agreements or arrangements relative to the people on Taiwan.

Section 109 of S. 245 provides that any performance, communication, assurance, undertaking or other action on behalf of the people on Taiwan shall be rendered, in the manner and to the extent directed by the President, through an instrumentality established by the people on Taiwan.

The Presidential directives under sections 106, 108 and 109, since provided for by statute, will have the force of law and be binding on all persons and government agencies.

Section 401 (c) of S. 245 indicates that agreements and transactions made by or through the Institute shall be subject to the same congressional notification, review and approval requirements and procedure as if such agreements are made by or through the Department or Agency of the U.S. on behalf of which the Institute is acting. The Senate Foreign Relations Committee report indicates that this provision insures that procedures parallel to currently applicable procedures for agreements for cooperation under section 123 of the Atomic Energy Act will apply.

The Atomic Energy Act contains numerous provisions relating to nuclear cooperation with foreign "nations". For example, section 123 of the Atomic Energy Act requires an agreement for cooperation with a "nation" before certain specified cooperation may be undertaken. Section 127 establishes criteria that must be met by nations for nuclear export. Such provisions, under section 101 (a) of S. 245, wolud be applicable to the people on Taiwan.

In accordance with section 104 of S. 245, and with the stated concurrence of the authorities on Taiwan, the agreement for cooperation with Taiwan and any other applicable international agreements in the nuclear field continue in force. Section 405 (a) of the NNPA confirms the authority to continue cooperation under agreement entered into prior to enactment of that Act. Section 104 of S. 245 makes clear this applies in the case of Taiwan.

Section 105 of S. 245 reconfirms that nuclear programs, transaction and relations with Taiwan may continue in accordance with law.

Under section 106(a) of S. 245, it is anticipated that the President will direct that these nuclear programs, transactions and other relations be carried out by or through the AIT. Transactions by private U.S. firms in nuclear matters would, of course, continue on a direct basic without AIT involvement.

It is further anticipated that the President will, in connection with section 108 of

S. 245, direct that agreements or arrangements in the nuclear field be entered into, performed, enforced or considered to be in force by or through the AIT. Thus, pursuant to this section (and to section 405 (a) of the NNPA, mentioned above), the current nuclear cooperation agreement with Taiwan remains in force and valid authority for exports thereunder. Further, section 404 (a) of the NNPA requires the President to seek to renegotiate such agreements. Section 108 of S. 245 makes clear that the AIT may enter into such an agreement. Further the AIT will be able to perform, on behalf of the U.S. or any department or agency or enforce agreements or other arrangements relative to the people on Taiwan.

Taiwan has announced the establishment of the Coordination Council for North American Affairs (CCNAA) to act as its instrumentality for unofficial dealings on behalf of the people on Taiwan. It is anticipated that the President will, in connection with section 109 of S. 245, direct that performance, communication, assurances, undertakings and other actions in the nuclear area be rendered or provided to or received or accepted from the CCNAA. Proposed section 109 authorizes this to be done on behalf of the U.S. or any department or agency. Thus, assurance that a proposed export is subject to the U.S.-Taiwan Agreement for Cooperation may be provided by and received from the CCNAA. Further, any clarification or assurance required during the process of export license applications would be obtained from the CCNAA.

Within this framework, the same procedure is established by the NNPA, the Nuclear Regulatory Commission's regulations contained in 10 CFR Part 110, and the Executive Branch Procedures published at 43 Federal Register 25326-30 will apply. These procedures are described in Chapter IX of the First Annual Report of the President to the Congress pursuant to section 601 of the NNPA.

The significant variance in the application of the regulations and procedures is that we envisage that the CCNAA will act, in all respects, on behalf of the people on Taiwan in the export process. To the extent that the United States Government must deal with, seek assurances from, or receive assurances from the CCNAA, the United States Government will act through the AIT.

Thus, the export licensing process for source or special nuclear material or production or utilization facilities would be as follows.

The process is initiated when a company that is either arranging for the transport of the source or special nuclear material or is the supplier of the production or utilization facility submits an application for an export license to the NRC. The Commission then requests the Executive branch analysis and judgment provided for in section 126 of the Atomic Energy Act.

In preparing this judgment, the Executive branch would seek, in accordance with section 1 (c) of Part B of the Executive Branch Procedures, confirmation that the export would be subject to the terms and conditions of the U.S.-Taiwan Agreement for Cooperation, that the consignee is authorized to receive the export, and that adequate physical security measures will be maintained. Since it is the task of the Department of Eenrgy to obtain this confirmation, the Department of Energy would submit the request to the AIT which would transmit it to the CCNAA. The confirmation of the CCNAA on behalf of the people on Taiwan would be transmitted back to the Department of Energy by the AIT and would in all respects satisfy the requirements of law.

The Executive branch judgment and analysis would deal with the criteria specified by law and would, in addition, transmit to the NRC this confirmation.

When the NRC receives the Executive branch judgment and analysis, the export license application would, in all respects, be treated as any other similar application. If during the course of either NRC or Executive branch consideration of an export license application concerning Taiwan there arose a need to seek further assurances or obtain further information, the request would be transmitted by the Department of State through the AIT to the CNAA, which would provide the necesary assurances or information.

Mr. McCLURE. A memorandum of January 30, 1979, to the Commissioners of the Nuclear Regulatory Commission from the Commission's General Counsel, Subject: Legal Issues Arising from the United States' New China Policy, raises a series of questions about continued nuclear exports to Taiwan resulting from the January 1, 1979, change in status, including the issue of the legal definition of "nation" in the Atomic Energy Act, the status of the 1972 Agreement for Cooperation, the status of assurances and commitments, the legal import of the People's Republic of China recognition, and other issues. Would you agree that S. 245 addresses and disposes of all of those legal issues, so that cooperation in the peaceful uses of atomic energy, including nuclear exports, can continue, without any legal impediments, as before?

Mr. CHURCH. Yes. S. 245 addresses and dispenses directly of those issues in the January 30 memorandum to insure that there is full legal authority to continue that cooperation, including nuclear exports, and it is our specific intent that the authority shall be used so that continued cooperation will result.

Mr. McCLURE. A letter of February 15, 1979, to Chairman ZABLOCKI of the House Foreign Affairs Committee from the Nuclear Regulatory Commission's General Counsel responded to a series of questions from the chairman on the issue of continued cooperation, including nuclear exports. The letter raised some additional issues regarding the legal import of the status of the people on Taiwan for nuclear export statutory criteria, the legal authority of the American Institute on Taiwan and its counterpart instrumentality, under the Atomic Energy Act and the Nuclear Nonproliferation Act, to procedurally continue cooperation, including nuclear exports, the authority of the President to establish the specific procedures, and other issues. Does S. 245 address and dispose of all the legal issues raised in the February 15, 1979, letter, so that cooperation can continue without any legal impediments, as before?

Mr. CHURCH. Yes. S. 245 addresses and disposes directly of all those issues in the February 15 letter to insure that there is full legal authority to continue that cooperation, including nuclear exports, and it is our specific intent that the authority shall be used so that continued cooperation will result.

Mr. McCLURE. Would you agree, then, that the pending amendment will clarify fully, as a matter of law in the statute, the clear intent of the Congress that all of the aforementioned legal and procedural questions are resolved in the bill and that this bill shall authorize and assure continued cooperation, including nuclear exports?

Mr. CHURCH. I agree completely with your statement of the effect of the amendment and the intent of the Congress in enacting it in this bill.

Mr. McCLURE. It is my intent by offering this amendment that the scope of the amendment not only apply to export licenses and applications, but also technology transfers, subsequent arrangements and any other authorized form of cooperation with the people on Taiwan in the peaceful uses of atomic energy pursuant to both the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act of 1978. Is that also your intent in agreeing to accept this amendment?

Mr. CHURCH. Yes; the intent is not to limit the scope of the amendment in a legal sense to only export licenses and applications.

Mr. President, I find this amendment acceptable, and I believe that it clarifies the matter of real importance to the United States in the field of implementing our nuclear policy.

I commend the Senator for offering the amendment.

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

Mr. JAVITS. Mr. President, the amendment is acceptable to me, and I am grateful for the explanation about the detail of what the Senator from Idaho intends.

I thank my colleague.

Mr. CHURCH. I thank the Senator from New York.

Mr. McCLURE. I thank the Senator from New York.

Mr. CHURCH. Mr. President, with the support of the ranking minority member, I again move the adoption of the amendment.

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

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

TAIWAN ENABLING ACT AND THE U.S.-ROC MUTUAL DEFENSE TREATY

● Mr. CRANSTON. Mr. President, today we are considering the Taiwan Enabling Act, S. 245. I support that legislation as an essential part of the process of normalization and the establishment of full diplomatic relations with the People's Republic of China while at the same time maintaining our strong commercial, cultural, and other relations with the people on Taiwan on an unofficial, but no less substantive, basis.

One of the essential acts in the process of normalization of relations with the People's Republic of China was the termination of the mutual defense treaty between the Republic of China on Taiwan and the United States.

The President, on behalf of the United States, has given notice of the termination of that treaty effective December 31, 1979. I personally believe that this action of the President was correct and

within his authorized and constitutional powers because article X of the treaty expressly authorizes such termination.

However, the constitutional question of the power of a President to so terminate the mutual defense treaty is the subject of a considerable difference of opinion, including that of two of the most distinguished colleagues in this Senate Chamber. Senator KENNEDY, the distinguished senior Senator from Massachusetts, is of the firm view that President Carter was right in recognizing the People's Republic of China and in giving notice to terminate the mutual defense treaty with Taiwan.

The distinguished senior Senator from Arizona, Senator GOLDWATER, is of the equally firm view that the President does not have the power unilaterally to terminate the mutual defense treaty with the Republic of China, whatever the merits of recognizing the People's Republic of China as the sole legal government of China. Senator GOLDWATER is of the view that the President needs either two-thirds approval of the U.S. Senate or congressional concurrence. This constitutional issue has now been presented by Senator GOLDWATER and some of his colleagues both in the House and Senate to our judicial system for resolution.

Both Senator KENNEDY and Senator GOLDWATER have presented their views in the current issue of the American Bar Association Journal. Senator KENNEDY has written an article supporting his view under the title "Normal Relations with China: Good Law, Good Policy." And Senator GOLDWATER has presented his views immediately following Senator KENNEDY's views in an article entitled "Treaty Termination Is A Shared Power."

Mr. President, I welcome these two articles and their scholarly and succinct presentation of the constitutional questions and public policies involved. I personally believe that Senator KENNEDY's position is the stronger position from the standpoint of constitutional law and history and is the preferable position from the standpoint of the conduct of foreign policy. However, I think it important that each of us consider both sides of this important question.

Mr. President, I ask that the text of the article by the Honorable EDWARD M. KENNEDY and the article by the Honorable BARRY M. GOLDWATER in the February 1979, issue of the American Bar Association Journal be printed in the RECORD.

The articles are as follows:

NORMAL RELATIONS WITH CHINA: GOOD LAW, GOOD POLICY

(By EDWARD M. KENNEDY)

For almost three decades, until the end of 1978, American foreign policy was plagued by an anomaly. Alone among the major nations of the world, the United States had failed to recognize officially a basic fact of international life—that the People's Republic of China effectively governs China's territory and one billion people. But last December 15 President Carter courageously decided to establish diplomatic relations with the People's Republic as of January 1, 1979, and to exchange ambassadors on March 1. He thereby successfully concluded the normalization process begun by President Nixon and Chairman Mao in the 1972 Shanghai communiqué.

At the same time the president notified Peking's rival, the Republic of China on Taiwan, that the United States would terminate diplomatic relations with it. The two competing governments have long held that only one of them can be recognized as the government of China and that Taiwan is a part of China. The president also announced that the United States would give notice on January 1—as it did—of its intention to terminate one year hence the 1954 Mutual Defense Treaty with the government of Taiwan under Article 10 of the treaty.

The United States formerly declared, however, its continued interest in the peaceful resolution of the Taiwan issue and the continuation of commercial, cultural, and other nongovernmental relationships with the people of Taiwan. The Carter administration also provided for Taiwan's future ability to defend itself by making clear that its authorities could continue to purchase selected defensive weapons in the United States.

I welcome and support this decision. It was right in its recognition of the reality of China. It was responsible in its provision for the continuing well-being of the people of Taiwan. It was a well-timed stroke of grand strategy, giving the United States maximum benefit in our triangular relationship with China and the Soviet Union, consolidating the unprecedented process of accommodation among China, Japan, and the United States, and ushering in a new era of cooperation and friendship between the world's most powerful and the world's most populous nations.

In thus establishing a normal and enduring relationship with China, the president enhanced the prospects for peace and prosperity of Taiwan. By changing the form of our relations with the island, the president enhanced their substance and durability. While Peking continues to maintain that Taiwan "is entirely China's internal affair," it has not contradicted the statement that the United States "continues to have an interest in the peaceful resolution of the Taiwan issue and expects that the Taiwan issue will be settled peacefully by the Chinese themselves." In addition, although Premier Hua Kuo-feng registered China's objection to continuing American arms sales to Taiwan, he said that, despite these differing views, "nevertheless the joint communique was reached."

Chinese leaders have often stated their preference for a peaceful resolution of the Taiwan issue, and one can understand why. Peking is preoccupied with the Soviet military threat, and it lacks the military means successfully to invade Taiwan. It is clearly interested in improving its relations with the West, especially the United States and Japan, in order to promote both parallel action to balance Soviet power and cooperative arrangements to modernize its agriculture, industry, technology, and defense. Nothing would more surely jeopardize this vital strategic endeavor than the use of force against Taiwan.

Of course, circumstances may change over time, and it is noteworthy that the United States managed to normalize relations without undermining the legal basis for American action in behalf of Taiwan in the unlikely event that should become necessary. The recent joint communique did nothing to clarify the United States' view of the legal status of the island, which the Shanghai communique left artfully obscure. In the new communique the United States simply "acknowledges the Chinese position that . . . Taiwan is part of China."

This creative ambiguity in our legal position leaves open what actions we might take to assure the peaceful future of Taiwan, just as that question was left open under the new terminating 1954 defense treaty, which provides only the vague assurance that, in the event of attack, the United States will "meet the common danger in accordance with its constitutional processes."

I believe that the combination of improved Sino-American ties, continuing nongovernmental relations with Taiwan (including access to defensive arms), and Washington's statement of interest in a peaceful settlement of the island's future will give Taiwan increased security and prosperity. To help realize this prospect, I intend to join in sponsoring legislation that will facilitate nongovernmental contact with the island and will sustain its well-being.

CAN THE EXECUTIVE TERMINATE THE TREATY ON ITS OWN?

Despite these measures to safeguard the island, some critics have denounced President Carter's normalization decision as a "stab in the back" of Taiwan. Sen. Barry Goldwater and others are now challenging, in the courts as well as in Congress, the presidential notice terminating the defense treaty. They incorrectly argue that the executive lacks authority to terminate the treaty, according to its own terms, without the approval of two thirds of the Senate or a majority of each house of Congress.

I strongly oppose this challenge, which threatens to sidetrack one of the most important foreign policy initiatives of recent history into domestic constitutional controversy. I am confident that this effort will fail, for law, practice, and policy clearly support the president's notice of termination in these circumstances. It is in no one's interest to throw our future relations with Taiwan into legal limbo, instead of assuring the continuity of our relations with the people of that island.

The president might have avoided the constitutional question by simply exercising his unchallenged prerogative to recognize the People's Republic as the government of China and to establish diplomatic relations with it. As demonstrated by the experience of other nations that have switched recognition from Taipei to Peking, this would have led to the lapse of the 1954 defense treaty and of the other bilateral agreements between Washington and Taipei, which Peking has always regarded as invalid, with the Congress then providing for continuing nongovernmental relations with Taiwan. By reiterating its previous declarations that the defense treaty was a nullity, Peking could have left no doubt that the treaty no longer had legal effect, as a consequence of the position of China's new government rather than through a termination decision by Washington.

The president chose, however, to end the defense treaty according to its one-year termination provision and to state that other agreements with the Republic of China on Taiwan endure until replaced by new arrangements with the authorities on the island. Whatever the merits of the latter claim under international law and practice, the president plainly has the independent authority to terminate a treaty according to its notice provision.

Although the Constitution requires the president to obtain the advice and consent of the Senate prior to concluding a treaty, it sets forth no such requirement for terminating a treaty. In approving the 1954 defense treaty with the Republic of China, the Senate might have required the president to obtain the approval of the Senate or Congress prior to termination, but it chose not to do so. The treaty simply provides for termination with one year's notice. In the light of 20th century practice, this plainly confers on the president the power to terminate the treaty at his discretion. In his December 15,

1978, momorandum to Secretary of State Vance, the State Department legal adviser, Herbert J. Hansel, stated categorically that "the president has the authority to decide under the Constitution whether the United States shall give the notice of termination provided for in Article X of the U.S.-R.O.C. Mutual Defense Treaty and to give that notice without congressional or Senate action."

Presidents have given notice of treaty termination independent of the Senate or Congress on 14 separate occasions in our nation's history, and ten of these instances have occurred in the last 50 years:

1815 (Madison). Agreement on annulment of 1782 Treaty of Amity and Commerce with the Netherlands.

1899 (McKinley). Notice of termination of certain articles of 1850 Convention of Friendship, Commerce, and Extradition with Switzerland.

1920 (Wilson). Agreement on termination of 1891 Treaty of Amity, Commerce, and Navigation with Belgium concerning the Congo.

1927 (Coolidge). Notice of termination of 1925 treaty with Mexico on prevention of smuggling.

1933 (Roosevelt). Notice of withdrawal from 1921 multilateral Convention for the Abolition of Imports and Export Prohibitions and Restrictions.

1933 (Roosevelt). Declaration of termination (withdrawn subsequently) of 1931 Treaty of Extradition with Greece.

1936 (Roosevelt). Protocol of termination (withdrawn subsequent) of 1871 Treaty of Commerce and Navigation with Italy.

1939 (Roosevelt). Notice of denunciation of 1911 Treaty of Commerce and Navigation with Japan.

1944 (Roosevelt). Notice of termination of 1929 protocol to Inter-American Convention for Trademark and Commercial Protection.

1948 (Truman). Notice of withdrawal from 1937 multilateral Convention for the Regulation of Whaling.

1954 (Eisenhower). Notice of withdrawal from 1923 Convention on Uniformity of Nomenclature for the Classification of Merchandise.

1962 (Kennedy). Notice of termination of 1902 Convention on Commercial Relations with Cuba.

1965 (Johnson). Notice of denunciation (subsequently withdrawn) of 1929 Warsaw Convention concerning international air travel.

1975 (Ford). Notice of termination of participation in the International Labor Organization.

Especially in the 19th century, presidents occasionally terminated treaties at the direction of or with the prior or subsequent consent of the Senate or the Congress. But this fact in no way negates the president's power to act independently. In modern practice this presidential exercise of independent authority outnumbers the total of all other methods utilized.

Since 1920 only President Hoover and Nixon have not terminated treaties pursuant to a notice provision. All other modern presidents, from Wilson through Carter, have exerted their valid constitutional authority by terminating treaties without formal advice and consent. Their actions have been accepted by the Congress and unchallenged in the courts.

No American judicial decisions directly address the question of the president's right, pursuant to a notice provision, to terminate a treaty without formal congressional approval. Some court cases assume independent presidential power to terminate. In *Charlton* v. *Kelly*, 229 U.S. 447 (1913), for example, the Supreme Court pointed out that it is for the president to determine whether a treaty violation has occurred and, if so, whether termination is warranted. And in *Terlinden* v. *Ames*, 184 U.S. 270 (1902), the Supreme Court held that on the question of whether an American treaty with Prussia survived the formation of the German Empire, the actions of the executive branch and the German government were of controlling importance.

Often the issue of treaty termination is related intimately to the question of recognition of a foreign sovereign and establishment of diplomatic relations, as indeed it is in the case of China, and both questions have been regarded as requiring political judgments that are within the president's authority.

An overwhelming number of contemporary scholars of international and constitutional law who have considered this question agree that the president has the clear prerogative to give notice of termination, pursuant to a notice provision in a treaty, without the approval of the Senate or the Congress.[1] The American Law Institute takes the same position in Sections 155 and 163 of the Restatement of the Law (Second), Foreign Relations of the United States.

PRESIDENT CAN'T ENTANGLE ALONE, BUT HE CAN DISENTANGLE

Sound historical and policy reasons sustain this conclusion. The framers of the Constitution feared "entangling alliances" and required the president to obtain the advice and consent of two thirds of the Senate prior to concluding a treaty. The framers manifested no similar concern with the president's exercise of discretion to disentangle the nation from alliances, and the Constitution thus imposed no requirement of Senate participation in treaty termination.

In the absence of specific constitutional, treaty, or statutory language restraining the president, it has been understood that he is responsible for determining how to deal with treaties once concluded. For example, in referring to the 1793 Neutrality Proclamation by President Washington and its relation to American treaties with France, Alexander Hamilton wrote that "treaties can only be made by the President and Senate jointly; but their activity may be continued or suspended by the president alone." Hamilton, incidentally, made this statement with specific reference to a situation almost identical to that involved in normalization with China.

He wrote, as quoted in Letters of Pacificus and Helvidius on the Proclamation of Neutrality of 1793:

"The right of the executive to receive ambassadors and other public ministers, may serve to illustrate the relative duties of the executive and legislative departments. This right includes that of judging, in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognized, or not; which, where a treaty antecedently exists between the United States and such nation, involves the power of continuing or suspending its operation. . . .

"This power of determining virtually upon the operation of national treaties, as a consequence of the power to receive public ministers, is an important instance of the right of the executive to decide upon the obligations of the country with regard to foreign nations."

Despite the fact that the president's independent power to terminate treaties is well-established, supported decisively by modern practice, and accepted by the Congress and most scholars, Senator Goldwater now seeks to challenge it. Because the president, especially in the nineteenth century, occasionally terminated a treaty with prior or subsequent Senate or congressional participation, he argues that the president must always obtain legislative approval, except that, as he wrote in *China and the Abrogation of Treaties*, "history indicates the president may, if Congress raised no objection, determine whether or not a treaty (1) has been superseded by a later law or treaty inconsistent with or clearly intended to revise an earlier one, (2) has already been abrogated because of its violation by the other party, or (3) cannot be carried out because conditions essential to its continued effectiveness no longer exist and the change is not the result of our own action." He would dismiss the many instances of independent presidential treaty termination as "exceptions" to the supposed general rule requiring legislative approval.

Senator Goldwater's analysis is seriously flawed. When carefully examined, the instances of independent presidential termination do not fall into the three categories of "exceptions" that he suggests. Rather, they demonstrate that the president has been free to terminate treaties in a variety of situations whose common denominator is that in each case it was no longer wise for the United States to adhere to the treaty in question. Contrary to Senator Goldwater's assertion, most instances of independent presidential termination have occurred in circumstances in which there was no inconsistent law or treaty superseding the treaty in question, there was no violation by the other party, and there was no impossibility of performing treaty obligations.

For example, Senator Goldwater claims that President Coolidge independently terminated our 1925 treaty with Mexico on the prevention of smuggling because it was "impossible to implement the convention." Yet there is no factual basis for this contention. The record reveals that the secretary of state thought it inadvisable to retain the treaty so long as Mexico failed to conclude an arrangement safeguarding American commerce against discrimination. (U.S. Archives, 74 D 481, Box 16678.)

Similarly, Senator Goldwater seeks to portray President Roosevelt's 1939 termination of the 1911 commercial treaty with Japan as being compelled by our obligations under the 1922 Nine-Power Agreement. But nothing in the later agreement required the United States to terminate the purely commercial treaty.

The only evidence offered to support Senator Goldwater's view is a statement by Senator Schwellenback that actually shows that he did not believe it necessary to terminate the 1911 treaty (84 Cong. Rec. 10785.) The treaty was terminated, as the notice stated, because it "contains provisions which need new consideration . . . with a view to better safeguarding and promoting American interests as new developments may require."

In fact, not only is Senator Goldwater's interpretation flawed by its misconstruction of the precedents, but it also is flawed logically as well. What is the source of the president's power to make "exceptions" unless it derives from his authority to terminate a treaty without legislative approval? Why cannot the president make other "ex-

[1] See, e.g., Cohen, "Normalizing Relations with the People's Republic of China," 64 A.B.A.J. 940 (1978); Tribe, *American Constitutional Law* 164 (1978); Henkin, *Foreign Affairs and the Constitution* 136 (1972); Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, Vol. II, 1519–20 (2d rev. ed. 1945); McDougal and Lans, "Treaties and Congressional-Executive or Presidential Agreements," 54 YALE L.J. 181, 336 (1946); McClure, *International Executive Agreements* 16, 306 (1941); Willoughby, *The Constitutional Law of the United States*, Vol. I, 585 (2d ed. 1929); Reeves, "The Jones Act and the Denunciation of Treaties," 15 A.J.I.L. 33, 34, 38 (1921); Letter from Lowenfeld to the *New York Times*, May 28, 1978.

ceptions"? Since the 14 cases of independent presidential termination that supposedly constitute "exceptions" outnumber the total of all other methods utilized in modern practice, they are strange "exceptions" indeed.

The treaty power is not the only one in which the Constitution requires the approval of the Senate before the president takes certain action but does not require similar approval when he undoes that action. The Senate's consent is necessary for the appointment of cabinet officers but not for their removal. (272 U.S. 52; 295 U.S. 602.) "The conduct of foreign relations, like the duty to see that the laws are faithfully executed, is a plenary executive power," Prof. Randall Nelson wrote in 42 *Minnesota Law Review* 879 (1958). "In the absence of express limitations upon the power to remove and the power to terminate, there is a strong presumption that no such limitation was intended."

SUBSEQUENT PRACTICE HAS REPUDIATED EARLIER VIEWS

In seeking to bolster his position, Senator Goldwater relies on quotations from Thomas Jefferson and James Madison—uttered before the nation had any experience with treaty termination—to the effect that legislative consent is legally required. Yet in the same discussion Jefferson conceded that there were disagreements about the treaty power, and in 1815 Madison became the first president to terminate a treaty without legislative consent. Subsequent presidential practice has plainly repudiated the early view of Jefferson and Madison and confirmed that of Hamilton and later Madison.

Nor is there substance to Senator Goldwater's general argument that, apart from the many "exceptions," when the president terminates a treaty without legislative consent, he violates his constitutional duty to "take care that the laws be faithfully executed," because the Constitution makes a treaty "the supreme law of the land."

This misses the point of the very case at issue. Article 10 of the treaty in question provides for its termination. In giving notice of an intent to terminate the treaty pursuant to that provision, the president was not violating the treaty but acting according to its own terms—terms that were approved by the Senate when it consented to the treaty.

As Charles C. Hyde, former legal adviser to the Department of State, put it in his leading treatise: "The president is not believed . . . to lack authority to denounce, in pursuance of its terms, a treaty to which the United States is a party, without legislative approval. In taking such action, he is merely exercising in behalf of the nation a privilege already conferred upon it by the agreement."

This suggests the proper course for senators who are troubled by the president's independent authority to terminate a particular treaty or category of treaties. At the time that each treaty is made and submitted for their advice and consent, they could seek to condition Senate approval on acceptance of the Senate's participation in its termination. The Senate might have done so when it consented to the 1954 defense treaty with the Republic of China, but it did not. Any attempt, at this point, to invalidate the president's notice of intention to terminate is not only unwise as a matter of enlightened China policy but also without legal foundation. Prof. Louis Henkin, one of our leading constitutional authorities, has written: "Attempts by the Senate to withdraw, modify, or interpret its consent after a treaty is ratified have no legal weight; nor has the Senate any authoritative voice in interpreting a treaty or in terminating it."

GOOD LAW, GOOD POLICY, AND IN OUR AND CHINESE NATIONAL INTERESTS

Normalization of relations with China is good law and good policy. It is in our national interest, in the interest of Chinese on both sides of the Taiwan Strait, and in the interest of peace in Asia and the world. We should not allow an argument that is based on a misconception of the law to divert us from supporting the president's statesmanship. The Congress and the American people should focus their efforts on co-operating with the executive branch to develop the measures required to consolidate our new and encouraging relations with both the People's Republic and Taiwan.

TREATY TERMINATION IS A SHARED POWER

(By BARRY M. GOLDWATER)

On December 15, 1978, while the Congress was out of session, President Carter announced that the United States would recognize the People's Republic of China as the sole legal government of China as of January 1, 1979. At the same time the president also made known, through informal briefings for the media, his unilateral decision to terminate the defense treaty with the Republic of China, claiming authority to act under Article X of that treaty, which states "either party," not "either president," may cancel it after giving one year's notice. Without public announcement, the actual notice of termination of the defense treaty was sent by diplomatic note to the Republic of China on December 23, 1978, to be effective on and as of January 1, 1979.

The president's decisions were shrouded in secrecy and contrary to the purpose of Section 26 of the International Security Assistance Act of 1978, a law enacted by Congress just three months preceding his announcement, which specifically called for prior consultation with the legislative branch.

On December 22 I filed suit in the United States District Court for the District of Columbia, with 15 of my colleagues from both houses of Congress, challenging the validity of the president's attempted termination of the treaty without any supporting legislative authority. We asked the court to declare the president's action unconstitutional and illegal and to set aside his purported notice to cancel the Treaty as having no effect.

It is the premise of our case that in acting alone to interpret the defense treaty and to make a self-serving interpretation of the constitutional allotment of powers among the executive and legislative departments, President Carter has not only usurped powers conferred on the Congress, but has attempted to exercise a function the Supreme Court has said is clearly reserved to the judicial branch, the power "to say what the law is." *United States* v. *Nixon*, 418 U.S. 683 (1974.)

The question is not whether any past precedents justify the president's assertion of independent power, although I believe the weight of historical evidence proves that treaties are normally terminated only with legislative approval. The true question is whether his action represents the original intent of the people who drafted the Constitution.

This is a legal and historical question, and the hard fact is that nothing in the records of the federal convention or in the explanations at the state conventions on ratifying the Constitution confirm in any way the president's sweeping claim of unchecked power. To the contrary, contemporary materials and the text of the Constitution show that the termination of a treaty, involving as it does the sacred honor of the country and serious policy interests, is a decision of such major importance that the framers required the joint participation of both political departments, the executive and legislative, in making that decision.

If left unchallenged, the president's unilateral action will set a dangerous precedent that would enable him or a future president to terminate any defense treaty at will. In fact, the precedent could be used for the presidential termination of any treaty to which the United States may now be a party or become a party in the future—for instance, with Israel. This unchecked concentration of power is totally inimical to our democratic representative form of government.

However one may feel about the wisdom of independent presidential termination of the defense treaty as a step required to complete full normalization of relations with Peking, we each should remember the admonition of Chief Justice John Marshall: "The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional." In filing suit, it was my purpose to defend the legislative function conferred by the Constitution, not to contest the rightness or wrongness of his policies, which can be debated in other forums.

The Constitution is silent as to how a treaty shall be terminated. It is also silent on how a statute or any other law shall be cancelled. Yet no one makes the argument that the president alone can repeal a statute. In fact, in *The Confiscation Cases*, 20 Wall. 92 (1874), the Supreme Court expressly said that "no power was ever vested in the president to repeal an act of Congress."

It is my belief that by placing treaties among "the supreme Law of the Land" in Article VI, clause 2, and by requiring in Article II, Section 3, that the president "shall take care that the Laws be faithfully executed," the framers meant, and expected without saying more, that the president would carry out a treaty in good faith. This is exactly the opposite of giving him an implied authority to cancel any treaty at will. It is also well known that the framers were concerned with restoring dependability to treaties made by the United States. They were anxious to gain the respect and confidence of foreign nations by keeping our treaty commitments.

For example, in the preface to his notes on debates in the Constitutional Convention, James Madison singles out the lack of obedience to treaties as one of the conditions the federal Constitution was intended to correct. Our unfaithfulness to treaties, Madison wrote, is among "the defects, the deformities, the diseases and the ominous prospects for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding & appreciating the Constitutional Charter the remedy that was provided."

In a similar vein, James Wilson, who signed the Constitution and sat on the first Supreme Court, lectured his law students that a country "which violates the sacred faith of treaties, violates not only the voluntary, but also the natural and necessary law of nations. . . ." He added: "As the United States have surpassed others, even other commonwealths, in the excellence of their constitution and government; it is reasonably to be hoped, that they will surpass them, likewise in the stability of their laws, and in their fidelity to their engagements."

Would the framers, who regarded violation of "the sacred faith of treaties" as "wicked," "dishonorable," and contrary to the best interests of the country in acquiring respect in the community of nations, have contradicted these purposes by making it as easy under the new Constitution for a single officer of the government to repeal a treaty as it had been for individual states to nullify a treaty under the Articles of Confederation?

We should also remember the concern of the framers with sectional economic interests. Many of them hoped for advantageous commercial treaties that would open up trade for their sections with other nations. The framers also had extensive discussions about treaties of peace as being included within the treaty clause, in recognition of the fact that those treaties would be the normal method of terminating a war. Without any supporting textual evidence to show

it, it is inconceivable that the framers assigned to one person power to denounce a commercial treaty that would be highly beneficial to the interests of a particular geographic region or a peace treaty that had formally concluded a war and whose faithful adherence would presumably advert the chance of resumption of hostilities, however slight that chance may be. As the language of the Constitution does not distinguish commercial and peace treaties from other treaties, such as a security pact, it is obvious that all treaties share the same protective armor.

JOINT PARTICIPATION NEEDED FOR ANY "GENUINELY CRITICAL DECISION"

In his landmark work on the subject in 5 *Seton Hall Law Review* 527 (1974), Prof. Arthur Bestor persuasively shows that the doctrine of separation of powers is "prescribed as explicitly for the conduct of foreign relations as for the handling of domestic matters" and explains: "The purpose and effect of any such arrangement is to require the joint participation—the co-operation and concurrence—of the several branches in the making and carrying out of any genuinely critical decision."

Justice Joseph Story, one of the foremost scholars to sit on the Supreme Court, confirms his statement. In his *Commentaries on the Constitution*, Story writes, in connection with the decision of the framers to allot the treaty authority jointly in the president and the Senate, "his joint possession of the power affords a greater security for its just exercise, than the separate possession of it by either" and that it "is too much to expect, that a free people would confide to a single magistrate, however respectable, the sole authority to act conclusively, as well as exclusively upon treaties."

Story adds, in words having equal relevance to making or unmaking a treaty: "The check, which acts upon the mind from the consideration, that what is done is but preliminary, and requires the assent or other independent minds to give it a legal conclusiveness, is a restraint which awakens caution, and compels to deliberation."

This is what the framers had in mind in establishing a system of checks and balances. They sought to protect the security of the people by making the president and the Senate checks on each other in the exercise of the full treaty power. By providing for the added deliberation and attention to the subject that woud be required by vesting the full treaty power jointly with the president and at least one branch of the legislature, the security of the people would be far better protected than it would be if the power were conferred on a single officer. The security that follows caution and added deliberation would be lost if no check had been put on the unmaking of a treaty.

Why the framers would want to offer the people security in the making of treaties, but not in their termination, is unexplained by those who argue this difference exists. I believe there is no difference and that the checks and balances called for in the separation of powers is equally as applicable to the critical decision of casting aside our formal treaties with other nations as it is in making those treaties originally.

The early authorities, including some among the Founding Fathers, saw the repeal of a treaty in the same light as they saw the repeal of a statute. It would have been strange to hear anyone argue that the president, by his sole authority, could terminate whatever treaty he wished, whenever he wished. James Madison, for one, believed that "the same authority, precisely," would be exercised in annulling as in making a treaty." Thomas Jefferson, when he was Washington's first secretary of state, wrote a report in which he reasoned that the same authority who possessed the power of making treaties consequently had the power of declaring them dissolved. And, when he was vice president, Jefferson compiled the first manual of rules of the Senate, in which he wrote: "Treaties being declared equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded."

Further evidence that the frames linked the repeal of treaties to the repeal of statutes appears in John Jay's brief analogy in *The Federalist*, Number 64: "They who make laws may, without doubt, amend or repeal them, and it will not be disputed that they who make treaties may alter or cancel them . . ."

Justice Iredell, who served on the first Supreme Court, shared the views of Madison and Jefferson as to the legislative role in terminating treaties. In an opinion accompanying *Ware* v. *Hylton*, 3 Dall. 199 (1796), he twice stated his belief that Congress alone has "authority under our government" of declaring a treaty terminated, even in circumstances where the other country has first violated it.

Another authority who believed the legislature must act before a treaty is terminated is James Buchanan. In writing about the anticipated cancellation of a commercial treaty with Denmark considered damaging to our exports, then Secretary of State Buchanan wrote that "an act must first pass Congress to enable the president to give the required notice. . . ." His official concession of the joint possession of power is especially noteworthy since that treaty contained a provision similar to the one in the R.O.C. defense treaty so heavily relied on by President Carter.

Each treaty authorizes termination after notice being given to the other party. However, Secretary Buchanan obviously believed the sovereign authority who could make the decision to give notice was not the president alone, but the president together with the authority of a law enacted by Congress.

When the United States finally cancelled the treaty with Denmark, it was accomplished by a Senate resolution of March 3, 1855, passed unanimously, which advised and consented to authorizing President Pierce to give notice of its termination. The president had requested the authority, thereby giving some indication of his belief that the decision-making authority was jointly possessed by him and the legislature, or at least one branch of it, and was not vested in him alone.

The incident led to an authoritative report by the Senate Foreign Relations Committee in 1856. In response to public discussion over whether the Senate had acted properly in authorizing presidential action without the concurrence of the House of Representatives, the committee concluded that the Senate and president jointly possessed competence to terminate a treaty "without the aid or intervention of legislation" by the other house. Speaking precisely to the same issue presented by Article X of the R.O.C. defense treaty, the committee decided that "where the right to terminate a treaty at discretion is reserved in the treaty itself, such discretion resides in President and Senate."

The committee explained: "The whole power to bind the government by treaty is vested in the president and Senate, two thirds of the senators present concurring. The treaty in question was created by the will of the treaty making power, and it contained a reservation by which that will should be revoked or its exercise cease on a stipulated notice. It is thus the will of the treaty-making power which is the subject of revocation, and it follows that the revocation is incident to the will." Thus, the committee clearly took a position at odds with the novel theory asserted by President Carter today.

LODGE THOUGHT CONGRESS COULD DISAPPROVE TAFT'S NOTICE

Henry Cabot Lodge, when he was chairman of the Senate Foreign Relations Committee in 1911, also believed the power of treaty termination was jointly posssessed by the president and legislature. In response to a question in the Senate whether notice, given Russia by President Taft to terminate a commercial treaty because of Soviet violations, would be legal in the absence of congressional ratification, he replied, "Of course, Congress can disapprove his action; and then, I take it, the notice fails. . . . " Senator Lodge added his opinion that the power to terminate that treaty by notice, as authorized in an article thereof, was vested in the Senate and president together "because in making such a treaty the Senate and the president represent the high contacting party."

Lodge was then acting as floor manager of legislation that did ratify the president's action, and his statements clearly express his interpretation of the term "contracting party," used in a treaty provision, as meaning the Senate and president jointly.

In 1917 Prof. Edward Corwin, recognized as one of the leading authorities on the Constitution in this or any other century and generally a defender of broad presidential power, wrote: "[A]ll in all, it appears that legislative precedent, which moreover is generally supported by the attitude of the executive, sanctions the proposition that the power of terminating the international compacts to which the United States is party belongs, as a prerogative of sovereignty, to Congress alone."

Another official admission of the necessity for legislative concurrence in the decision to provide notice in circumstances in which a treaty itself authorizes the giving of notice comes from an attorney general's opinion. In 1941 Francis Biddle, then acting attorney general, was asked to advise President Roosevelt whether, in view of the dislocation of ocean-borne commerce because of war, the International Loan Line Convention, which governed ocean tanker tonnage loads, had ceased to be binding. Biddle concluded the convention was inoperative because of the "well-established principle of international law, *rebus sic stantibus*, that a treaty ceases to be binding when the basic conditions upon which it was founded have essentially changed."

But he sharply qualified his opinion. While the president could decide whether the treaty was inoperative or suspended under this principle of international law, the president alone could not terminate the treaty if he acted under a treaty provision allowing withdrawal by giving due notice. Biddle wrote: "It is not proposed that the United States denounce the convention under Article 25 (47 Stat. 225), nor that it be otherwise abrogated. Consequently, action by the Senate or by the Congress is not required."

Article 25 of that convention provided that it may be denounced by any "contracting government" by notification to the other parties and that the withdrawal should take effect 12 months after the date of notification is received. The article is similar to Article X of the R.O.C. defense treaty, which likewise allows denunciation by the United States after one year's notice. Thus, it is clear that Biddle believed legislative concurrence was needed in order to authorize presidential action pursuant to the terms of a treaty in circumstances identical to those asserted by President Carter as grounds for unilateral action. President Carter's decision to notify the Republic of China on his sole authority is directly in conflict with a 20th century opinion of the country's highest law enforcement officer.

History confirms the denial of an independent treaty termination power of the president, although there are minor exceptions explainable under principles of ordinary contract law. In fact, the first treaty terminations were done by act of Congress in 1798. These were the three treaties of alliance with France, which were cancelled by Congress after repeated French attacks on American shipping.

The second instance of termination by the United States was in 1846, 57 years after the Constitution was approved. President Polk asked Congress for authority to pull out of a treaty with Britain yielding joint rights to the Oregon Territory. A joint resolution was enacted giving him authority to provide notice of withdrawal, as was authorized in the treaty. This is the first known instance of termination by notice and is impressive historical evidence of what procedure is required to carry out a treaty provision similar to Article X of the R.O.C. defense treaty.

In all, I have identified 48 instances in which treaties have been terminated or suspended by the United States—40 with the clear authorization or ratification of an act of Congress, joint resolution, or Senate resolution. Four others were superseded by a later statute or treaty in conflict with the earlier treaty. The normal practice of treaty termination in the United States has been joint action by the president and Senate or Congress.

Only four treaties have been cancelled by the president entirely independent of any supporting legislative authority. The president may not have acted constitutionally even in these isolated cases, which are abnormal. In fact, Congress may not have been informed, and thus no challenge was made at the time. But if there is any difference in the two groups of cancelled treaties, a logical explanation may be found in contract law.

For in each of the situations of independent presidential action, the other party had first violated the treaty, it was impossible to perform the treaty, or there was a fundamental change of conditions essential to the operation of the treaty and originally assumed as the basis for it. In none of these incidents was the reason for terminating or withdrawing from a treaty the result of a breach or other action on our part inconsistent with the purposes of the treaty concerned.

In these circumstances, the incidents fall within the rules of early contract law by which a party is released from an agreement. All the first writers on the law of nations, such as Grotius and Battel, whose works were consulted by the Founding Fathers, agreed that there is no difference in the rules of law applied to public treaties or private contracts.

The framers may well have silently assumed the president could determine a treaty ended if it should be violated by the other country, if performance became impossible, or if there was a fundamental change of conditions not of our own making. In their own experience, it was an implied condition of a contract or treaty that the obligations of the parties ended or were suspended on the happening of one of these events. Without conceding the legality of occasions when the president had acted unilaterally, these principles of contract law may explain independent presidential action in exceptional circumstances, none of which apply to the president's action regarding the R.O.C. defense treaty.

STATE DEPARTMENT'S MEMORANDUM BACKS CARTER'S ACTION

The State Department has released a memorandum by Herbert Hansell, its legal adviser, dated December 15, the same day as President Carter's public announcement, claiming the president could do what he did. That paper, actually a legal argument, contains highly selective quotations from authorities (none cited in this article appears in the memo) and sets forth a dubious list of alleged precedents for unilateral presidential action. Although the legal adviser lists 12 precedents for independent treaty termination, he admits on the face of the brief that two were never terminated (notice was withdrawn) and two more were instances in which the other nations first denounced the treaties, which seriously weakens the relevance of the precedents.

The State Department reaches so far to find an early precedent that it wrongly attributes the first example of presidential treaty termination to President Madison. This seeming rock of the State Department list is created from a passage in a letter from Secretary of State Monroe in response to the claim by the Netherlands in 1815 that an earlier commercial treaty had expired.

State claims Monroe's answer appears to accept the interpretation given the treaty by the Netherlands. Once Monroe was president, however, he repudiated that meaning of his letter. Monroe's secretary of state, John Quincy Adams, insisted that the earlier treaty had not been annulled. In *University* v. *Miller*, 14 N.C. 188 (1831), the Supreme Court of North Carolina accepted President Monroe's position and enforced the treaty as law.

The State Department also omits mentioning in its memo that the early commercial treaty had been concluded with a different state. During the Napoleonic wars the United Netherlands, with whom we had signed the treaty in 1782, was absorbed into the French empire, entirely disappearing as a separate nation. After the war it was reformed and joined with other areas.

Samuel B. Crandall writes the state thus erected from the ashes of war "differed in name, territory, and form of government from the state which had entered into the treaty. . . ." In other words, if the treaty was annulled, it was because of the disappearance of one of the parties and not because of any broad power held by the president. This is the stuff of which the State Department memo is made.

Of the few alleged precedents that have any plausible basis (three or four at most), all can be explained by invoking the principles of contract law discussed above. None of these exceptions has any application to the R.O.C. defense treaty.

Even as to this handful of precedents, there is no ground for asserting independent presidential power. There is no court decision upholding their legality, and the last precedent is no better than the first. As the Supreme Court said in *Powell* v. *McCormack*, 395 U.S. 486 (1969): "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date."

It has been suggested that since the president alone has the power to remove executive officers appointed by and with the advice and consent of the Senate, he also has power to remove treaties. The two cases are completely dissimilar. The ability to remove officers clearly under his direction aids in the efficient performance of the president's duties. The removal of treaties violates the president's constitutional duty to see "that the laws be faithfully executed." It is obvious that the president's relation with subordinate officers cannot be equated to his relation with sovereign authorities of other nations. The courts also have sharply restricted the removal power to purely executive officers, holding the president cannot removal officers who exercise quasi-legislative or judicial functions in Humphrey's Executor, 295 U.S. 602 (1935). As the treaty power has long been found to partake more of the legislative than executive character, the analogy with the removal power does not hold up.

By admitting that the defense treaty "is technically still in effect" in 1979, until the notice period expires, the administration rejects any notion that the treaty lapsed upon derecognition of the R.O.C. By this and by asking Congress for legislation to permit the other "current agreements and treaties in effect with the government on Taiwan to remain in force," the administration admits that the authorities on Taiwan are a de facto government in control of the territory cf Taiwan and that we can have dealings with them.

The only remaining question is whether, although the president normally cannot terminate a treaty without further legislative action, the Senate has consented to his action in the case of this treaty by having approved language in it that allows termination by notice. The answer is clear that no authority of this type can be inferred from the treaty or legislative history.

First, it should be noted that the provision does not authorize termination after notice by "the president" or "executive" of either country. The treaty uses the term "party." This obviously means the sovereign authority of the state giving notice. In determining who represents the sovereign authority, it is necessary to consult the constitutional processes of the state in order to find what power makes the decision to give notice and, after that decision has been made, what power shall actually transmit the notice. Under our Constitution, it is clear that whoever communicates notice, the power of making the initial decision belongs jointly to the president and Senate or Congress.

Although it is generally accepted that the president is "the sole organ of the nation in its external relations, and its sole representative with foreign nations" (29 U.S. 304, 319–20), this proves no more than that it is the president who shall act as the official representative of the nation in communicating with the foreign government. His capacity as a diplomatic organ in no way need imply a power of making the critical policy decision required before delivery of the notice.

There is absolutely nothing in the legislative reports and proceedings concerning the 1954 treaty that indicates the president can act alone in giving notice. In fact, the language of the defense treaty differs in a significant way from the text of the related Formosa Resolution, which did specifically authorize the president to cancel it. Thus, the record bears strong evidence the Senate did not mean for the president to act alone in denouncing the treaty, since similar language was not used in the treaty.

The Formosa Resolution and the defense treaty both came before the Senate at the same time. The treaty was first considered in committee concurrently with the resolution in January, 1955. The resolution was reported to the Senate on January 26 and signed into law on January 29. The treaty was reported on February 8 and approved by the Senate on February 9.

IF THE TREATY MEANT "PRESIDENT," WHY DID IT SAY "PARTY"?

The Senate had each measure before it for immediate comparison. In this setting, it is striking that the Formosa Resolution, by its own language, expires "when the president shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress." The treaty, on the other hand, provides for termination on one year's notice by "either party."

Why, if the treaty meant to authorize "the president" of either party to terminate it by giving notice, did it not say so? The Senate had before it language of the specific kind in the Formosa Resolution, which it could have substituted for Article X, if it meant to approve independent presidential action.

When it advised and consented to a treaty containing an entirely different term, without any explanation in the papers sent to it by the executive branch or in its own hearings, report, or floor debate, indicating that the term meant something other than what it said ("party"), this is surely conclusive that it did not understand "party" to mean "president."

In 1856 the Senate Foreign Relations Committee had unequivocally found that language similar to Article X referred to "the will of the treaty-making power," which it defined as "the president and Senate." The Senate, together with the president and often with the House of Representatives, had participated in the termination of nearly 40 treaties by 1955, virtually all of which contained duration provisions similar to Article X of the R.O.C. defense treaty. From this, if any understanding could be attributed to the Senate when the treaty was ratified, it was that the term "party" meant the president and Senate jointly.

But the State Department would not only attribute a meaning to the R.O.C. defense treaty of which it never informed the Senate. It would put the same meaning on dozens of other major treaties that contain similar provisions. For example, the North Atlantic Treaty Alliance and our security pacts with South Korea, Japan, and the Philippines include articles allowing either "party" to withdraw after one year's notice. The Nuclear Test Ban Treaty, the Statute of the International Atomic Energy Agency, the Nuclear Nonproliferation Treaty, the Biological Weapons Convention, the Universal Copyright Convention, and the Outer Space Treaty, among others, each provide by their own terms for termination after one year's or less notice to the other parties. The consequences of accepting the State Department's interpretation of these provisions is far reaching indeed.

No matter that the Senate was not clearly informed of what the language meant when it gave its advice and consent to ratifying these agreements. No matter that the executive may have had a different understanding than the Senate and kept silent about it.

When it suddenly suits the needs of expediency for its policy of the moment, the State Department unveils a doctrine it has hidden from public discussion. After having exploited the use of executive agreements to the point where the president can make virtually any treaty he wants by calling it a mere executive agreement, now the State Department is ready to usurp the power of unmaking treaties as well.

Events in the year ahead may well determine whether the executive succeeds or fails in this historic power grab.●

ORDER FOR RECESS UNTIL MONDAY, MARCH 12, 1979

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 12 o'clock noon on Monday.

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

INTERNATIONAL TRAVEL AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 15, S. 233.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 233) to amend the International Travel Act of 1961 to authorize additional appropriations, and for other purposes,

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with an amendment on page 2, beginning with line 8, strike through and including line 14, and insert in lieu thereof the following:

"SEC. 9. The Secretary shall reduce the number of employees of the United States Travel Service in the offices of such Service in the District of Columbia, in order that the total number of such employees as of September 1, 1979, and thereafter, does not exceed 40 per centum of the total number of such employees as of December 31, 1978.".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the first sentence of section 6 of the International Travel Act of 1961, as amended (22 U.S.C. 2126) is amended by striking out "and" immediately after "1978;", and inserting immediately before the period at the end thereof the following: "; and (8) $8,000,000 for the fiscal year ending September 30, 1980".

SEC. 2. The International Travel Act of 1961, as amended (22 U.S.C. 2121 et seq.) is further amended by adding at the end thereof the following new section:

"SEC. 9. The Secretary shall reduce the number of employees of the United States Travel Service in the offices of such Service in the District of Columbia, in order that the total number of such employees as of September 1, 1979, and thereafter, does not exceed 40 per centum of the total number of such employees as of December 31, 1978.".

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Virginia.

Mr. WARNER. I thank the distinguished Senator from West Virginia.

Mr. President, I rise in support of S. 233.

The chairman, Senator CANNON, and the chairman of the subcommittee, Senator INOUYE, and myself have cosponsored this bill.

It is for the purpose of continuing the U.S. Travel Service for a year at a greatly reduced level.

Mr. President, I rise to support S. 233 introduced by the senior Senator from Hawaii, Mr. INOUYE, which I cosponsored, to continue funding of the U.S. Travel Service for 1 year at a greatly reduced level. Included in this reduction is a 60-percent cut in the staff of the USTS Washington office.

International travel and tourism—persons coming to the United States from other countries—are of tremendous benefit to our Nation's economy. It is for this reason that, in 1961, the Congress approved the International Travel Act, authorizing the Secretary of Commerce to encourage such travel and tourism in the United States through the U.S. Travel Service.

Since enactment of that legislation, the Congress has kept a close watch on the tourism industry. Extensive hearings have been held on the subject and, from time to time, additional legislation has been enacted to encourage growth in the travel and tourism industry.

In 1974, the Senate, without a dissenting vote, adopted Senate Resolution 347 authorizing the Senate Commerce Committee to undertake a comprehensive study of the tourism industry and to recommend legislation to establish a national tourism policy. That mandate was carried out. Last year, the Commerce Committee published the National Tourism Policy Study.

Mr. President, that study found that three USTS travel service programs during the period of fiscal 1974–77 for tour development, incentive travel, and conventions had a cost-benefit ratio of $18.60 in foreign exchange earnings for the Nation's travel and tourism industry for every USTS budget dollar expended.

That would seem to me to represent a very fine investment, particularly at a time that the deficit in the United States balance of payments has reached an all-time high.

In spite of this, the administration, by recommending that the USTS not be funded for the coming fiscal year, has proposed to eliminate an agency which has had a strong positive impact toward reducing that balance-of-payments deficit.

As a result of the National Tourism Policy Study by an earlier Congress, the Commerce Committee has held hearings and soon will come forth with legislation to implement a national tourism policy. In the meantime, I believe that the U.S. Travel Service, for the reasons I have already mentioned, should be continued at a reduced level until such time as Congress acts on implementing a national tourism policy.

Therefore, Mr. President, I support passage of S. 233.

Mr. President, I ask unanimous consent that Senator Pressler may have the remainder of my time.

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

Mr. PRESSLER. Mr. President, I thank the Senator from Virginia.

I wish to express my support for S. 233 and to commend Senators CANNON, INOUYE, and WARNER for their leadership in this area.

I join as a cosponsor in that effort.

I commend them for their recognition of the importance of the tourism industry in our Nation. Their work in this area is greatly appreciated by the people of South Dakota and myself.

In South Dakota, tourism is our second largest industry. This is largely family tourism, and much of it is in the Black Hills. It is very important for Congress to take a careful look at this wholesome industry, and the importance of retaining the U.S. Travel Service offices, both here and abroad.

I was very concerned to hear that the administration wanted to eliminate the USTS budget for 1980. Eighty-six percent of our foreign visitors come from the six countries where we maintain USTS offices: Canada, Mexico, the United Kingdom, France, West Germany, and Japan. Five percent of our international tourism is from nine countries where USTS conducts travel promotion

efforts. This brings the total of foreign visitors affected by the USTS to 91 percent.

The Administration maintains that these visitors would come to the U.S. regardless of the USTS. I disagree. South Dakota is very much an interior State. While foreign visitors may come naturally to our bigger east and west coast cities, it takes a special effort to let them know what we have available in some of our States in the Midwest. If we lose the USTS, international tourism will be dealt a severe blow in South Dakota, and other interior States. Our transportation systems are limited so private industries will not be contributing to our tourism through their promotional efforts. We need some assistance in this area.

Currently, tourism brings about $444,000,000 per year into the State of South Dakota. The U.S. Travel Service grants matching funds to South Dakota, and to the Old West Trail Foundation, in the amount of about $20,000 annually. Most recently, this has been used to encourage Canadian tourists to come to our State. This summer, tour brokers from Frankfurt, Germany, are being brought to South Dakota by the USTS. In addition, foreign journalists are also being brought to South Dakota an a publicity tour. Such efforts have resulted in a marked increase in foreign visitors to South Dakota. During recent years, nearly $25 million has been spent by these foreign visitors annually. That is $125 in revenue for South Dakota for every $1 of U.S. Travel Service funds expended in our State. Where else can we see such a good return for our investment?

Again, I express my wholehearted support for S. 233. We need the U.S. Travel Service and its international offices.

For this reason I have joined as a cosponsor. I feel that tourism is very important particularly in terms of the value of the dollar and the need for us to attract this additional revenue and business.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass?

The bill (S. 233), as amended, was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96–8), explaining the purposes of the measure.

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

PURPOSE

This legislation would continue funding the United States Travel Service (USTS) for 1 year at a reduced level of $8 million, and require a staff reduction in the USTS Washington office by 60 percent, effective September 1, 1979. Pending the legislative recommendations of the National Tourism Policy Study which will be forthcoming from this Committee within the next few months, S. 233 as amended, is intended to permit the continuation of international tourism marketing programs currently being carried out by the Department of Commerce through the Travel Service in six major markets and other designated markets throughout the world. By failing to request funds for USTS, the administration is, in effect, repealing the International Travel Act of 1961.

The six major markets in which USTS maintains offices are: Canada, Mexico, Japan, West Germany, France and the United Kingdom. USTS also carries on marketing activities in nine other countries. Although its limited resources do not permit it to maintain offices in these countries, the agency conducts travel promotion efforts through U.S. embassies, and the travel trade. These countries are: Venezuela, Austraila, Italy, the Netherlands, Switzerland, Sweden, Brazil, Spain, and Belgium. These 15 countries generated 91 percent of the visitors to the United States in 1977. (16.9 million international arrivals, and 85 percent of foreign exchange earnings from tourism ($5.4 billion.))

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business with Senators permitted to speak up to 10 minutes therein, but the period not to last beyond 20 minutes.

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

SENATOR RANDOLPH'S 77TH BIRTHDAY

Mr. PROXMIRE. Mr. President, today is an unusual day in many ways, but I think one of the principal reasons is because today is the 77th birthday of JENNINGS RANDOLPH.

All of us who have been in the Senate for any length of time know JENNINGS as a really marvelous human being. He is the epitome of courtliness. He is generous. He works very hard. He accomplishes a great deal. As we all know, he is chairman of the Committee on Public Works. He is a man with whom I have been working closely on some things, and I have been in opposition, strenuous opposition, with him on others, but he is a wonderful Senator, and I do think that the day should not pass without recognition of the fact that this marvelous man has given so much of his 77 years to this country and to this body.

He has been in Congress longer than any other Member of Congress. He came to the Congress in 1933, and served in the House for a number of years. Then he went into private business, and then returned, and has served in the Senate since 1958, always with great distinction.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. PROXMIRE. Yes, indeed.

Mr. ROBERT C. BYRD. I join with the distinguished Senator from Wisconsin in complimenting my very able senior colleague, and wishing him the best on this happy birthday.

JENNINGS is a man who has tremendous energy. He is always working for the people of West Virginia. He is a very pleasant colleague to work with. I have worked with him now going on 21 years. There is the song which says "21 years with the wrong woman." But this is 21 years with the right colleague.

May I just quote a bit of verse at the end of this long day as it slips up on all of us, and I will say these lines to Senator RANDOLPH:

Count your garden by the flowers,
Never by the leaves that fall.
Count your days by the sunny hours,
Not remembering clouds at all.
Count your nights by stars, not shadows.
Count your life by smiles, not tears.
And on this beautiful March evening
Count your age by friends, not years.

Mr. PROXMIRE. I thank the majority leader for a really marvelous and most appropriate poem. Seventy-seven years, as you say, about JENNINGS, he is so full of energy and vitality and really youthful attitude. He is just remarkable in so many ways, and I am delighted to hear that most appropriate verse from our distinguished majority leader.

Mr. ROBERT C. BYRD. I thank my friend.

Mr. PELL. Mr. President, I, too, would like to add my words of support to the remarks concerning the senior Senator from West Virginia, and add my voice of congratulation to the senior Senator from West Virginia on his birthday. His sense of history, his courteousness, his kindness, and his commonsense are all of the highest order, and he is, indeed, a decoration not only of West Virginia but of the U.S. Senate, and may we have him for many more successful years in our body.

FAILURE TO RATIFY THE GENOCIDE CONVENTION A SOURCE OF POLITICAL EMBARRASSMENT

Mr. PROXMIRE. Mr. President, our failure to ratify the Genocide Convention has given our ideological enemies a significant symbolic advantage in the eyes of the world community. Soviet propagandists have never hesitated to point out the inconsistencies of a national policy that, while guaranteeing certain indivdual freedoms and liberties to its citizens, refuses to make even a symbolic effort to insure that those liberties are extended to members of the world at large.

Consider what the Soviet News Service Izvestia had to say regarding the United Nations Declaration of Human Rights:

In the conditions of capitalism the declaration's basic tenets remain unfulfilled to this day. The bourgeois democracies, which serve the interests of imperialist monopolies, have turned the rights and freedoms assured by their constitutions into a farce. Thanks to the unstinted efforts of the Soviet Union . . . the United Nations has taken a series of measures aimed at restoring the independence of colonial people, the ending of all forms of racial discrimination, and (has) signed conventions condemning racism and genocide.

Mr. President, by the looks of this quote one would think that the Soviet Union was a freethinker's paradise. Although every person present today knows that this statement is ludicrously false, it is nonetheless true that the United States has maintained a bewildering policy in this area.

We have no reason to duck this issue. For 30 years we have done so, to our enemies' delight. Former United Nations Ambassador Charles Yost further confirmed this during the 1970 Foreign Relations Committee hearings on the Genocide Convention when he detailed the way that our failure to ratify this treaty was smugly thrown in our diplomats' faces whenever we had protested gross violations of human rights in other nations.

Mr. President, we must put an end to the lie that our detractors allege against us. We can do so by ratifying the Genocide Convention.

Mr. President, I yield the floor.

Mr. PELL. Mr. President, I would like to commend the Senator from Wisconsin for raising the question of the Genocide Convention. He does it regularly, and I hope the day will come when success will reward his efforts. I share his belief in regard to criticizing our failure to ratify it.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider one nomination on the calendar.

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

DEPARTMENT OF AGRICULTURE

The PRESIDING OFFICER. The clerk will report the nomination.

The second assistant legislative clerk read the nomination of Dale Ernest Hathaway, of the District of Columbia, to be Under Secretary of Agriculture for International Affairs and Commodity Programs.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.).

ORDER FOR REFERRAL OF SENATE RESOLUTION 15 TO COMMITTEE ON FOREIGN RELATIONS

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that Senate Resolution 15 to be sent to the Committee on Foreign Relations in conformity with the unanimous-consent agreement which was obtained at around 12:45 p.m. today, and that Senate Joint Resolution 3 remain on the calendar. That was a part of the unanimous-consent agreement made earlier in the day. It does not conform to the amendment which was before the Senate at the time, so I am asking unanimous consent to send only the one resolution, rather than two resolutions, to the Committee on Foreign Relations.

Mr. STEVENS. Mr. President, reserving the right to object, it was my understanding that Senate Joint Resolution 3 would be on the calendar.

Mr. HARRY F. BYRD, JR. Senate Joint Resolution 3 is on the calendar, and the request would be to send the other resolution, Senate Resolution 15, to the Committee on Foreign Relations in conformity with the unanimous-consent agreement made at 12:25 p.m. today.

Mr. STEVENS. I have no objection.

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

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT ON TAIWAN ENABLING ACT

Mr. ROBERT C. BYRD. Mr. President, anent the unanimous-consent order that was entered with respect to the Taiwan enabling legislation, I will try to flesh out that agreement now.

The distinguished acting Republican leader and I have discussed this, and I believe I am correct in saying he approves the request I am going to make, though he is here and will speak for himself, of course.

I ask unanimous consent that the time for debate on the enabling act be equally divided between and controlled by Mr. CHURCH and Mr. JAVITS; that there be a period of not to exceed 5 hours for debate on the act; provided further, that there be a time limitation on any debatable motion, appeal, or point of order, if such is submitted by the Chair to the Senate, of 20 minutes, to be equally divided and controlled; and that the agreement be in the usual form.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, there is already a time agreement on any amendment.

As to the usual form, it is my understanding that the time on those amendments, of course, would be controlled by the sponsor of the amendment and the Senator from Idaho, and that if the majority leader's request now is to put into the usual form a time limit on points of order and debatable motions made with regard to the Taiwan legislation itself, and we are not intending any limitations on Senator HELMS' amendment, those agreements would still stay in order.

Mr. ROBERT C. BYRD. No.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. I am saying that this does not apply to the amendments to be offered by Mr. HELMS. I have not seen them, but this would not put a rule of germaneness, of course, on Senator HELMS' amendment; is that correct?

Mr. ROBERT C. BYRD. No, it would not, because we have already got his amendments designated by name.

Mr. STEVENS. But this does not apply to any amendments?

Mr. ROBERT C. BYRD. It would to other amendments.

Mr. STEVENS. We have an agreement of 1 hour on all amendments.

Mr. ROBERT C. BYRD. Well, he is protected.

Mr. STEVENS. But I mean all other amendments.

Mr. ROBERT C. BYRD. All other amendments, under this request, would have to be germane.

Mr. STEVENS. I have no knowledge of what the amendments to be offered by the Senator from Idaho, for instance, would be.

Mr. ROBERT C. BYRD. I will be glad to modify my request as follows: That the agreement with respect to the division and control of time be in the usual form.

Mr. STEVENS. I thank the Senator from West Virginia.

The PRESIDING OFFICER. Is there objection to the modified request?

Mr. STEVENS. There is no objection, if the modified agreement does not impose the rule of germaneness on amendments that will have 1 hour, according to our understanding.

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

HOSPITAL COST CONTAINMENT

Mr. ROBERT C. BYRD. Mr. President, most people do not need facts and figures to tell them that it is costing them more to obtain basic medical care. A Harris survey, conducted last fall, found that, along with general inflation and uncontrolled Federal spending, Americans ranked the cost of health care as one of their major concerns. The average American now works 1 month each year—one-twelfth of his or her time—just to pay his or her share of the Nation's health care costs. The typical family of four with an annual income of $16,000 is now spending about $2,000 for medical services and in taxes used to support these services.

HOSPITAL COSTS

In 1950, total health care spending in the Nation comprised 4.5 percent of the gross national product; in 1968, 6.5 percent; in 1978, 8.9 percent. Expenditures for hosiptal care are the largest component—40 percent—of total health care costs in this country.

In recent years, hospital costs have risen annually at an average rate of 15 percent. Between 1975 and 1977, hospital costs increased between 14 and 20 per-

cent each year—an inflation rate more than two times the general rate of inflation as measured by the consumer price index. Five years ago, more than $29 billion was spent on hospital care in this country. Last year, more than $60 billion was spent.

Hospital costs are often called "invisible costs" since most people pay only a small portion of these costs directly. More than 80 percent of all hospital expenditures are paid by the Government or by employers through insurance plans. Nevertheless, the bite out of the paycheck is real. Every employed person now pays an average of $15 each week to finance the country's hospital expenditures.

Most private health insurance is obtained as a fringe benefit of employment, with employers generally paying about 85 percent of the cost of employees' health insurance plans. Hospital cost inflation burdens employers with increased insurance premiums and taxes. This year, employers are expected to spend more than $30 billion on hospital expenses. Employers' costs are passed on to employees in the form of forgone wages or fringe benefits. Additionally, employees as consumers are faced with rising prices of the goods and services produced. Hospital cost inflation directly affects all workers through increased out-of-pocket expenditures during hospitalization.

Rising hospital costs also mean increased taxes. Medicare, medicaid, veterans' health benefits, and public hospitals are financed through Federal, State, and local revenues. More than 12 percent of our Federal tax dollars are now spent on health care. The Federal Government will spend more than $30 billion on hospital care this year. State and local governments are expected to spend about $10 billion.

Twenty-five percent of the social security payroll tax goes toward financing medicare and that money is supplemented by general revenues. The elderly are now paying more out of their own pockets for medical care than they were in 1964, the year medicare was enacted. It is estimated that the medicare and medicaid programs will cost the Nation's taxpayers more than $55 billion in 1980, up from $44 billion last year, and $39 billion in 1977.

THE 95TH CONGRESS

In the final days of the 95th Congress, by a vote of 64 to 22, the Senate passed its own version of a hospital cost containment bill, which I supported. It was the product of a great deal of study and work on the part of many Senators.

Senator TALMADGE, and Senator LONG, of the Finance Committee, offered a plan which addressed the impact on hospital cost inflation on the medicare and medicaid programs. Senator KENNEDY and NELSON, of the Human Resources Committee, offered legislation which addressed the need for an immediate slowdown of hospital cost inflation in the private as well as the public sector.

Both of these measures made important contributions; ultimately, the Senate acted wisely in accepting the "Nelson compromise." In its recognition of volunteer efforts at costcutting in the hospital industry, I found it to be a reasonable and positive approach. Mandatory Federal cost controls would have been imposed only as a last resort—only if hospitals failed to achieve their own cost containment goals. I regret that the measure died in the House.

THE HOSPITAL COST CONTAINMENT ACT OF 1979

Senator NELSON and Senator KENNEDY, along with other Senators, have introduced a measure which builds upon the action taken by the Senate last session. It would establish an average rate of increase for hospital costs in 1979, which hospitals would be asked to meet voluntarily. As in the plan passed last year by the Senate, Federal mandatory controls would be imposed only as a last resort—should the goal of slowing down hospital cost inflation not be met on a nationwide basis.

The measure recognizes that hospital delivery of services is not the sole cause for hospital cost inflation. The national goal for the hospital industry in calendar year 1979 would be based on the general rate of inflation plus additional cost factors unique to the industry. These factors include the actual percentage rate of inflation in the cost of goods and services purchased by the hospitals as well as allowances for growth in population served and for increased quantity and quality of services.

Many provisions adopted by the Senate in its own version of hospital cost containment are included in the mandatory cost control program. Any individual hospital meeting the national goal would be exempt from the mandatory program. Additionally, all hospitals in any State would be exempt from the program, should the goal be met on a statewide basis.

Certain types of hospitals which face unusual financing situations would be exempt from the program. These include small, rural hospitals, new hospitals, and health maintenance organization hospitals, as well as hospitals located in States with their own statutory cost containment programs.

THE NEED FOR ACTION

The cost of hospital care has been rising faster than the overall cost of living, and faster than other medical costs. While there was an improvement in the rate of hospital cost increase last year—due to the voluntary efforts of the hospital industry and the savings incurred by hospitals in States with mandatory cost containment programs—the rate of increase accelerated sharply at the year's end, renewing public concern. Moreover, the hospital cost inflation rate of 13.1 percent even exceeded price increases for other highly inflationary items in the economy. It exceeded food prices, which rose at a rate of 11.8 percent; fuel prices, which rose by 8.0 percent; and housing costs which grew at a rate of 11.5 percent, as measured by the consumer price index.

The hospital industry is one of the most inflationary segments of our economy. Hospital cost inflation results in inequitable and inefficient distribution of scarce health care dollars. Our tax dollars must be prudently spent. Adequate care must be as accessible to poor and middle-income citizens as well as to those for whom price is no object. It is my hope to see legislation which will bring hospital cost inflation under control become law this session.

THE OLYMPIC JOB OPPORTUNITY PROGRAM

Mr. STEVENS. Mr. President, we are all aware of the many demands the Federal and State governments make on private industry. For the most part, the business community has always come through as requested. It is pleasing to learn of a private business who has set the pace for not only other businesses, but the Government as well.

Such is the case of the Canteen Corp., a Chicago-based firm which has embarked on a commendable and far-reaching program to assist the U.S. Olympic athletes throughout the Nation through their Olympic job opportunity program. The Canteen Corp. of America has placed numerous athletes in their corporate jobs. Many of these athletes currently training for the 1980 Olympic Games could not continue training were it not for programs such as that sponsored by the Canteen Corp. This is a commendable program, and one which I hope the Federal Government will emulate.

Senate Bill 387, a bill I recently introduced, follows the example of the Canteen Corp. by providing leave time for Olympic athletes employed by the Federal Government. Note: the 1980 Olympics are only 1 year away.

Mr. President, I ask unanimous consent that an article, "Jobs for Olympians: Business Pitches In," published in the June 12, 1978, issue of Business Week, be printed at this point in the RECORD.

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

JOBS FOR OLYMPIANS: BUSINESS PITCHES IN

The 1976 Summer Olympics in Montreal struck Howard C. Miller, president of Canteen Corp. in Chicago, as unfair—not the games themselves, but the sight of state-subsidized athletes competing against Americans whose only support came from family and friends.

Instead of complaining about "the Russians and East Germans subsidizing amateur athletics," Miller addressed himself to the apparent inequity. The result is the Olympic Job Opportunity Program, an organization that has already found corporate jobs with flexible hours and paid time off for 23 U.S. Olympic hopefuls now in training. Some 80 major companies have endorsed the idea, and Miller envisions companies supporting up to a quarter of the 600 U.S. athletes who will compete in the 1980 summer games in Moscow and winter games at Lake Placid, N.Y.

"The U.S. has been losing three out of four classes of super athletes who do not happen to graduate from college during an

Olympic year," he maintains. "They have no place to go but work." Although swimmers peak at 18 or 19, the average age of U.S. Olympic athletes is 25.

NO HANDOUTS

To aid these athletes, Canteen began organizing the job opportunity program in late 1976. It sent out letters to the nation's 500 largest companies and got responses from nearly 300. "We're asking for a full-time job, not a handout for three years," Miller emphasizes. Salaries of the two dozen athletes placed so far average $12,000 to $15,000 a year, and, even if the individual trains and competes half of the time, that only costs the company $3,000 or $3,750 after tax.

Since last year, Canteen has built up the largest corporate team of Olympic contenders. It includes long-distance runner Tom Burleson, hurdler Charles Dobson, and 1976 gold-medal speed-skater Peter Mueller. While Mueller works as a maitre d' at a Canteen restaurant in Milwaukee, his wife, 1976 silver-medal speed-skater Leah Paulos, works as a youth-market sales representative for Coca-Cola Co.

Rower Carol Brown, a 1976 bronze-medal winner, is working in the marketing department of Pepsi-Cola/Seven-Up Bottling Co. of Seattle. Race walker August Hirt is an accountant for Continental Illinois National Bank & Trust Co. of Chicago. And biathlon athlete Peter Hoag works for Samsonite Corp. in Denver, where he has access to both skiing and a shooting range. Other companies hiring Olympic contenders include Montgomery Ward, General Mills, Standard Brands, Johnson & Johnson, and Wilson Sporting Goods. Last October, Wilson employed sprinter Stanley Vinson as a $9,000-a-year customer-service representative in the team sports promotion program.

"There was little support in the job market for athletes wanting to continue to compete," says Vinson, who had an assortment of moving and dishwashing jobs before Wilson hired him. Without the job opportunity program, he emphasizes, "I was at the end of my athletic career." Now he sells Wilson sporting equipment and voluntarily trains in Wilson T-shirts and jogging shoes.

COKE AND SHOWER HEADS

Companies participating in the job program are advised not to expect publicity from their involvement. But Miller acknowledges that if athletes do bring home the gold, later commercial endorsements are "a benefit that may accrue."

The job opportunity program is, of course, just one aspect of the U.S. effort, which, the U.S. Olympic Committee predicts, will cost $26 million between 1977 and 1980—double the previous four-year budget. About 85% of this cost is split between private donations and the corporate identification program, which allows companies to identify products with the U.S. Olympic Committee and team for $50,000 and up. There are more than 50 commercial categories, from candy and cosmetics to orange juice and toothbrushes.

Companies are starting their Olympic-related advertisements earlier, says Arthur I. Kuman, director of the Olympic Committee's corporate participation program. "It's intelligent repetition that counts," he adds. Already, Coca-Cola and Pollenex shower heads are being advertised and Toyota Motor Co. and its 1,000 domestic dealers have embarked on the largest corporate identification program ever, dubbed "the million dollar dash for the 1980 Olympics." Between Apr. 24 and June 30, Toyota will contribute at least $1 million—about $10 per vehicle sold—to the U.S. Olympic Committee.

All of these programs are important, but Canteen's Miller suggests the job opportunity program "seems to be the only logical system for mustering the full potential of our amateur athletes."

FRONTIER FARMING IN ALASKA

Mr. STEVENS. Mr. President, in light of President Carter's action under the Antiquities Act and the current debate over the status of Alaska lands, I would like to bring to my colleagues' attention a chapter of Alaska's history concerning the development of her extensive agricultural resources.

The potential for agriculture in Alaska has been well documented since the turn of the century. History shows us that the development of Alaska's agriculture and other renewable resources have been impeded and blocked by inconsistent and often shortsighted Federal policies based on fear, overreaction, and misconceptions about Alaska.

In 1906, during a period of intense interest in Alaskan grain farming, following the movement of the railroad to the interior, President Roosevelt withdrew all Alaskan coal lands from entry, by Executive order, pending Government investigation. Out of this action came one of the pivotal issues in the American conservation movement known as the Ballinger-Pinchot controversy. Although Roosevelt promised Alaska a swift implementation of a coal-leasing system, the ramification and repercussions of the conservation-exploitation dialog delayed legislation on the issue for 8 years.

Since the development of Alaskan railroads at that time depended upon coal, the closing of the coal lands meant a virtual halt to railroad construction. Without the railroad, which was the backbone of American agriculture, the movement to develop grain farming in interior Alaska came to a standstill and has never fully recovered momentum until the present.

The development of agriculture in Alaska once again stands at a critical juncture. The State has during the last 2 years initiated a mandate to release large tracts of State-owned land for agricultural production and has committed itself to subsidize in part the infrastructure required for developing these resources.

The President's recent action under the Antiquities Act withdraws roughly 15 million acres of the highest potential agricultural lands out of the 18.5 million acres identified by the U.S. Conservation Service as suitable for agriculture, roughly 80 percent of Alaska's agricultural land.

I can only hope that history in this case does not repeat itself and the Congress will move promptly in resolving the issue.

Mr. President, I ask unanimous consent that an article printed from the Annals of the Association of American Geographers be printed in the RECORD as well as a short statement regarding the agricultural situation in Alaska.

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

THE COLLAPSE OF FRONTIER FARMING IN ALASKA

(By James R. Shortridge)

[Figures not printed in the RECORD]

(Abstract. Literature of the 1898–1950 period predicted that Alaska would be occupied by pioneer farmers, in a manner similar to the rest of the United States. Physical conditions allow subsistence farming in large areas of Alaska, and many government inducements were offered to pioneers. These included liberal land laws, a subsidized government railroad, and a demonstration group settlement scheme. The almost complete failure to attract settlers seems attributable mainly to a decline in the traditional advantages of frontier agriculture in the twentieth century and a simultaneous rise in the opportunities and amenities of urban life. These trends were generally not acknowledged by government planners until about 1950, and their increasingly elaborate plans to force the recalcitrant yeoman farmer onto the "last frontier" were thus exercises in frustration.)

Agriculture has always been miniscule in Alaska. Only some three hundred farms exist at present and the total has never been above 623.[1] Alaska is thus one of the exceptional areas in the United States where the cherished yeoman farmer tradition was not implemented. This anomaly has been noted by many observers, and the usual explanation invokes a combination of limited physical potential, poor transportation, and small markets. Certainly these factors are important, but a historical perspective on the question suggests a much more complex situation.[2]

Contemporary sources from the early decades of this century reveal a general agreement among laymen and professional authorities that Alaska was ripe for frontier agricultural settlement. The land was thought to be physically capable of supporting a substantial agriculture and the nation as a whole was assumed to require a new pioneer fringe. Yet, somehow frontier agriculture failed to develop. It is argued here that Alaskan physical conditions would have allowed subsistence farming. The critical factor in the anomaly was a change in American attitudes toward pioneering that occurred nearly simultaneously with the expectations of Alaskan development. A gap was created between the collective American mind and the individual one; the symbol and idealization of the yeoman farmer survived long after individual Americans were willing to pioneer. From about 1900 to 1950 Alaska endured this quandary, suffering frustration as increasingly elaborate but largely futile government programs were proposed to attract farmers to this last frontier. These programs are detailed here as they represent a final chapter in the pioneer westward expansion of this country, a demonstration of the strength and resiliency of the agrarian yeoman vision to Alaskans and Americans generally.[3]

PHYSICAL POTENTIAL FOR AGRICULTURE

No one could ever argue that Alaska is a physical paradise for agriculture. Many parts are mountainous, other large areas are poorly drained, and a short growing season prohibits farming in many additional sections. There is, nevertheless, a substantial acreage that could conceivably be farmed. This easily demonstrable fact is apparently very hard for Americans to accept, however, as a steady stream of Alaskan writers from the 1860s to the present have felt compelled to correct

Footnotes at end of article.

the public's overly negative appraisals of local climatic conditions. In 1946, for example, an exasperated Alaskan Commissioner of Agriculture compained: [4]

"I don't know what we can do to persuade the American people. They *want* to believe that Alaska is a land of snow and ice. When I talk with persons in the States about our wonderful agriculture up here, most of them smile and say with their eyes, 'Poor fellow, he's been away too long. Talks like a bad case of North Pole fever. There just can't be farms in Alaska as he describes.' "

The explanation of the overly pessimistic judgments of the Alaskan climate is beyond the scope of this paper, but as such opinion casts a persistent negative aura over any discussion of agricultural potential in the region, it seems desirable to briefly summarize the physical potential of the area as it is described in modern studies.[5]

Soils and grazing potential

Good soil is a scarce and highly localized commodity in Alaska. Steep mountainous terrain covers a large portion of the area, and lowland soil forming processes are frequently retarded by poor drainage. Permafrost, occurring discontinuously in the vast Yukon basin, restricts downward percolation where it is found. Still another obstacle to soil formation is the slow rate of weathering encountered north of the Alaska Range. Low ground temperatures for much of the year effectively prohibit several chemical and biological weathering agencies and slow most others.

Despite all the above limitations it would be wrong to conclude that Alaska lacked soils suitable for cultivation. Weathering does go on and the region has "a very large area of loess-like deposits and river terraces having nutrient-enriched, stone-free substrata of favorable texture, and often either level or smooth topography." [6]

Several million acres, at least, are so blessed (Fig. 1).[7] The principal arable soil association in Alaska is generally termed Subarctic Brown Forest. This title suggests a similarity to the Brown Forest soils of more southerly regions, and although both the name and the implied similarity have been challenged, the soils remain the finest in Alaska. Perhaps the primary precondition for their formation is a well-drained site, and this is one of their most valuable characteristics for agriculture. They tend to be acidic at the surface, but are much less so and even slightly alkaline with depth. Texture is also acceptable for cultivation and the plant nutrient content is in "fairly high supply" at least in comparison with most other Alaskan soils.[8]

All of the arable lands can certainly also be considered to have grazing potential, but in addition, nearly every other part of Alaska short of ice cap and rock outcrop is capable of supporting life to some extent. The exact degree depends on the type of animal involved and the amount of supplementary feed available. This leads to a certain amount of arbitrariness in measuring grazing potential. If one limits the consideration to rangeland capable of sustaining grazing animals for the bulk of the year without appreciable supplementary feeding, a criterion traditionally used by frontiersmen, a general picture can be sketched.

Reindeer pasturage must first be distinguished from cattle and sheep ranges; the far hardier reindeer can graze year-round where other domesticates would starve. The Alaska and Aleutian Ranges effectively divide the two territories. Although climatic differentials caused by the mountains are one prime reason for this, varying pasture types are important also.

The only authoritative map of reindeer pasture potential was prepared in 1922 by the U.S. Department of Agriculture (Fig. 2).[9] Despite the fact that it was compiled when Alaskan vegetation was only sketchily known, it is still being used in modern studies.[10] The core of the reindeer range is the cottonsedge tundra, a land of moss and lichens with scattered patches of grass, many flowering plants, and occasional low shrubs. The actual extent of this browse has never been carefully estimated. Guesses by those best informed range from 150,000 to 350,000 square miles.[11]

South of the Alaska Range, extending from the Kenai Peninsula, south of Anchorage, westward to Unalaska Island is a lush grassland of approximately 10,000 square miles suitable for cattle and sheep grazing.[12] The dominant grass is bluetop (*Calamagrostis langsdorfit*) which frequently is in pure stands. Its height (often reaching six feet), the obvious way cattle thrive on it, and its desirability as a hay species were important observations that very few travellers to Alaska failed to make. The grass has certain problems, however, including a tendency to decline in vigor if cropped annually for hay. Complaints of low protein percentage and high levels of crude fiber are common in the literature, but this was caused by harvesting too late in the season.[13] The bluetop plant has thus been partly responsible for the very mixed agricultural forecasts for the south Alaska grasslands; on the one hand it fattened animals without human aid, and on the other frustrated herdsmen who attempted to store it for winter use.

Climatic potential

Few people considered Alaska's rangelands unsuitable for agricultural settlement despite the variability in soils. The exact available quantities of each soil and rangeland type were questioned, but their existence was not. As for climatic conditions, nearly every author on the region has assailed the myth that "all Alaska is a frozen, treeless waste." [14]

One of the most important and misunderstood factors controlling the agricultural climate of Alaska is high latitudinal position.[15] Especially important are several important ramifications of long summer days for plant growth. Not only are the July mean maximum temperatures above sixty degrees in nearly all the state and exceed seventy degrees over a broad portion of the interior, but the long days minimize the danger of a midseason frost. If the temperature should fall to the freezing mark, sunrise can often raise it again before damage to the plant occurs. Long days also increase the time that photosynthesis can operate. According to recent work, the middle Yukon Valley has one of the world's highest rates of potential photosynthesis for the four month period from May through August.[16]

A map of the mean number of days between frosts shows large areas of the interior with seasons of eighty days or more, a period adequate for the production of hardy grains and vegetables given the long subarctic summer days (Fig. 3). The government experiment station at Rampart, on the middle Yukon River, never had a grain failure during its entire twenty-six-year existence. The long days, high temperatures, and a near absence of thunderstorms in the interior all bode well for crops. The only summer handicap is an occasional mild drought. Though precipitation totals rarely exceed sixteen inches in this region, crop failures are rare because of low evaporation rates.

Southward from the Alaska Range is a completely different climatic world. Marine influences produce narrow ranges of diurnal and annual temperature and a superabundance of cloud cover, fog, and rain. Growing seasons average 140 or more days along the entire coast, and grasses can grow nearly continuously. Subsistence grazing is possible with a minimum of expense, although the maritime conditions do not favor the ripening of many crops and even inhibit the field drying of hay.

A coarse summary of the physical adaptability of Alaska to agriculture can be obtained by comparing the maps of soils and growing season length (Figs. 1 and 3). The eighty-day isoline fairly adequately delimits the possibilities for hardy grains and vegetables in all areas north of the Alaska Range. Within this isoline, soil conditions limit the physical potential for extensive development. Large areas in the lower valleys of the Yukon, Kuskokwim and other Bering Sea rivers are unsuitable on this account. The most favorable areas for cultivation are large portions of the middle and upper Yukon and Kuskokwim valleys, the lower and middle Tanana Valley, the Cook Inlet lowland, and scattered lowlands along the extended Gulf of Alaska shoreline.

THE EXPECTATION OF DEVELOPMENT

Before the great Klondike gold stampede began in 1897 there was no real need for Alaska to be settled nor any rational expectation that it would be. Americans were busy populating the much more accessible and better known plains states. The rapid influx of literally thousands of miners to the territory brought the need for prompt reassessment, especially since the mining boom corresponded in time to the virtual exhaustion of the fertile, drought-free portions of the public domain stateside. Apparently a new agricultural frontier would have to be developed to counter the rising land values and tenancy rates in the Middle West. If not, many feared that the era of cheap food and general prosperity would soon be gone forever.[17] Either of these conditions was considered reason enough to expect large-scale agriculture development in Alaska; together they seemed to make it inevitable.

The mining boom swelled the white population of Alaska from 4,298 in 1890 to 30,493 by 1900, and no one foresaw any reason for the rush to cease.[18] A market for local produce thus seemed assured. The population influx also encouraged the U.S. Department of Agriculture to set up local experiment stations, and with amazing speed the physical feasibility of agriculture was verified. In 1902 the head of the experiment stations stated that "it has been demonstrated that Alaska has agricultural possibilities of a high order." [19] A few years later the governor indicated that the opinion was general: "Speculation has already passed out of fashion among a large number of Alaskans who think there is no longer any doubt as to the general feasibility of agriculture in the Territory." [20]

The experiment stations, under the skillful and ebullient leadership of C. C. Georgeson, quickly rectified many of the bugbears of Alaskan agriculture. Stations were established both on the coast and in the interior, hardy varieties of seed and livestock were introduced, and cultivation practices were studied. The net results were overwhelmingly positive, so much so that after two years of work Georgeson could claim that: "at a conservative estimate, the tillable and pastureland of the Territory amount to 100,000 square miles" (Fig. 4).[21]

The initial aim of Klondike-era agriculture was local supply only, but as immense acreages of potentially productive land became known, export products came to dominate discussions. Three possibilities were highly touted: cattle and sheep ranching, wheat farming, and reindeer herding. Together they

---

Footnotes at end of article.

seemed to hold a promise for a new agrarian empire.

Cattle and sheep ranching in the lush natural grasslands of Kodiak and the Aleutian Peninsula was the first enterprise to gain national attention. The grasslands had long been known, and when a Seattle packing firm placed some 9000 sheep and 200 cattle on Kodiak in 1902 and 1903, many took note.[22] Although the pastures remained relatively empty for the next twenty years, the work of the experiment station at Kodiak was quite successful. Government and private sources echoed a similsr sentiment: [23]

"At present this part of the country is almost entirely neglected. But one of these days the stock raisers of the world will wake up. They will find no finer spot on earth for the promulgation of their industry than the Island of Kodiak."

It naturally became harder to keep up the enthusiasm as time passed without development, but in the middle 1920s sagging hopes were revived. Two companies each imported a thousand head of sheep to Unalaska and Umnak Islands in 1924, and one of them, reporting "exceedingly promising results," brought in another 3500 head by 1927.[24] Additional hope for development came from Congress, which in 1927 approved the creation of grazing leases on the public lands. The General Land Office reported having 80 applications on file for the southern Alaskan leases in 1930, and 190 in 1931.[25]

Wheat, like livestock a traditional American frontier commodity, was not accorded the same enthusiasm as the ranching industry in the years immediately following the gold rush. Wheat would not grow well on the coast and its potential in the interior was stymied by inaccessibility. Bonanza dreams picked up after plans for the Alaska Railroad were announced in 1914, however, and reached euphoric levels by the early 1920s when government wheat breeding efforts were deemed successful. The optimistic outlook became general when a Fairbanks farmer's association built a grain mill in 1921. Many waxed grandiloquent, and even the governor was impressed: [26]

"There is absolutely no reason why, with the extension of the acreage under culture, Alaska should not produce all the flour that is needed for home consumption and in the course of time have a surplus for export. The completion of the Government railroad will give access to the coast settlements, and if freight rates are adjusted to the economic requirements of the Territory, Alaska flour can and will be shipped to southeastern Alaska and elsewhere."

Both the wheat and cattle-sheep industries were enthusiastically promoted in the early years of the century, but their sporadic, very slow development rates were constant hindrances to public credibility. In contrast, the reindeer industry in this period was a model of rapid and smooth growth. It seemed to be an enterprise uniquely suited to the vast tundra lands, and supplied a product for which abundant markets could be created in the coterminous United States and elsewhere.

Reindeer were introduced into Alaska in 1891, originally to provide subsistence for the destitute Eskimo population. It was soon observed that the animals were thriving, doubling their numbers every three years given only minimal care. It seemed almost too good to be true, and Americans were quick to see the implications. The clarion call was sounded in 1903: [27]

"There are 400,000 square miles of barren tundra in Alaska where no horse, cow, sheep, or goat can find pasture; but everywhere on this vast expanse of frozen land the reindeer can find the long, fibrous, white moss which is his food. There is plenty of room for 10,000,000 of these hardy animals. The time is coming when Alaska will have great reindeer ranches like the cattle ranches of the southwest . . . In thirty-five years Alaska will be shipping each year to the United States anywhere from 500,000 to 1,000,000 reindeer carcasses and thousands of tons of delicious hams and tongues. At no distant day, it may be safely predicted, long reindeer trains from arctic and subarctic Alaska will roll into Seattle and over most western cities like the great cattle trains that now every hour thunder into the yards of Chicago."

Grosvenor had made a most daring prophecy, but one which the developments of the ensuing years seemed to substantiate. Articles appeared bearing such titles as "Alaska, the World's Meat Shop," "The Reindeer Revolution," and "The T-Bone of Tomorrow," each espousing Grosvenor-like dreams.[28]

A market was all that the industry needed, and no one doubted this prospect for a minute. Reindeer meat could be delivered to the west coast cities at a price one-fourth to one-half that of beef, and the meat was universally judged first-class, both in quality and in taste. By 1920 the largest of the reindeer operators had lined up distributors in Seattle, Portland, Minneapolis-St. Paul, Oklahoma City, Chicago, New York, and Boston, and had obtained contracts with several major hotels and passenger railroads. Herd size was reported at 350,000 in 1924 and still growing. It was, in the words of geographer J. Russell Smith, an industry "thoroughly established." [29]

THE ENIGMA OF NON-DEVELOPMENT

The reindeer, wheat, and cattle-sheep industries, together with the general land needs and beliefs existent in the United States, comprised a tenable platform from which Alaskan agrarian dreams could be projected. From 1897 until the days of the Great Depression people were continually led to predict an imminent settlement boom. With the exception of the reindeer business, however, the years passed with only token development, and a doctrine of imminent settlement became harder and harder to sustain. The white population remained virtually static from 1910 through 1930 at 30,000 people, and the number of farms climbed only slightly from 12 in 1900 to 500 in 1929.[30] The trickling growth was hardly a boom.

What was wrong with Alaska? That any piece of American territory would not develop a strong class of yeoman farmers was beyond the belief of most citizens. It had been the pattern from Massachusetts to Kansas and Oregon. Farmers were an integral link in the accepted "wave-theory" of settlement and, as the public generally linked farming with both democracy and independence, nonsettlement seemed almost un-American.[31] Alaska was truly an enigma in the late 1920s and early 1930s, and the search for an explanation became almost a mania. Article after article carried such titles as "What Ails Alaska?," "Why Alaska Is Being Rapidly Depopulated," and even "Will Alaska Secede?" [32]

The reasons advanced for the lack of settlers were varied, and changed somewhat throughout the period as stagnation remained after supposed problems were rectified. Inadequate land laws were blamed early, and later foils included government bureaucracy and the influence of special interest groups. The principal and continuing concern, however, was the transportation issue. Through sympathetic and often enthusiastic government and private activity, most of these supposed obstacles to settlement were removed by 1930, but the result was an even deeper enigma in 1930 than in previous decades. There were still no farmers in Alaska, but now there were no convenient scapegoats to blame.

The land laws

A major concern in the immediate post-Klondike years was the form and operation of the homestead laws originally extended to Alaska in 1898. They specified that all entries must be on officially surveyed land, but the first surveys were delayed some ten years.[33] Moreover, eighty acres was the maximum entry allowed, a holdover from the days when vegetable gardens were deemed the only possibilities for the land.

Since inadequate land laws or even their absence altogether were rarely an important factor in keeping American settlers out of a new territory, it is unlikely that the survey and acreage controversies in Alaska were more than limited obstacles to settlement. As the federal government progressively liberalized the land laws, no convincing case could be made against them. Enlargements of the homestead entry limit were considered in 1900 by the U.S. House of Representatives, reasoning that "an 80-acre homestead is too small for actual use in any new country, and instead of reducing the size of a homestead in that region there would be greater reason for increasing it to a half section, or even a whole section." Two years later the maximum entry was enlarged to 320 acres.[34]

Railroads and the conservation movement

Concerned writers of the time increasingly began to focus on the transportation issue as the land laws improved and settlement was still slow. Transportation woes, of course, were by no means unique to the Alaskan frontier. They were an inevitable accompaniment of every move into new land. Their solution was almost always a slow process, but usually a steady one, as increasing numbers of people and natural resources justified the construction and maintenance of more railroads, roads, sea lanes and the like. Since railroads were at the peak of their national popularity at the time of the Klondike, attention was concentrated mainly on them.

Transportation in Alaska seemed to be improving at an acceptable and even surprising rate in the early years of the century. Following the passage of a bill to grant railroad rights-of-way in 1898, private capital was rapidly invested in railroads all over the territory. The White Pass and Yukon Railroad was completed from Skagway to the Yukon River at Whitehorse in 1900, and the Alaska Central began construction from Seward toward Rampart on the Yukon in 1902. Elsewhere, between 1897 and 1903 at least four companies were organized to drive up the Copper River valley before the successful Copper River and Northwestern Railroad began work there in 1905. Short lines also sprang up in the Tanana Valley, at Yakutat, and on the Seward Peninsula.[35]

Gold, copper, and coal were the main lures for railroad construction, but it was acknowledged that the opening of rich agricultural valleys would be a most important auxiliary feature. Seen through the eyes of enthusiastic railroad builders, farming potentials appeared limitless. Trumpeted one railroader with more fancy than fact: [36]

"Alaska is really a fertile region. . . . Thousands of people have been going north to Alaska not simply to dig for gold, and then return, but to locate there permanently. . . . Barley, oats, and buckwheat have become quite important crops, and thousands of bushels of grains are now transported south to the coast from the great interior plains."

Others were just as extreme. The completion of a line to either Fairbanks or Eagle, wrote a promoter in 1903, "means the development there of three or four agricultural

Footnotes at end of article.

and mining states like Iowa, Minnesota, the Dakotas, and Montana in central Alaska." [37]

All of the above agrarian dreams were dealt a severe blow in 1906 when, because of an attempt to monopolize the Bering coal lands inland from Cordova, President Roosevelt withdrew all Alaskan coal lands from entry pending government investigation. Out of this simple action came one of the pivotal issues in the American conservation movement, the Ballinger-Pinchot controversy.[38] Although Roosevelt promised Alaska a swift implementation of a coal-land leasing system, the ramifications and repercussions of the conservation-exploitation dialog delayed legislation on the issue until 1914.

The implications of the coal dilemma for Alaskan transportation were predictable. Since "all Alaskan railroads wanted coal—those bankrupt, those building, and those few operating," the closing of the coal lands meant a virtual halt to railway construction.[39] The Ballinger-Pinchot controversy inextricably tied the transportation issue to the conservation one, and the latter was put forward time and time again as the underlying reason behind the population stagnation. A prominent geographer of the time, Ralph S. Tarr, was of the opinion that "Alaska and Alaskans have been made the victims of a combination of stupid land laws, awakened public conscience, the clamor of the unreasoning mob, and politics." Tarr welcomed the conservation wave but warned: [40]

"There is danger lest it become a quack medicine that will kill and maim instead of being the cure-all it is proclaimed to be. Even continued exploitation may be preferable to unwise conservation. In Alaska it has so far checked progress, and no immediate prospect of relief is in sight."

The Alaska Railroad

Helpless Alaska, an innocent victim of the latent environmental concern of the nation, soon became a theme not only for popular writers and social critics, but also for leading government officials. Largely to atone for this guilt, the Secretary of the Interior and others threw their wholehearted support to an already well publicized plan for a government-built, government-run railroad into the Alaskan interior.[41] The idea met with some opposition, but public support was overwhelmingly in its favor. The "guilt" aspect was probably the biggest selling point for the railroad, but close behind lay the hope and expectation that this transportation improvement would bring in its wake * * *.

By 1914, with the Alaska Railroad under construction and a coal leasing system finally in operation, the future looked bright to most observers. Progress, however, was only fleeting and Alaska soon fell once again into stagnation. This time an explanation was much harder to find—the land laws were good, transportation was notably improved, and the coal fields were reopened.[42] World War I provided a temporary excuse, with Governor Riggs suggesting that Alaskans "have flocked to the colors in great numbers," and that "a large proportion of the population, seized by the general restlessness of the country, has left for the scenes of greater excitement and anxiety.[43] This exodus was undoubtedly largely responsible for the drop in the white population from 36,400 in 1910 to 27,883 in 1920, but does little to explain why a large population upswing did not occur in the immediate postwar years.[44]

Analysts were practically at a loss to explain the stagnation of the 1920s. A few attempted to muster a case for bureaucratic red-tape and the problems inherent in government from long distance (i.e., control of Alaskan affairs in Washington, D.C.), but why these would keep out settlers was never stated.[45] The problem clearly went much deeper.

As the 1920s wore on, and especially after the arrival of the Great Depression, the tendency was to ignore the issue at last, and thus by implication to assume that rural settlement was somehow not "fated" for Alaska. The Depression effectively extinguished the flickering hopes for large cattle and sheep operations as well as those for grain elevators and mills. Of the three agricultural export hopes, only reindeer remained and this industry too, even with its strong initial market penetration and 700,000 head of stock in 1931, was destined to practically die by the end of that decade.[46]

The collapse of the reindeer industry

Declining reindeer exports in the early 1930s were properly attributed to the Depression, but this economic crisis was only one of many problems which descended suddenly on the industry. Some of the troubles were perhaps inevitable given the rapid growth and pioneering nature of the business. Insect and parasite problems, for example, which had been negligible in the early years when the herds were small, progressively increased as the deer multiplied. In the same manner, but of much greater consequence, problems of range management and herding procedure also grew along with the herds. Straying became more and more common with the animals either joining wild caribou bands or falling victim to wolves, a predator which naturally increased its numbers along with the reindeer. At the same time, government surveys found evidence of serious overgrazing.[47] Lichen pastures required from fifteen to thirty years to recover from heavy use, a much slower time than had been suspected. This meant fewer animals could be grazed per square mile and led to increased herding costs.

The above problems might have been largely overcome had the healthy meat export picture of the late 1920s maintained itself. Two forces, however, combined to prevent this: the Great Depression of the 1930s and pressure tactics adopted by the American cattle industry to keep out the "competition from Alaska." Around 1930 the cattlemen apparently began to feel that reindeer exports were increasing at an alarming rate. "Today it is two million pounds," their trade journal railed, "tomorrow it may be twenty million." [48] The major battle of the reindeer-cattle "war" seems to have occurred when Carl Lomen, the main reindeer operator, contracted with a nationwide chain-store system to stock and advertise reindeer meat: [49]

"Quick to sense the danger in this movement, stockmen at once took action. They held up to the management of the concern in question the falsity of some of their claims, and especially stressed the disloyalty to members of an industry upon which the welfare of the whole community largely rested. So hot and insistent was the attack that the chain-store people capitulated. A promise was drawn from them that in the future no reindeer meat would be handled in their stores."

The tactics of the cattlemen effectively killed the white-owned reindeer export business and indirectly hurt the native operators, as they too were left without large outlets for surplus deer. A widespread sentiment developed to prohibit white ownership in the hope of preserving the remainder of the dwindling market for the Eskimo herders. The sentiment was made into law in 1937.[50]

From 1937 on the industry went into even more rapid decline. The native herders began to lose heart without the technical, managerial, and marketing skills of the white businessmen and many returned to their traditional hunting and fishing existence, allowing wolves to gradually decimate the reindeer. The inventory was down to 250,000 deer by 1940, when World War II supplied the death blow. Eskimo herders deserted to take new government jobs and discovered in the process a way of life which made reindeer herding seem a poor alternative; by 1945 only 60,000 deer remained and by 1949 there were only 27,920.[51]

THE DECLINE OF PIONEERING

The reasons for the reindeer fiasco seem fairly obvious, but they apply only to that particular industry. The more general question, why rural settlement never came to Alaska on a significant scale, remains unanswered. As has been shown, the principal reasons advanced at the time—poor land laws, lack of transportation, and the government conservation policy—were unsatisfactory; the problem remained after each supposed cause was remedied. A more adequate answer, which in retrospect seems quite obvious, was almost totally passed over by contemporary writers. American life in general and American agricultural life in particular was rapidly undergoing changes in the early decades of this century which made pioneer farming an increasingly undesirable alternative for most people, both from an economic and a social standpoint.

Two major reasons for the decline of pioneering can be seen by examining the traditional economic rationale of the frontier farm. Cheap land and a fertile, virgin soil were important assets, and in theory, these outweighed the handicaps of long distance to markets and an absence of many of the amenities of established society. Only two members of this equation stayed relatively constant as the new century advanced: cheap land and distance to market. The other two changed radically, and in a direction so as to tip the already tedious balance away from the pioneer existence. Rich soil, with the growing use of fertilizers, insecticides, and better soil conservation practices, became no longer the sole property of the virgin lands. Moreover, the amenities of civilization the frontier family had to give up increased immeasurably. This second point, while not nearly so well known as the first, is one of the most important factors in bringing to an end the age of pioneering. Isaiah Bowman saw it as early as 1931, and expressed it well: [52]

"The first question the modern pioneer asks of a land where he is to dwell and create a home is, "What is the *quality* of the life I shall have to live there"? Such a question rarely interested the pioneer of an earlier day because he left comparatively little behind him. . . . In their home communities early families had only a low level of medical skill, and there were no telephones, no bathtubs, no movies, and no many-other-kind-of-things for them to relinquish in order to become pioneers. If they subjected their families to the dangers of the wilderness they also offered them such advantages as there may be in an outdoor life. Today it requires courage to leave the telephone behind, for at the other end of it is a skilled specialist, not merely an herb doctor, who may save the life of a member of the family in a crisis. . . . Social pleasures and social communication have increased enormously in recent years, and these the pioneer can enjoy only in greatly attenuated forms."

In addition to the above considerations, at least two others contributed to the demise of American pioneering. One was the development of higher yielding plant varieties. With new wheat varieties and the development of greater skill in utilizing the subhumid lands of the Great Plains, there was no longer any need for the crop to be grown on the Alaskan frontier, thousands of miles from markets of the East.

A concurrent trend in United States agriculture was one toward increased mechanization. This, while easing the workload of the established farmer, was another severe blow to pioneering. Pioneers traditionally were people long on ambition and brawn,

Footnotes at end of article.

but short on capital.[53] In the early 1900s it became increasingly impossible to compete on the commercial market without such new "necessities" as tractors and reapers. One could still practice subsistence agriculture with ambition and a mule or two, but in view of increased knowledge of how "the other half" lived, this alternative appealed to only a very few.

The absence of settlers in Alaska in the 1920s was evidence that the American people would no longer participate in subsistence frontier agriculture. In spite of this the public apparently could not understand why "other" Americans would not be willing to emigrate. Pioneering was so deeply embedded in the fabric of American culture that people found it nearly impossible to acknowledge that it was no more. One of the earliest admissions of the real state of affairs was by the novelist John Steinbeck. In 1938 he wrote of an old California frontiersman who painfully realized that an era was at its end: [54]

"It wasn't Indians that were important, nor adventures, nor even getting out here. It was a whole bunch of people made into one big crawling beast. . . . It was westering and westering. Every man wanted something for himself, but the big beast that was all of them wanted only westering. . . . Then we came down to the sea, and it was done. . . . There's a line of old men along the shore hating the ocean because it stopped them. . . . But that's not the worst—no, not the worst. Westering isn't a hunger any more. It's all done. . . . It is finished."

There was no reason, of course, for the insight of Steinbeck to have any noticeable effect on Alaska, but in the same year that he published the above lines a remarkably perceptive government report was issued by the National Resources Committee expressing the same general thought.[55] With regard to agricultural settlement, it categorically denied many of the long-held official opinions on the subject. The Scandinavian analogy, by which great development for Alaska had traditionally been predicted, was shown to be faulty. Moreover, and even more revolutionary, the changing nature of pioneering and the end of subsistence agriculture were explicitly stated. The report concluded that the agricultural future of the territory could only be a limited one—that of supplying the small local market.

The report was not wholly negative, but when compared to the recent prophecies of reindeer by the million and wheat fields covering thousands of acres, both expansive enough to supply the rest of the nation, it was quite a comedown. The document was most sobering, but an accurate indication of the true position of Alaska in the modern era of commercialization, mechanization, and improved transportation.

THE REVIVAL OF AGRARIANISM

The report of the National Resources Committee in 1938 finally stated what long years of frustration had failed to make obvious to most Alaskans—that agriculture would be only a minor element in the economy of the territory. One might expect that given the honesty of the report and its official source, it would serve as a model for subsequent similar statements by journalists and other analysts. Alaskans then would be relieved from their long-time infatuations with agricultural pursuits and look for other economic opportunities.

Such a development did not immediately follow the National Resources Committee report. In fact, some ten years later talk of agriculture and settlement booms was almost as widespread as it had been in the immediate post-Klondike days. Only after about 1950 were the findings of the Committee generally accepted.

Footnotes at end of article.

Why was the boom period so prolonged? Of primary importance were the Great Depression and World War II. As will be discussed, depression times caused many Americans to forsake urban life for the supposed economic security of living on the land. Alaska, by virtue of its frontier image and a resettlement plan in the Matanuska Valley sponsored by the federal government, was prominently involved in this activity.

World War II was also responsible for an agrarian revival in Alaska. The strategic location of the territory with respect to Japan led to rapid infusions of military dollars and personnel. National attention was directed to the vulnerability of Alaska, and to the need for settling the land and making it as self-sufficient as possible. Plans for the importation of European refugee farmers soon followed, as did efforts to encourage United States veterans to settle in the Northland once the fighting was over. In the mid-1940s agricultural optimism was higher than it had been since the immediate post-Klondike days.

Matanuska and the "back-to-the-land" movement

The Great Depression came just after a time when millions of people had been attracted from rural areas to cities. As hard times persisted "many men turned their eyes back to the land, to the old homestead, to security, to a memory." [56] The sentiment was naturally a boon to the long-frustrated promoters of Alaska settlement, especially since the federal government saw fit to encourage the trend through a Subsistence Homestead division within the Department of the Interior.

Some one hundred agricultural "colonies" were established by the Division of Subsistence Homesteads and other government agencies during the mid-1930s.[57] One resettlement effort took place in the Matanuska Valley northeast of Anchorage.[58] The allocation of a colony to Alaska angered a few Americans who wanted more federal money for their own states, but from the standpoint of the government it made a good deal of sense. Past settlement attempts in the area had provided valuable information about soils, for example, and a government controlled railroad already operated in the valley. Land surveys were also completed.

Matanuska was to be a shining example of what agriculture could be in Alaska—a convincing final refutation of the "Seward's Icebox" image, and a demonstration for other, independent settlers. In the words of one of the general directors of the project in 1936: [59]

"The primary purpose was to show by actual example that Alaska was a suitable place for colonization. Information already assembled indicated that soil and climatic conditions were very favorable. But because nearly everyone in this country has traditionally thought of Alaska as a land of extreme cold, perpetually ice covered, and suitable only for Eskimo, reindeer, polar bear, and hardboiled gold miners, few people thought seriously of going up there and trying to make a home.

The government considered that if this colony should turn out to be a success, then the general public of America would know that Alaska was suitable for colonization. Many people lacking the opportunity to make a living in some parts of the United States would then go up there of their own accord, and try their fortunes on our last great physical frontier."

The combination of government subsidy and continuing depression created a large settler pool in the United States from which to draw. When word of the planned Alaska project was released, letters by the thousands began to pour into the offices of the Interior Department. According to one authority, some 26,000 letters were at one time on file from individuals "begging to be moved to Alaska." [60] Since the scope of the Matanuska scheme was to be only on the order of 200 families, it thus seemed probable that the settlers chosen could be ones well suited to meet the Alaskan challenge.

The government decided to restrict the Matanuska recruiting to the upper Middle West and, in particular, to the extremely depressed "cutover" region of Michigan, Minnesota, and Wisconsin. The reasoning, of course, was that people from this area would have less trouble adjusting to the climate and farming conditions of Alaska than would recruits from other regions. Further stipulations required colonists to be "honest to God" farmers, young, healthy, married, aware of the possible hardships to be encountered, and "possessed of a rugged, pioneering spirit." [61] The 202 families finally selected by the government case workers ostensibly satisfied these guidelines. The men averaged 32.7 years in age, the women 28.3, and all the families claimed they had had previous farming experience.

Would the hand-picked pioneers of 1935 succeed? The selection procedures indicated that they would, but the results were mixed. Many colonists complained and within a year sixty-four of the families had departed. Another large contingent were enthusiastic, however, stating that the problems had been exaggerated. Description and analysis of this situation has been a popular undertaking by amateur and professional social scientists from 1935 to the present. They all essentially agree on the basic problems of the project, but often differ in their interpretations.

It is obvious that opinion on Matanuska was sharply divided. There were those settlers who saw principally opportunity in being placed in Alaska, and those who focused on the absence there of accustomed refinements. Past analyses have often tended to support one side or the other, either labeling the complainers as a small group of misfits or attacking the enthusiasts as a romantic minority. Viewed from a historical perspective, however, the schism was to be expected. It simply represented the division between the traditional pioneers and the new wave of Americans unwilling to make the sacrifices even government-aided pioneering required. It was a fluke of timing that in Matanuska both sides would be represented by large numbers; earlier, the traditional pioneers would have predominated and complaints would have been few, while later in time only a small number probably could have been found to undertake subsistence agriculture in this remote locale.

Was Matanuska a success? This question has never been resolved. Most authorities who wrote in the 1930s predicted it would be, but the facts are that conditions deteriorated in the years through 1938. There was increasing dissatisfaction with subsistence farming, the Anchorage market was not large enough to allow complete farm commercialization, and production and shipping costs were too high to permit export to other centers. A *New York Times* reporter in 1935 prophetically saw what was to happen: [62]

"But the indications are that, although the colonists can undoubtedly find a rich subsistence in the valley, their chances to make more than small change are not extraordinarily bright. At present this gives them almost no concern. After years of wrestling with crop failures and tobogganing prices, most of them are happy to look out over their forty acres of fertile, tax-free land and accept its promise of comparative security. The more ambitious may not take the same attitude later on, especially if conditions improve at home."

The World War II boom

Matanuska in 1938 was just about to prove that American pioneer settlement, even

when aided by the federal government, was doomed to failure in any area not possessing large markets close at hand. The myths of agrarianism and the national need for a Turnerian agricultural frontier, along with the drives they generated to place yeoman farmers in Alaska, seemed close to extinction. If a well-financed, government-backed venture failed, could there be doubt that others would as well? This was the mood sensed and reported in 1938 by the National Resources Committee. Agricultural settlement on a significant scale was apparently not to be achieved in Alaska; a cherished American tradition was about to be abandoned.

The only force which could insure success for the Matanuska colony was a significant increase in the size of the local Alaskan market, and any possibility of this seemed very remote in 1938. The situation was changed abruptly the following year. With the possibility of United States involvement in the growing world conflict, military precautions demanded that Alaska be fortified. A naval base was begun at Kodiak and army installations were built near Anchorage and Fairbanks. In addition, military road construction was initiated on a large-scale. Civilian and military personnel poured into the territory, and practically overnight the Matanuska farmers had more orders than they could fill.[63]

The King-Havenner Bill. Alaskan agriculture was revitalized by the war effort in several ways. Besides the simple expansion of local production for the larger market, the military ideal of making Alaska as self-sufficient as possible in the even of attack prompted renewed government interest in the settlement question. In new strategy proposed by the Department of the Interior, the problem was seen to be a "vicious" economic cycle:[64]

Underpopulation over a large area leads to excessively high transportation costs.

High transportation costs result in a high cost of living.

High living costs result in high costs of production.

High costs of production and transportation make most industries unprofitable.

Lack of industrial development results in seasonal unemployment.

High living costs and seasonal unemployment discourage immigration and encourage emigration.

All of which results in underpopulation.

The report stressed that once the cycle was broken, Alaska could easily prosper on its own. The problem was how to make the initial incision. Individual immigrants could never do it. A large-scale colonization effort was needed, backed by "large amounts of capital and long-range planning." To avoid the problems which beset Matanuska, two basic changes were proposed: to entrust the colonies to government-chartered but privately-financed corporations in the manner of the old Plymouth and Dutch East India Companies, and to select as settlers refugees and others who might better appreciate the advantages of Alaska than did many of the Matanuskans.[65]

The plan was quite imaginative and, backed by both the Labor and Interior Departments, it was introduced into Congress as the King-Havenner bill in 1940. Although it failed to get out of committee, the bill represented an important step in the American perception of the Alaskan frontier.[66] Agricultural settlement, especially given defense needs, was still thought to be essential to Alaska, but the means of achieving it had changed. The unregulated, individual immigration characteristic of Middle Western development was an acknowledged failure in Alaska. The shortcomings of this system were partially rectified by the group colonization effort at Matanuska, but the many complaints suggested that even this approach would not work with the new generation of luxury-accustomed Americans. The King-Havenner bill advocated having European refugees do the initial pioneering. Once the hard work was done and the local economy established, Americans could then move in. As a prominent economist-sociologist suggested at the Senate Hearings:[67]

"Americans cannot go to a place which is not growing. It [Alaska] is not a place that will attract the ordinary American workman. If, on the other hand, we had some device by which the population would come and stay there, and give the nucleus of growth, then we will begin to see our American unemployed gradually attracted there. . . . I have . . . talked to hundreds of young men who have felt the same way, that Alaska was a growing country, but until it had actually got well on the way to growth, they could not go there."

A New Land Rush. A bill similar to the King-Havenner proposal also failed in the next Congress, but proponents of Alaskan settlement were not terribly upset. Wartime Alaska was booming on its own. Over 100,000 military personnel were stationed in the territory during 1943 and 1944, and many of them were impressed by the land and its possibilities. Talk of a postwar boom mushroomed. The General Land Office was "deluged" by information requests in 1944, and sent out "tens of thousands of leaflets" on the subject of land availability.[68]

The demand for knowledge about farming in Alaska generated a considerable mass of new literature. In the popular magazines, Alaska was almost without exception portrayed as a "Land of Promise."[69] The scientists at the Alaska agricultural experiment station were nearly as optimistic. One wrote in *Successful Farming* that conditions were not too dissimilar from those in Iowa, and that if a person was willing to work, an Alaskan farm would provide "an income beyond the realm of possibility for the ordinary farmer in the States."[70] The former director of the station was quoted as follows:[71]

"I can truthfully say that the right kind of farmers can make a living more easily here in Alaska than almost any place I know of. Any family that has made a success of farming in the States, and has $4,000 in cash, should be largely self-supporting up here after the first year's harvest."

These officials also prepared a series of pamphlets for public distribution. One was a general information bulletin and the others dealt with conditions in the Matanuska and Tanana Valleys and with the prospects for ranching.[72] All were very encouraging to the prospective immigrant.

The information bulletins put out by the federal government were more guarded in their appraisals of the agricultural potential, and placed more emphasis on the need for capital, the limited market, and the physical limitations than did the pamphlets just mentioned.[73] These warnings, however, did little to check the popular enthusiasm for Alaskan settlement. The territory had acquired a new image. As two critics colorfully put it: "the territory has become in the public mind a land of dreams come true, a paradise of milk and honey and slippered case, an Eldorado where you can shoot moose and duck from your back porch and turn over solid-gold nuggets whenever you hoe your potatoes."[74]

The pervasiveness of the Eldorado image is suggested by the tone of several publications of the time which attempted to expose the fallacies in the boom talk. One writer stressed that all of Alaska was not like the Matanuska Valley, that it was not all good grazing land, and that winters throughout the territory were not all as mild as a large part of the Middle West.[75] In so doing, the author strongly suggests that many Americans were thinking of Alaska in these rosy terms. A somewhat similar approach can be found in a popular book of the times entitled *Opportunity in Alaska.*[76] Nearly every "opportunity" discussed is draped with warnings and restrictions, but the mere fact that such a book was published indicates that the boom was well-developed.

There were several underlying causes of the postwar enthusiasm. Postwar times were traditionally ones in which people were willing to move and begin new life styles, and, since Alaska had just been seen and admired by many thousands of servicemen, some influx of population could be expected. The natural beauty and untouched resources of the territory probably also appealed to the idealism and romanticism of young Americans tired of noise and fighting. A third force was the publicity created by those convinced that Alaskan settlement was essential to national security and by Alaskans who hoped settlement would keep the local economy at something near the fever-pitch it was during the war.[77]

The Veteran Homestead Bills. In the summer of 1947 a popular news magazine claimed that twenty families a day were moving to Alaska over the new Alcan Highway, and the Bureau of Land Management reported that requests for settlement information "averaged at least 5,000 a month." The civilian population of the territory reflects this interest. There were 79,000 residents in 1945, 83,000 in 1947, and 93,000 in 1948. It seemed to be only the beginning, for the Eightieth Congress had before it several plans to aid veterans in homesteading the land.[78]

The provisions of the homestead bills were tremendously liberal. The 160-acre limit was to be increased to a maximum of 1,920 acres in certain areas, no specific cultivation requirements were stipulated, and military service time could reduce the residency requirement to as little as one year. Essentially all that was required of an individual was to build a house on the land, and live on it, and to derive "some part" of his income from the claim. The hearings on the bills revealed a great deal of enthusiasm for the proposal, and the only major opposition was from the United States Forest Service which wished to retain as National Forest certain of the lands due to be opened for homesteading. One version of the bills unanimously passed the House but did not receive action by the Senate Committee on Public Lands.

The following year, 1948, President Truman specifically advocated government encouragement of Alaskan settlement, and soon the legislators were again busy. They passed a law to permit the sale of public lands in the territory and another to extend there the provisions of the Farm Credit Act of 1937. The most ambitious provision was a revival of the veteran homestead bill an expanded and even more liberal form.[79] The advantages of the 1947 version were all retained, and many others were added. The acreage maximum was increased to 2,560 in certain locations; the Secretary of the Interior was authorized to provide assistance at cost in land clearing, grading, road construction, and house building; and long-term, low-interest loans were provided to pay for these and similar endeavors. Moreover, the Department of Agriculture would clear at no cost up to five acres for the farmstead and private farm roads.

The provisions of the veteran homestead bill of 1948 were unparalleled in the history of the public lands, as they included almost every conceivable aid and inducement to settlement. It was as if after some eighty years of frustration, the United States government was finally pulling out all stops in an effort to colonize its northern territory. Enthusiasm for the bill was again very high in the House, and it was approved with only token opposition. The national security issue was the primary force behind this passage, but one can also detect in several of the

Footnotes at end of article.

speeches remnants of old agrarian philosophy.[80]

Even though the Senate again failed to act on the veteran homestead bill, Alaska in the late 1940s was experiencing the greatest population inflow in its history and nearly everyone was overjoyed. The territory was at last being settled.[81]

Although many attractions lured people to Alaska, the primary one was thought to be agriculture. This was the message stressed in the government and popular publications of the time, and judging from the number of requests for homesteading information received by the Interior Department, this was also the message received by the potential settlers.[82] Pioneering was an immensely popular idea.

It was thus a common belief in the late 1940s that Alaskan agriculture was flourishing. Only a very few writers bothered to record that, in fact, the immigrants were not becoming farmers. Although final homestead entries for the years 1946 through 1950 increased regularly (7, 20, 23, 156, and 186, respectively), their numbers were as nothing in comparison with the gains for those years in the total civilian population (1,000 3,000, 10,000, 7,000, and 12,000, respectively).[83] Apparently, hardships of pioneer farming quickly overcame romantic "living-off-the-land" notions, and, with the easy alternative of military construction work available, thousands of the intended farmers turned to this more lucrative field.

It was not really surprising that so few people noticed and recorded the nonparticipation of agriculture in the general postwar boom. Population was up sharply, business was good, and federal dollars were still pouring in. Alaska was enjoying its greatest prosperity since the Klondike times, and it was easy to overlook stagnation in one small facet of the economy.

The Census of 1949 revealed that the farming situation in Alaska had improved only slightly over conditions in 1929, and had fallen considerably from the peak statistics recorded during the military buildup of 1939. The number of farms was 525, up 25 from 1929, but down 98 from 1939 and a similar pattern existed for most other measures.[84] There was absolutely no basis for keeping alive dreams of an agricultural boom. By about 1950 the failure of the returning veterans to stay with farming had become obvious and Alaska at last began to pass into a new age. The agrarian dreams which had been sustained for half a century had finally ended.

THE ALASKAN FRONTIER IN RETROSPECT

The relationship of man with the land in Alaska has been a unique one, certainly without parallels in the United States experience. Americans consistently expected Alaska to develop along the lines established in the old Northwest Territory and repeated more or less regularly across the entire Middle West, Great Plains, and West Coast. An initial occupation by miner, hunter or trapper would gradually give way to a denser one featuring the pioneer farmer. These hardy souls, taking advantage of free land and virgin soils, would endure initial privations but would eventually profit from increased land values and the rapid commercialization of agriculture as more and more settlers came. Finally, villages and cities would form and manufacturing arise, creating the fully established landscape.

The Alaskan experience was true to this historical model for approximately forty years following the 1867 purchase. There were initial attempts at "booming" the Russian towns, but for the most part the land laid peacefully in wait for the first wave of settlement. As farmers occupied the western Middle West, fur traders and miners began to poke through the Alaskan wilds. In 1897, at almost the same time as the good, drought-free lands were being exhausted stateside, the Klondike gold rush got underway. Alaska was still very much following the model—the potential market of the miners and the free homesteads began to encourage the pioneer farmer to try his hand on this "last frontier."

The years immediately following 1900 should have been prosperous, exciting ones for Alaska if the stateside experience was to be repeated. Railroads would criss-cross the land, speculators would lay out city grids, and settlers would pour into the territory. Statehood would soon follow. With only minor exceptions, none of these events occured; for some reason Alaska did not progress as had Iowa and California before it. This startling reality shocked Alaskans and other Americans alike, and the ensuing years were spent in a chaotic search for an explanation. Attention was focused on such issues as inadequate homestead laws and slowness in railroad construction; Congress dutifully followed all suggestions. They amended the land laws, built an unprecedented government railroad, and even sponsored, as an example, the settlement of two hundred depression victims on Matanuska Valley farms—but to no avail. Pioneer farming just would not work in Alaska.

If it be granted that large areas of Alaska were physically suited for farming and that the techniques and attitudes of nineteenth and very early twentieth century America were conducive to pioneering, it is interesting to consider how close Alaska came to being the new agrarian empire that was visualized by so many. My research suggests that it came quite close. At the turn of the century American farmers were ready to spread to new lands. With only arid areas remaining in the West and soil rejuvenating fertilizers not yet common, the principal choice lay between the virgin lands of Alaska and the prairies of Canada. Alaska offered settlers the advantage of remaining on American soil, while the Canadian lands were closer at hand. If the judgments of the farmers had been based solely on these factors, there is little doubt that Canada would have attracted the majority of the American farmers. Alaska was simply too far away. It is doubtful, however, if the migration would have been as one-sided as it was were it not for the lock-up of the Alaska coal lands in 1906. Though undoubtedly stopping a monopolistic business venture, the decision removed the principal incentive to build railroads in the territory. Consequently, the considerable settlement incentives of the railroads and their advertising were lost to Alaska at a very crucial time. The would-be immigrants naturally turned to nearby and railroad-rich Canada. By the time the best Canadian lands were taken it was the 1920s, and by that time American society had changed enough so that the people were no longer willing to pioneer.

One can speculate farther on this topic. What would have happened if Canadian-American relations had been less amiable at this time? What if, for some reason, widespread adoption of fertilizers, indoor plumbing, electricity, and mechanized agriculture in general had been delayed in the United States for another decade? Alaska might have had it made. All it would have taken was a small start—the initial subsistance farmer. Once the land was cleared and the rural population established, the territory might well have developed like the rest of the United States.

After a final effort to entice veterans of World War II to farming, Americans rather abruptly abandoned their hopes to place a rural population in the territory. Fostered by the decline of agrarian doctrine in the states and supported by sound economic studies showing how widespread commercial farming in an area so remote, uncleared, and sparsely populated was not feasible, Alaskan agriculture settled into a small, specialized niche supplying fresh milk and vegetables to the local markets. The territory regained a sense of harmony with the rest of the union in doing this. While Alaska had been striving to achieve rural settlement in the first half of this century, the remainder of the country was beginning to abandon it. By the time of statehood in 1959 the Alaskan settlement scene actually did not look too different from that of Massachusetts or New Hampshire. The agricultures of all three were small and specialized, the people were overwhelmingly urban and concentrated in a few locations, and even the rural landscapes were somewhat similar. The abandoned fields and pastures of New England were not terribly different in appearance from the never cleared ones of Alaska.

The failure of pioneer agriculture to work in Alaska was a major anomaly in the American experience and a cause for considerable national concern. In spite of an acceptable physical environment, an end to the free humid lands stateside, and widespread agricultural publicity from private and government sources, the rate of rural settlement was never more than a trickle. The basic error that had been made, an error that apparently never has been fully understood, was to have regarded Alaska as simply an extension of the traditional American frontier. This it was not. The physical environment, while allowing cultivation, was strikingly different from any met in previous settlement. This difference was augmented in the public mind by the northern location of Alaska and its physical separation from the rest of the United States, and led to the belief that large portions of the territory were perpetually ice-shrouded. There was also an important temporal gap between the period of Alaskan settlement and that of the other states. When measured in years this difference does not seem great, but it looms as critical when measured in terms of technological advance. The rapid mechanization of farming; the changes in living produced by modern medicine, electricity, and plumbing; the increase of nonagricultural employment opportunities, and a host of similar revolutions acted to create a virtually new American culture. Pioneering, which had been an important, necessary part of the old way of life, became not only unpopular but unnecessary in the new.

FOOTNOTES

[1] The maximum was recorded in 1940. U.S. Bureau of the Census, *Sixteenth Census of the United States: 1940. Agriculture, Territories and Possessions*, p. 13.

[2] Karl E. Francis, "Outpost Agriculture: the Case of Alaska," *Geographical Review*, Vol. 57 (1967), pp. 496–505; Burke G. Vanderhill, "Perspectives on Alaskan Agriculture," *Journal of Geography*, Vol. 72 (1973), pp. 38–52. A more balanced treatment, though focusing primarily on the Matanuska colony of the 1930s, is Orlando Miller, *The Frontier in Alaska and the Matanuska Colony* (New Haven: Yale University Press, 1975).

[3] See Clifford B. Anderson, "The Metamorphosis of American Agrarian Idealism in the 1920s and 1930s," *Agricultural History*, Vol. 35 (1961), pp. 182–88.

[4] Quoted in Herbert Hilscher, "66-Day Barley in Alaska," *The Rotarian*, Vol. 69, No. 12 (Dec. 1946). pp. 18–19. See also Ernest Gruening, "Let's End Alaska Climythology," *Bulletin*, American Meterological Society, Vol. 43 (1962), pp. 533–38.

[5] The origin and persistence of overly negative appraisals of the Alaskan climate is explored in James R. Shortridge, "American Perceptions of the Agricultural Potential of Alaska: 1867–1958," unpublished doctoral dissertation, University of Kansas, 1972, pp. 35–43.

[6] S. A. Wilde and H. H. Krause, "Soil-Forest Types of the Yukon and Tanana Valleys in Subarctic Alaska," *Journal of Soil Science*, Vol. 11 (1960), pp. 266–79; reference on p. 267.

[7] Charles E. Kellogg and Iver Nygard, *Exploratory Study of the Principal Soil Groups of Alaska*, U.S. Dept. of Agriculture, Monograph No. 7 (Washington: Government Printing Office, 1951), p. 124.

[8] Wilde and Krause, op. cit., footnote 6, p. 271. Detailed studies are available from the U.S. Soil Conservation Service for the four principal farming areas in the state. They are: Samuel Rieger and R. Eugene Wunderlich, *Soil Survey and Vegetation of Northeastern Kodiak Island Area, Alaska*, Series 1956, No. 17 (1960); Samuel Rieger, G. W. Allen, A. D. Backer, E. G. Link, and B. B. Lovell, *Soil Survey of Kenai-Kasilof Area, Alaska*, Series 1958, No. 20 (1962); Samuel Rieger, James A. Demont, and Dupree Sanders, *Soil Survey of Fairbanks Area, Alaska*, Series 1959, No. 25 (1963); and Dale B. Schoephorster, *Soil Survey of Matanuska Valley Area, Alaska* (1968).

[9] Seymour Hadwen and Lane J. Palmer, *Reindeer in Alaska*, U.S. Department of Agriculture, Bulletin 1089 (Washington: Government Printing Office, 1922), p. 21.

[10] George A. Llano, "Utilization of Lichens in the Arctic and Subarctic," *Economic Botany*, Vol. 10 (1956), pp. 367–92; map on p. 369.

[11] The 150,000 figure is from Hadwen and Palmer, op. cit., footnote 9, p. 20; the 350,000 figure is from Carl J. Lomen, "Reindeer as a Source of Food," *Scientific American*, Vol. 141 (1929), pp. 104–18; reference on p. 106. Lomen was the leading reindeer owner in Alaska during the 1920s and the man most responsible for the industry's commercialization.

[12] The acreage estimate (the only one available) is from C. V. Piper, *Grasslands of the South Alaska Coast*, U.S. Department of Agriculture, Bureau of Plant Industry, Bulletin 82 (Washington: Government Printing Office, 1905), p. 9.

[13] G. W. Gasser, "The Grasses of Alaska," *Proceedings*, Third Alaskan Science Conference, 1952 (College, Alaska: Univ. of Alaska, 1954), pp. 46–51; William W. Mitchell, "Composition and Yield of Native Grasslands and Inherent Problems Pertinent to their Use"—Abstract, *Proceedings*, Seventeenth Alaska Science Conference, 1966 (College: University of Alaska, 1966), p. 76.

[14] Edith Fitton, 'The Climates of Alaska," *Monthly Weather Review*, Vol. 58 (March 1930), pp. 85–103; reference on p. 85.

[15] For a more complete discussion of Alaskan climatology than is sketched here see Fitton, op. cit., footnote 14; Murray Mitchell, Jr., "The Weather and Climate of Alaska," *Weatherwise*, Vol. 11 (1958), pp. 151–60; and Harold W. Searby, *Climates of the States; Alaska*, U.S. Dept of Commerce, Environmental Science Services Administration (Washington: Government Printing Office, 1968).

[16] Jen-hu Chang, "Potential Photosynthesis and Crop Productivity," *Annals*, Association of American Geographers, Vol. 60 (1970), pp. 92–101; map on p. 95.

[17] Josiah Strong, *Our Country: its Possible Future and its Present Crisis* (New York: Baker and Taylor, 1885), p. 153; James Bryce, *The American Commonwealth*, Vol. 2, new edition (New York: Macmillan, 1921), p. 913; William J. Trimble, "The Influence of the Passing of the Public Lands," *The Atlantic Monthly*, Vol. 113 (1914), pp. 755–67.

[18] Alfred H. Brooks, *Blazing Alaska's Trails*, B. L. Fryxell, ed. (College: University of Alaska and Arctic Institute of North America, 1953), p. 343.

[19] C. C. Georgeson, "The Possibilities of Alaska," *National Geographic Magazine*, Vol. 13 (1902), pp. 81–85; reference on p. 81.

[20] Walter E. Clark, "Farming in Alaska," *Sunset: the Pacific Monthly*, Vol. 24 (1910), pp 495–502; reference on p. 495.

[21] C. C. Georgeson, *Fourth Report on the Agricultural Investigations in Alaska, 1900*, U.S. Department of Agriculture, Office of Experiment Stations, Bulletin 94 (Washington: Government Printing Office, 1901), p. 67.

[22] John G. Brady, "Annual Report of the Governor of Alaska," in *Annual Report of the Department of the Interior*, House Doc. 5 of the 58th Cong., 2nd Sess., 1903, p. 20.

[23] William B. Stephenson, Jr., *The Land of Tomorrow* (New York: George H. Doran, 1919), pp. 57–58. For similar views see Brooks, op cit., footnote 18, p. 457; and Hugh H. Bennett, "Report on a Reconnaissance of the Soils, Agriculture, and Other Resources of the Kenai Peninsula of Alaska," in *Field Operations of the Bureau of Soils, 1916*, U.S. Department of Agriculture (Washington: Government Printing Office, 1921), pp. 39-174, especially pp. 139–40.

[24] Scott C. Bone, *Annual Report of the Governor of Alaska* (Washington: Government Printing Office, 1924), p. 33; U.S. Department of the Interior, *General Information Regarding the Territory of Alaska* (Washington: Government Printing Office, 1927), p. 76.

[25] U.S. General Land Office, *Annual Report of the Commissioner: 1930*, p. 50; U.S. General Land Office, *Annual Report of the Commissioner: 1931*, p. 13.

[26] Scott C. Bone, *Annual Report of the Governor of Alaska* (Washington: Government Printing Office, 1921), p. 41. See also Andrew J. Stone, "The Natural Resources of Alaska," *The Century Illustrated Monthly Magazine*, Vol. 100 (1920), pp. 841–48; "Agriculture in Alaska," *Science*, Vol. 52 (July 30, 1920), pp. 101–02; and A. H. Pulver, "Alaska as a Food Producer," *The Rural New Yorker*, Vol. 79 (1920), p. 1854.

[27] Gilbert H. Grosvenor, "Reindeer in Alaska," *The National Geographic Magazine*, Vol. 14 (1903), pp. 127–48; reference on pp. 127, 147–48.

[28] Emil E. Hurja, "Alaska, the World's Meat Shop," *The Overland Monthly*, Vol. 63 (1914), pp. 120–25; "The Reindeer Revolution," *The Independent*, Vol. 77 (1914), p. 163; and Francis J. Dickie, "The T-Bone of Tomorrow," *Sunset: the Pacific Monthly*, Vol. 43, No. 6 (Dec. 1919), pp. 41–42, 92.

[29] On prices and taste see E. W. Nelson, "What Reindeer Mean to the United States," *Weekly News Letter* (of the U.S. Department of Agriculture), Vol. 8, No. 26 (Jan. 26, 1921), p. 9, and Jean Bunnell, "The Alaska Reindeer Industry," *Journal of Home Economics*, Vol. 21 (1929), pp. 17–20; on distributorships see Carl J. Lomen, *Fifty Years in Alaska* (New York: David McKay Co., 1954), p. 90; the herd estimate is from Bone, op. cit., footnote 24, p. 43; the Smith quotation is from his "The Reindeer Industry in America: A Study of a New Industry and also of the Origins of Geographic Error," *The Scottish Geographical Magazine*, Vol. 40 (1924), pp. 74–88; reference on p. 84.

[30] U.S. Bureau of the Census, *Fifteenth Census of the United States: 1930. Outlying Territories and Possessions*, p. 29.

[31] Robert E. Riegel, "American Frontier Theory," *Journal of World History*, Vol. 3 (1956), pp. 356–80.

[32] W. P. Richardson, "What Ails Alaska?," *Current History*, Vol. 14 (1921), pp. 960–68; "Why Alaska is Being Rapidly Depopulated," *Current Opinion*, Vol. 72 (1922), pp. 408–09; Theodore M. Knappen, "Will Alaska Secede?" (in his column "The West in Washington"), *Sunset: the Pacific Monthly*, Vol. 50 (1923), pp. 47–48.

[33] U.S General Land Office, *Annual Report of the Commissioner:* 1909, p. 46.

[34] U.S. Congress, House, Committee on the Public Lands, *Homesteads in Alaska*, Report No. 569 of the 56th Cong., 1st Sess., 1900, p. 1; U.S. Congress, House, Committee on the Public lands, *Homesteads in Alaska*, Report No. 778 of the 57th Cong., 1st Sess., 1902, p. 1.

[35] Franklin W. Burch, "Alaska's Railroad Frontier: Railroads and Federal Development Policy, 1898–1915" unpublished doctoral dissertation, Catholic University of America, 1965, pp. 74–108.

[36] A. S. Atkinson, "Arctic Railroading," *The Railroad Gazette*, Vol. 35 (1918), p. 818.

[37] Frederick H. Chase, "Alaska's Railroad Development," *The American Review of Reviews*, Vol. 38 (1908), pp. 693–99; reference on p. 694. See also Harrington Emerson, "Opening of the Alaska Territory," *The National Geographic Magazine*, Vol. 14 (1903), pp. 99–106.

[38] James L. Penick, *Progressive Politics and Conservation: The Ballinger-Pinchot Affair* (Chicago: University of Chicago Press, 1968).

[39] Burch, op. cit., footnote 35, p. 203.

[40] Ralph S. Tarr, "The Alaskan Problem," *The North American Review*, Vol. 195 (1912), pp. 40–55; references on pp. 40, 43. For similar views see Sherman Rogers, "Alaska, the Misunderstood," *The Outlook*, Vol. 132 (1922), pp. 608–12; "Alaska and the Press Agents." *Hampton's Magazine*, Vol 26 (1911), pp. 659–60; C. L. Andrews, "Agriculture in Alaska," *The Alaska-Yukon Magazine*, Vol. 12 (1911), pp. 352–56; and Charles R. Tuttle, *Alaska: its Meaning to the World* (Seattle Franklin Shaey and Co., 1914), p. 23.

[41] U.S. Department of the Interior, *Annual Report of the Secretary:* 1913, p. 6.

[42] This is not to say that the coal issue was not an important one in curtailing Alaskan development. The willingness of Americans to pioneer declined greatly betwen 1906 and the 1920s. Had the coal lands remained open in 1906 and the private railroad building continued as expected, Alaska may well have received a sizable immigration of rural settlers in the 1906–1914 period.

[43] Thomas Riggs, Jr., Annual Report of the Governor of Alaska," in *Annual Report of the Department of the Interior* Vol. 2 (Washington: Government Printing Office, 1978). pp. 509–82; reference on p. 509.

[44] The 1930 census reported only 28,640 whites in Alaska.

[45] U.S. Department of the Interior, *Annual Report of the Secretary: 1921*, p. 7; Scott C. Bone, "The Land that Uncle Sam Bought and then Forgot," *The American Review of Reviews*, Vol. 65 (1922), pp. 402–10.

[46] George A. Parks, *Annual Report of the Governor of Alaska* (Washington: Government Printing Office. 1931), p. 111.

[47] Lawrence J. Palmer, *Progress of Reindeer Grazing Investigation in Alaska*, U.S. Department of Agriculture, Department Bulletin 1423 (Washington: Government Printing Office, 1926), p. 29.

[48] "Competition from Alaska," *The Producer: the National Livestock Monthly*, Vol. 12 (Jan. 1931), p. 17.

[49] "Reindeer Meat," *The Producer: the National Livestock Monthly*, Vol. 11 (March 1930), pp. 19–20; reference on p. 20. See also Lyman S. Brewster, "Reindeer in Alaska," *The American Cattle Producer*, Vol. 16 (May 1935), pp. 3–6; for the story of the reindeer men see Lomen, op. cit., footnote 29, p. 213. and Vilhjalmur Stefansson, "Alaska: American Outpost No. 4," *Harper's Magazine*, Vol. 183 (1941), pp. 83–92.

[50] U.S. Congress, House, Committee on the Teritories, *Reindeer Industry in Alaska*. Report No. 1188 of the 75th Cong., 1st Sess., 1937.

[51] The figures are from Ernest Gruening, *Annual Report of the Governor of Alaska* (Washington: Government Printing Office, 1940), p. 47; Ernest Gruening, *Annual Report of the Governor of Alaska* (Washington: Government Printing Office, 1945), p. 24; and Margaret Lantis, "The Reindeer Industry in Alaska," *Arctic*, Vol. 3 (1950), pp. 27–44; reference on p. 38. Since 1949 the diminished reindeer numbers have remained relatively constant. For the more recent history of the industry see J. Sonnenfeld, "An

Arctic Reindeer Industry: Growth and Decline," *Geographical Review*, Vol. 49 (1959), pp. 76–94; and Virginia Kraft, "Reindeer Find a Santa Claus," *Sports Illustrated*, Vol. 25 (Dec. 12, 1966), pp. 41–42, 47–49.

[52] Isaiah Bowman, *The Pioneer Fringe* (New York: The American Geographical Society, 1931), pp. 12–14.

[53] Lack of capital was probably the chief factor in the nondevelopment of the cattle-sheep grazing industry in southwestern Alaska. To tap the national or international market, a company needed not only livestock but ships, docks, and abattoirs. No one seemed willing to invest on this scale, in part because the reindeer industry farther north looked like a more viable concern for a while, and in part because capital at this time could be invested more safely and profitably in a wide variety of nonagricultural endeavors. On this latter point see Paul Wallace Gates, "The Role of the Land Speculator in Western Development," *Pennsylvania Magazine of History and Biography*, Vol. 66 (1942), pp. 314–33.

[54] John Steinbeck, *The Long Valley* (New York: The Viking Press, 1956), pp. 302–03. The passage quoted is from the story "The Leader of the People."

[55] U.S. National Resources Committee, *Regional Planning, Part VII, Alaska: Its Resources and Development* (Washington: Government Printing Office, 1938).

[56] Paul K. Conklin, *Tomorrow a New World: The New Deal Community Program* (Ithaca: Cornell University Press, 1959), p. 11.

[57] The provision creating the Division was part of the National Industrial Recovery Act of May, 1933. Another New Deal agency, the Federal Emergency Relief Association (FERA), was also active in the subsistence homestead program. Alaskan activities derived from this latter source.

[58] There is an abundance of literature on the Matanuska colony. Some of the more complete analyses are: M. A. Halldorson, "The Matanuska Valley Colonization Project," unpublished masters thesis, Univ. of Colorado, 1936; Theodore C. Feldman, "The Federal Colonization Project in the Matanuska Valley, Alaska," unpublished masters thesis, University of Washington, 1941; C. C. Hulley, "A Historical Survey of the Matanuska Valley Settlement," *Pacific Northwest Quarterly*, Vol. 40 (1949), pp. 327–40; Kirk H. Stone, *Alaska Group Settlement: The Matanuska Valley Colony*, U.S. Department of the Interior, Bureau of Land Management (Washington: Government Printing Office, 1950); Hugh H. Johnson and Keith L. Stanton, *Matanuska Valley Memoir: the Story of How One Alaskan Community Developed*, University of Alaska, Alaska Agricultural Experiment Station Bulletin No. 18 (Palmer, Alaska, 1955); Evangeline Atwood, *We Shall Be Remembered* (Anchorage: Alaska Methodist University, 1966); and Miller, op. cit., footnote 2.

[59] Lawrence Westbrook, *Questions and Answers about Matanuska Valley Colonization Project* (text of a radio broadcast), Works Progress Administration (Washington: Government Printing Office, 1936), p. 2.

[60] Atwood, op. cit., footnote 58, p. 22.

[61] Stone, op. cit., footnote 58, p. 29. Another advantage of the "cutover" population was its Scandinavian heritage. Finns, in particular, had long been advocated as the ideal settlers for Alaska. See C. C. Georgeson, *A Second Report to Congress on Agriculture in Alaska*. U.S. Department of Agriculture, Office of Experiment Stations Bulletin 62 (Washington: Government Printing Office, 1899), p. 43; U.S. General Land Office, *Annual Report of the Commissioner: 1902*, p. 404; and Eugene Van Cleef, "The Finns of the Pacific Coast of the United States, and Consideration of the Problem of Scientific Land Settlement," *Annals*, Association of American Geographers, Vol. 30 (1940), pp. 25–38.

[62] Elsie McCormick, "A Planned Economy is Put to the Test," *The New York Times*, Sept. 8, 1935, Section 7, p. 19.

[63] The military personnel stationed in Alaska for the years 1940 through 1944 were, respectively: 1,000, 8,000, 60,000, 152,000, and 104,000. During the same time period the civilian population of the territory rose from 74,000 to 81,000; George W. Rogers, *The Future of Alaska* (Baltimore: Johns Hopkins Press, 1962), p. 95.

[64] Harry Slattery. *The Problem of Alaskan Development*, U.S. Dept. of the Interior (Washington: Government Printing Office, 1939), p. 29.

[65] As the report put it: "Settlers . . . who can go back to a more or less comfortable existence if they tire of Alaska, are apt to take a critical view towards the problems of a pioneer community, whereas men and women who have definitely cut their ties with the past, who feel they must make their new life a good life or perish in the attempt, are more likely to face the hardships and to endure the sacrifices which the fashioning of that good life demands." (Slattery, op. cit., footnote 64, p. 35.)

[66] The principal arguments against the bill were that the refugees might well be "the secret agents of the dictators," and that it made no sense to bring in European immigrants when unemployment was already high in the U.S.; U.S. Congress, Senate, Committee on Territories and Insular Affairs, *Hearings, Settlement and Development of Alaska*, 76th Cong., 3rd Sess., 1940, pp. 74, 119.

[67] *Hearings, Settlement and Development of Alaska*, op. cit., footnote 66, p. 115. The author is Dr. Alvin Johnson, long-time director of the New School for Social Research in New York City and an authority on immigration.

[68] U.S. General Land Office, *Annual Report of the Commissioner: 1944*, p. 149. Similar statements can be found in the reports of 1945 and 1946.

[69] This was the title of an article by E. L. Bartlett, long-time Alaskan Delegate to Congress and, after statehood, a U.S. Senator; *American Federationist*, Vol. 52 (March 1945), pp. 21, 32. For similar optimism see Fergus Hoffman, "There's Good Farming in Alaska." *The Christian Science Monitor Magazine*, July 24, 1943, pp. 5, 13; Hilscher, op. cit., footnote 4; and Russell Annabel, "Homesteading Isn't for Softies," *The Saturday Evening Post*, Vol. 220 (Nov. 8, 1947), pp. 19 ff.

[70] Stanley L. Balloun, "A Farmer Looks at Alaska," *Successful Farming*, Vol. 43 (March, 1945), pp. 22 ff.; references on pp. 40, 42.

[71] Lorin T. Oldroyd, quoted by Hilscher, op. cit., footnote 4, p. 19.

[72] G. W. Gasser, *Information for Prospective Settlers in Alaska* (Juneau: Alaska Development Board, 1946); G. W. Gasser, *Livestock in Alaska* (Juneau: Alaska Development Board, 1946); G. W. Gasser, *The Matanuska Valley* (Juneau: Alaska Development Board, 1946); and G. W. Gasser, *The Tanana Valley* (Juneau: Alaska Development Board, 1946).

[73] *General Information Regarding the Territory of Alaska*, U.S. Department of the Interior (Washington: Government Printing Office, 1941); *Information Relative to the Disposal and Leasing of Public Lands in Alaska*, U.S. Department of the Interior, General Land Office Information Bulletin 2 (Washington: Government Printing Office, 1944); *What Has Alaska to Offer Postwar Pioneers?*, U.S. War Department, Education Manual 20, G.I. Roundtable Series (Washington: Government Printing Office, 1944); P. V. Kepner and Lorin T. Oldroyd, *Agriculture in Alaska*, U.S. Department of Agriculture, War Food Administration, Extension Service (Washington: Government Printing Office, 1945); and *Alaska:1946*, U.S. Department of the Interior, Division of Territories and Island Possessions (Washington: Government Printing Office, 1946).

[74] Corey Ford and Alastair MacBain, "Uncle Sam's Icebox," *Colliers': the National Weekly*, Vol. 107 (January 4, 1941), pp. 28–30, 40; reference on p. 30.

[75] William L. Worden, "Is it True What They Say About Alaska?" *The Country Gentleman*, Vol. 113 (July, 1943), pp. 16, 24–25.

[76] George Sundborg, *Opportunity in Alaska* (New York: The Macmillan Company, 1946).

[77] It is an unexplored question why World War II generated so much settlement activity and World War I so little. Improved transportation and communication may be part of the answer, but the two principal reasons are probably that many servicemen were exposed first-hand to the beauties of Alaska during World War II and that government spending at the time was generating a local economic boom.

[78] "Promise Land," *Time*, Vol. 49 (June 16, 1947), pp. 26–29; U.S. Bureau of Land Management; *Annual Report of the Director: 1947*, p. 283; the population figures are in Rogers, op. cit., footnote 63, p. 95; on the homestead bills see U.S. Congress, House, Committee on Public Lands, *Hearings, Alaska Veterans' Homesteading Act of 1947*, 80th Cong., 1st Sess., 1947; and *Providing for the Settlement of Certain Parts of Alaksa by War Veterans*, Report No. 944 of the 80th Cong., 1st Sess., 1947.

[79] The ——— statement is in U.S. *Congressional Record*, 80th Cong., 2d Sess., 1948, Vol. 94, Part 5, p. 9266; for other legislation see U.S. Congress, House, Committee on Public Lands, *Hearings, Homesteading in Alaska by War Veterans*, 81st Cong., 1st Sess., 1949, and *Providing for the Settlement of Certain Parts of Alaska by War Veterans*, Report No. 734 of the 81st Cong., 1st Sess., 1949.

[80] The need to protect the national security was prompted not only by the recent war, but by growing distrust of the Soviet Union (see the speech by Rep. Lemke in U.S. *Congressional Record*, 81st Cong., 2d Sess., 1949, Vol. 96, Part 6, p. 7652); a popular 1947 toast ran as follows: "Here's to Joe Stalin: Alaska's best friend." ("Promised Land," op. cit., footnote 78, p. 27). For the agrarian argument see the speeches of Reps. Murdock and Jensen in U.S. *Congressional Record*, 81st Cong., 2d Sess., 1949, Vol. 96, Part 6, p. 7651.

[81] Total population increased from 99,000 in 1946 to 138,000 in 1950 (Rogers, op. cit., footnote 63, p. 95).

[82] Requests averaged at least 5,000 per month in 1947. See U.S. Bureau of Land Management, *Annual Report of the Director: 1947*, p. 283.

[83] Homestead information is from *Homesteads*, U.S. Department of the Interior, Bureau of Land Management (Washington: Government Printing Office, 1962); population figures are from Rogers, op. cit., footnote 63, p. 95. One of the few accurate observers of the situation was Richard L. Neuberger, "Our Urbane, Civilized Frontier," *The New York Times Magazine*, July 13, 1947, pp. 16–17, 22–23.

[84] U.S. Bureau of the Census, *Seventeenth Census of the United States: 1950. Agriculture, Vol. 1, Part 34.1: Alaska*, pp. 8–9, 13–14, 17.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, 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 appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

COORDINATION OF U.S. ECONOMIC POLICIES AFFECTING DEVELOPING COUNTRIES—MESSAGE FROM THE PRESIDENT—PM 38

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

As required by Title III of the International Development and Food Assistance Act of 1978, I am writing to inform you of the steps I have taken and propose to take to strengthen the coordination of U.S. economic policies affecting developing countries.

I propose to create an International Development Cooperation Administration (IDCA) as an independent agency within the executive branch. The IDCA Director would report both to me and to the Secretary of State, and would serve as our principal international development adviser. The Director would receive guidance concerning the foreign policy of the U.S. from the Secretary of State. He would submit his budget to the Office of Management and Budget after consulting with the Secretary.

The principal responsibilities of the IDCA Director would be to ensure that the varied instruments by which the U.S. contributes to development abroad are utilized effectively and in concert, and that the efforts of U.S. bilateral programs and those of the multilateral development institutions are complementary. To carry out those responsibilities, the IDCA Director would establish and control the budgets and policies of IDCA's several component agencies, and make recommendations to me concerning the appointment and removal of senior officials of each component. IDCA would contain:

The Agency for International Development.

The Overseas Private Investment Corporation, of whose Board of Directors the IDCA Director would become Chairman.

A new Institute for Technological Cooperation designed to promote scientific and technological research in the developing countries, which I have proposed through legislative amendment.

In addition:

Lead responsibility for policy and budget for our voluntary contributions to the following international organizations will be transferred to IDCA: UN Development Program; UNICEF; OAS Technical Assistance Funds; UN Capital Development Fund; UN Educational and Training Program for Southern Africa; UN/FAO World Food Program; FAO Post Harvest Losses Fund; and UN Disaster Relief Organization.

Existing arrangements with regard to the multilateral development banks (MDBs) would be modified so that the Secretary of the Treasury will consult with the IDCA Director in the selection of candidates for the U.S. Executive Director and Deputy Executive Director positions in the MDBs, and the IDCA Director will advise U.S. Executive Directors on MDB projects and program proposals.

The IDCA Director would take part in executive branch decisionmaking concerning such matters affecting international development as trade and monetary issues; he would speak to the relative priority of development and other U.S. objectives in respect of these and other issues. He would replace the AID Administrator as Chair of the Development Coordination Committee.

I have directed OMB to review alternative organizational arrangements respecting all ACTION programs, and will consider the possible relation of Peace Corps to IDCA in light of the conclusions of that review.

I intend to propose the creation of IDCA under the reorganization authority renewed by Congress in 1977. In addition, various administrative and program adjustments will be made by Executive order and agency delegation.

I believe these steps will substantially strengthen the coordination of U.S. policies affecting the developing world, and will lead to a more coherent strategy of development and the more effective use of the various bilateral and multilateral instruments by which the U.S. can encourage the growth of developing economies. I am pleased that these actions and proposals are similar to those proposed last year by the late Senator Hubert H. Humphrey. I look forward to joining with you to put them into operation.

JIMMY CARTER.

THE WHITE HOUSE, *March 7, 1979.*

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–749. A communication from the General Counsel of the Department of Defense, transmitting a draft of legislation to amend title 10, United States Code, to provide for a Department of Defense Military Retirement and Disability Fund, and for other purposes; to the Committee on Armed Services.

EC–750. A communication from the Secretary of the Navy, transmitting a draft of proposed legislation to amend section 409 of title 37, United States Code, to eliminate restrictions for transporting a house trailer or mobile dwelling by a member of the uniformed services, and for other purposes; to the Committee on Armed Services.

EC–751. A communication from the President, United States Railway Association, transmitting, pursuant to law, a report of the accomplishments of the association during fiscal year 1978; to the Committee on Commerce, Science, and Transportation.

EC–752. A communication from the Chairman, Marine Mammal Commission, transmitting, pursuant to law, its sixth annual report, for calandar year 1978; to the Committee on Commerce, Science, and Transportation.

EC–753. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation to amend the Rail Passenger Service Act to extend the authorization of appropriations for Amtrak for three additional years, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EC–754. A communication from the Deputy Assistant Secretary for Land and Water Management, Department of the Interior, transmitting, pursuant to law, a report entitled "Modification of Island Park Dam, Stage One, Minidoka Project, Idaho and Wyoming," January 1979; to the Committee on Energy and Natural Resources.

EC–755. A communication from the Under Secretary, Department of Energy, transmitting, pursuant to law, a report entitled "Application and System Design Study for Cost-effective Solar Photovoltaic Systems at Federal Installations," February 1979; to the Committee on Energy and Natural Resources.

EC–756. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Report of the DOE Working Group on Communist Assistance," December 1978; to the Committee on Energy and Natural Resources.

EC–757. A communication from the Assistant Secretary of the Interior, transmitting, pursuant to law, a report and final comprehensive supplementary environmental statement of the Secretary of the Interior on modification of the Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota, authorized for construction by Public Law 89–108, dated August 5, 1965; to the Committee on Energy and Natural Resources.

EC–758. A communication from the Director, Office of Revenue Sharing, Department of the Treasury, transmitting, pursuant to law, the sixth annual report of the Office of Revenue Sharing, Department of the Treasury, March 1, 1979; to the Committee on Finance.

EC–759. A communication from the Acting Secretary of the Treasury, transmitting a draft of proposed legislation to provide for increased participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank; to the Committee on Foreign Relations.

EC–760. A communication from the President of the United States, transmitting a draft of proposed legislation to authorize appropriations under the Arms Control and Disarmament Act for the fiscal year 1980, and for other purposes; to the Committee on Foreign Relations.

EC–761. A communication from the Director, Office of Personnel Management, transmitting a draft of proposed legislation to amend the Retired Federal Employees Health Benefits Act, as amended, with respect to the Government contribution toward subscription charge for health coverage; to the Committee on Governmental Affairs.

EC–762. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Unique Helium Resources Are Wasting: A New Conservation Policy Is Needed," March 7, 1979; to the Committee on Governmental Affairs.

EC–763. A communication from the Administrator, National Credit Union Administration, transmitting, pursuant to law, a report relating to a new system of records; to the Committee on Governmental Affairs.

EC–764. A communication from the Chairman, Board of Directors, Tennessee Valley Authority, transmitting, pursuant to law, a report relating to the Government in the Sunshine Act; to the Committee on Governmental Affairs.

EC–765. A communication from the Chairman, Federal Communications Commission, transmitting, pursuant to law, a report relating to the administration of the Freedom of Information Act; to the Committee on the Judiciary.

EC-766. A communication from the Director, Federal Mediation and Conciliation Service, transmitting, pursuant to law, a report relating to the administration of the Freedom of Information Act; to the Committee on the Judiciary.

EC-767. A communication from the Secretary, Railroad Retirement Board, transmitting, pursuant to law, a report relating to the administration of the Freedom of Information Act; to the Committee on the Judiciary.

EC-768. A communication from the Acting Staff Director, United States Commission on Civil Rights, transmitting, pursuant to law, a report relating to the administration of the Freedom of Information Act; to the Committee on the Judiciary.

EC-769. A communication from the Chairman, National Endowment for the Humanities, transmitting, pursuant to law, a report relating to the administration of the Freedom of Information Act; to the Committee on the Judiciary.

EC-770. A communication from the District of Columbia Representatives, Ladies of the Grand Army of the Republic, Inc., transmitting, pursuant to law, a report of the audit of the books of the organization; to the Committee on the Judiciary.

EC-771. A communicataion from the Director, United States Water Resources Council, transmitting, pursuant to law, a report relating to the administration of the Freedom of Information Act; to the Committee on the Judiciary.

EC-772. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Hospice Care—A Growing Concept in the United States," March 6, 1979; to the Committee on Labor and Human Resources.

EC-773. A communication from the Administrator, Veterans Administration, transmitting a draft of proposed legislation to amend section 101 of title 38, United States Code, to limit the recognition of persons as legally adopted children of a veteran if adopted through courts in foreign countries; to the Committee on Veterans' Affairs.

EC-774. A communication from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to establish voluntary limits on the annual increases in total hospital increases in hospital inpatient revenues to the extent that the voluntary limits are not effective; to the Committee on Labor and Human Resources and the Committee on Finance, jointly, by unanimous consent.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a communication from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation dealing with hospital cost containment, be jointly referred to the Committee on Labor and Human Resources and the Committee on Finance.

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

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-74. A joint memorial adopted by the Legislature of the State of Idaho; to the Committee on Commerce, Science, and Transportation.

"JOINT MEMORIAL NO. 15

"Whereas, Congress in its wisdom established the National Rail Passenger System, better known as 'Amtrak,' to provide an alternate means of transportation for those persons who by choice wish to travel by other than automobile, bus or airplane; and

"Whereas, the Secretary of Transportation, Mr. Brock Adams, has recommended to the Congress that the entire rail passenger system be reduced from the present 27,000 miles to 15,000 miles, or a 43 percent reduction of the total mileage in the system; and

"Whereas, this reduction would eliminate the 'Pioneer Route' which extends from Seattle, Washington to Salt Lake City, Utah and traverses through southern Idaho providing services to the cities and surrounding areas of Nampa, Boise, Mountain Home, Shoshone and Pocatello; and

"Whereas, the 'Pioneer Route' has, since its beginning in June, 1977, exceeded the expectations of Amtrak by steadily increasing ridership, in providing an alternate method of transportation, and in being used extensively by our senior citizens and young families; and

"Whereas, rail passenger transportation provides the most fuel efficient method of transportation; and

"Whereas, we are asked by the President of the United States to conserve energy and especially in the area of fossil fuels; and

"Whereas, the supply of oil and gasoline is very uncertain and the rationing of aviation fuel and gasoline is a very real possibility in the near future.

"Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the Senate and House of Representatives concurring therein, and speaking on behalf of the citizens of the State of Idaho, that we ask the Congress of the United States and the President of the United States to take necessary steps to insure that the present rail passenger system remain intact, most notably the 'Pioneer Route.'

"Be it further resolved that the Secretary of the Senate be, and she is hereby authorized and directed to forward copies of this Memorial to the Honorable Jimmy Carter, President of the United States, the President of the Senate and the Speaker of the House of Representatives of Congress, and the honorable congressional delegation representing the State of Idaho in the Congress of the United States."

POM-75. A joint resolution adopted by the Legislature of the State of Virginia; to the Committee on Commerce, Science, and Transportation:

"SENATE JOINT RESOLUTION NO. 142

Whereas, the television stations in Virginia for more than a quarter century have made a significant contribution to the education, enlightenment, instruction and entertainment of the people of the Commonwealth; and

"Whereas, the contributions of air time and other services in support of community and State activities by the television stations in Virginia have been generous and substantial; and

"Whereas, public service broadcasting of television programs and announcements in Virginia has helped significantly to place the Commonwealth in the forefront of states in such important areas as observance of speed limits, thus reducing accidents and thereby saving lives on Virginia highways; has helped Virginia to become a model among states in its programs of energy conservation; has contributed significantly to the anti-litter program of the Old Dominion, to the promotion of tourism in Virginia, and to many other endeavors that enhance the economy and the quality of life in our State; and

"Whereas, through news and public affairs programming, the television stations of Virginia serve daily to inform the citizens of the Commonwealth of the issues that affect their lives and well-being; and

"Whereas, dating from the first commercial television station's efforts, all commercial television stations of Virginia have consistently encouraged and supported the growth of educational television and Public Broadcasting Service in the Old Dominion; and

"Whereas, the eleven commercial stations and five Public Broadcasting Service stations provide service that virtually every Virginian welcomes into his home regularly; and

"Whereas, television stations in Virginia are in the front ranks of those making possible the success of innumerable community activities, such as United Way Campaigns, Red Cross Blood Programs, Cancer Society Drives and many other worthwhile programs vital to community life; now, therefore, be it

"Resolved by the Senate, the House of Delegates concurring, That the General Assembly expresses its awareness of the contributions of television stations in the fields of economic, cultural, educational, political and informational endeavor, and its confidence in the capabilities of the individual television stations in Virginia; and be it

"Resolved further, That the Clerk of the Senate is hereby directed to send copies of this resolution to the Chairman of the Federal Communications Commission, to members of the Virginia delegation to the Congress of the United States and to the individual television stations in Virginia, that they may be apprised of the appreciation of this body."

POM-76. A resolution adopted by the Legislature of the State of Hawaii; to the Committee on Energy and Natural Resources:

"HOUSE RESOLUTION 162

"Whereas, the Energy Policy and Conservation Act signed into law on December 22, 1975 authorized the creation of a Strategic Petroleum Reserve with an initial capacity of five hundred million barrels of oil for the United States; and

"Whereas, President Carter's administration has subsequently proposed an amendment to expand the Strategic Petroleum Reserve to one billion barrels of oil by 1985, an approximately six-month supply; and

"Whereas, the 1975 Act also provided that each noncontiguous area of the United States which does not have overland access to domestic crude oil should have its component of the Strategic Petroleum Reserve within its respective territory; and

"Whereas, on December 15, 1976 the Federal Energy Administration (now incorporated in the Department of Energy) recommended that no component of the reserve be located in Hawaii because of the high costs involved and environmental hazards; and

"Whereas, the Federal Energy Administration further noted that the one billion barrel reserve planned for the Louisiana salt domes would be sufficient to provide for Hawaii's needs as well as for the rest of the nation during an oil emergency; and

"Whereas, after long and persistent lobbying by Hawaii's state administration and congressional delegation, Hawaii was successful in persuading the Department of Energy to support a three million barrel emergency oil storage facility in the Islands rather than to store all of Hawaii's reserve in the Louisiana salt domes; and

"Whereas, while the Department of Energy's decision will give Hawaii a limited measure of protection (approximately a one-month reserve), the three million barrel reserve is much smaller than the ten million barrel capacity that Hawaii needs to adequately protect itself in an oil emergency; and

"Whereas, a ten million barrel oil reserve (an approximately ninety-day reserve) is essential to Hawaii because of the State's almost complete dependence on imported oil for its energy needs; and

"Whereas, it has been estimated that any additional emergency shipment from the Louisiana salt domes would take approximately sixty-three days to reach Hawaii and that any supply of Alaskan oil would have only limited use in Hawaii because of its high sulfur content; and

"Whereas, the storage of only three million barrels of oil in Hawaii would result, therefore, in a serious shortfall of energy for Hawaii in the event of another disruption to oil supplies as experienced in the Arab embargo of 1974; and

"Whereas, plans for a three million barrel, $12 million emergency oil storage in Hawaii have been deleted from the Carter Administration budget; and

"Whereas, while the threat of an oil embargo for the continental United States is only partial because of its domestic crude oil, coal, natural gas, shale oil, hydroelectric and nuclear power, and its interconnecting electric grids and oil and gas distribution systems, the threat to the Island State of Hawaii which has none of the aforementioned backup resources, is total; now, therefore,

"Be it resolved by the House of Representatives of the Tenth Legislature of the State of Hawaii, Regular Session of 1979, that the United States Department of Energy is requested to increase Hawaii's Strategic Petroleum Reserve to a ten million barrel capacity in view of Hawaii's unique vulnerability and problem as an Island State situated thousands of miles from the continental United States; and

"Be it further resolved that Hawaii's delegation to the United States Congress is respectfully requested to do everything within its power to establish a ten million barrel Strategic Petroleum Reserve in Hawaii; and

"Be it further resolved that certified copies of this Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of Energy, and to each member of Hawaii's delegation to the United States Congress."

POM-77. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Foreign Relations:

"RESOLUTION

"*Whereas*, The industrial northeast is the backbone of the American economy; and

"*Whereas*, American industry and homes are extremely dependent on a continued flow of oil; and

"*Whereas*, A Mexican oil and natural gas pact is essential to the economic livelihood of the New England states; now, therefore be it

"*Resolved*, That the Massachusetts Senate memorializes the President and the Congress of the United States to secure an oil and natural gas pact with Mexico; and be it further

"*Resolved*, That copies of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States and to the presiding officer of each branch of Congress; and copies shall also be transmitted to the Governors of the several states of the Union."

POM-78. A joint resolution adopted by the Legislature of the State of Arkansas; to the Committee on the Judiciary:

"HOUSE JOINT RESOLUTION 1

"Whereas, with each passing year this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

"Whereas, the annual Federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal government to curtail spending to conform to available revenues; and

"Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget not subject to the legal public debt limit; and

"Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all Federal spending and be in balance; and

"Whereas, believing that fiscal irresponsibility at the Federal level, with the inflation which results from this policy, is the greatest threat which faces our Nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

"Whereas, under Article V of the Constitution of the United States, Amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary, or on the application of the legislatures of two-thirds of the several states the Congress shall call a constitutional convention for the purpose of proposing amendments. We believe such action vital;

"Now, therefore, be it resolved by the seventy-second General Assembly of the State of Arkansas:

"That this Body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the General Assembly of the State of Arkansas requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and

"Be it further resolved:

"That, alternatively, this Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that ficsal year; and

"Be it further resolved:

"That this Body also proposes that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the Federal Constitution, or requiring the Congress to call a constitutional convention for proposing such an amendment to the Federal Constitution; and

"Be it further resolved:

"That copies of this Resolution be sent by the Secretary of State to the Arkansas Congressional Delegation; and

"Be it further resolved:

"That the Secretary of the State of Arkansas is directed to send copies of this Joint Resolution to the Secretary of State and presiding officers of both Houses of the Legislature of each of the other States in the Union, the Clerk of the United States House of Representatives, Washington, D.C., and the Secretary of the United States Senate, Washington, D. C."

POM-79. A resolution adopted by the Legislature of the State of Georgia; to the Committee on the Judiciary:

"HOUSE RESOLUTION 254

"Whereas, millions of abortions have been performed in the United States since the decision on abortions by the United States Supreme Court on January 22, 1973; and

"Whereas, to date, the Congress of the United States has not proposed a 'human life' amendment to the Constitution of the United States.

"Now, therefore, be it resolved by the House of Representatives that this body hereby urges the Congress of the United States to call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution that would protect the lives of all human beings, including unborn children, at every stage of their biological development.

"Be it further resolved that this application shall constitute a continuing application for such a convention pursuant to Article V of the Constitution of the United States until such time as the legislatures of two-thirds of the states shall have made like applications and such convention shall have been called by the Congress of the United States.

"Be it further resolved that copies of this concurrent Resolution be presented to the President of the Senate of the United States, the Secretary of the Senate of the United States, the Speaker of the House of Representatives of the United States, and to each member of the Congress from Georgia attesting the adoption of this Resolution by the House of Representatives of the State of Georgia."

POM-80. A joint resolution adopted by the Legislature of the State of Utah; to the Committee on the Judiciary:

"JOINT RESOLUTION

"Whereas, with each passing year, this Nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars;

"Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues;

"Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit;

"Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance;

"Whereas, numerous states have constitutional requirements that appropriations not exceed anticipated revenues for the forthcoming year;

"Whereas, believing that fiscal irresponsibility at the federal level, and the inflation which results therefrom, constitutes the greatest threat now facing our nation, this Legislature is of the firm conviction that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

"Whereas, under Article V of the Constitution of the United States, amendments to the federal constitution may be proposed by the Congress, whenever two-thirds of both houses deem it necessary and, on the application of the legislatures of two-thirds of the several states, the Congress shall call a constitutional convention for the sole purpose of proposing amendments, which action this Legislature deems vital.

"Now, therefore, be it resolved by the 43rd Legislature of the State of Utah, that the Congress of the United States is requested to institute procedures to add a new article to the Constitution of the United States and to prepare and submit to the several states an amendment to the Constitution of the United States requiring, in the absence of a national emergency, that the total of all

federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

"Be it further resolved that, alternatively, this Legislature applies to the Congress of the United States to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution which would require, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed that total of all estimated federal revenues for that fiscal year.

"Be it further resolved, that this Legislature calls upon the legislatures of each of the several states to request Congress to enact an appropriate amendment to the federal constitution or, in the alternative, to apply to the Congress to call a constitutional convention for the sole purpose of proposing such an amendment to the federal constitution.

"Be it further resolved, that copies of this Resolution be forwarded to the President of the Senate and the Speaker of the House of Representatives of the United States and to all members of the Utah delegation in Congress.

"Be it further resolved, that copies of this Resolution also be prepared and forwarded to the secretaries of state and to the presiding officers of the legislatures of the several states with the request that they join this State in making application to the Congress of the United States to pass such an amendment or, in the alternative, to call a convention for the sole purpose of proposing such an amendment.

"Be it further resolved, that this application for a Convention Call for proposing amendments be limited to the subject matter of this Resolution and that the State of Utah be counted as a part of the necessary two-thirds states for such a call only if the convention is limited to the subject matter of this Resolution."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MAGNUSON, from the Committee on Appropriations, without amendment:

S. Res. 50. A resolution disapproving the proposed deferral of budget authority to promote and develop fishery products and research pertaining to American fisheries (together with view of the Committee on the Budget) (Rept. No. 96-32).

By Mr. MAGNUSON, from the Committee on Appropriations, with amendments:

H.R. 2439. An act to rescind certain budget authority contained in the message of the President of January 31, 1979 (H. Doc. 96-46), transmitted pursuant to the Impoundment Control Act of 1974 (together with additional views and views of the Committee on the Budget) (Rept. No. 96-33).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

Larry E. Meierotto, of the District of Columbia, to be an Assistant Secretary of the Interior.

(The nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. JACKSON. Mr. President, as in executive session, from the Committee on Energy and Natural Resources, I report favorably the nomination of Larry E. Meierotto, of the District of Columbia, to be an Assistant Secretary of the Interior.

I ask unanimous consent that a biographical statement and the required financial statement of Mr. Meierotto be printed in the RECORD.

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

LARRY EDWARD MEIEROTTO

Mr. Meierotto is experienced in a wide range of executive positions in which he has been responsible for budget and administrative management.

He became the Assistant Director for Administrative Services for the State of Idaho in 1971.

In 1972, he served as a Special Assistant to the Governor of Idaho Cecil D. Andrus, and as Special Assistant to the Budget Director for the State of Idaho.

In 1974, Mr. Meierotto assumed the responsibilities of Planner with the Idaho Department of Environmental and Community Services, and later served as Coordinator of the Re-election Campaign of Andrus for Governor.

During 1975, he served as Director of Special Projects for the Pacific Northwest Regional Commission coordinating efforts to encourage expanding business and new industry in the region.

In 1976, Mr. Meierotto again became a Special Assistant to Governor Andrus.

In January of 1977, he moved to Washington, D.C. and became a Special Assistant to the Secretary of the Interior.

In July, 1977, the Secretary appointed him Deputy Assistant Secretary for Policy, Budget and Administration since November, 1977.

Mr. Meierotto earned his B.A. Degree in Political Science from the University of Portland in 1967. He performed graduate studies at the University of Idaho, where he served as President of the Associated Graduated Students of the University of Idaho.

He has served on many public and civic boards including the Idaho Traffic Safety Commission, Idaho Volunteers in Corrections, Central Volunteer Bureau, United Cerebral Palsy of Idaho, and the Coalition for Advocacy of the Developmentally Disabled.

He has been listed in Outstanding Young Men of America.

FINANCIAL STATEMENT

ASSETS

Cash on hand and in banks, $2,033.01.

Listed securities—add schedule, $15.00.

Real estate interests—add schedule, $8,600.00.

Personal property, $5,000.00.

U.S. Government Federal Retirement, $5,310.20.

Deposit—1615 Swann St. NW, Washington, D.C., $675.00.

Total assets, $21,633.21.

LIABILITIES

Loan, Department of Interior Credit Union, $619.99.

Total liabilities, $619.99.

Net worth, $21,013.22.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Meierotto, Larry Edward.

Position to which nominated: Assistant Secretary, Policy, Budget and Administration. Date of nomination: January 18, 1979. Date of birth: August 10, 1945. Place of birth: Dalles, Oregon, Marital status: Divorced. Name and ages of children: Thackeray (2).

Education: institution, dates attended, degrees received, and dates of degrees: The Dalles Senior High School, September 1961 to June 1963, Diploma, June 1963. University of Portland, September 1963 to June 1967, B.A., June 1967. University of Idaho, September 1967 to May 1968. Graduate School, January 1970 to May 1970.

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

The Dalles, Oregon General Auto Supply, Inc., Auto Parts, Counter Man, Mr. and Mrs. O. J. Hylland, December 1961 to January 1970.

Coordinator, State Senator Cecil D. Andrus, Boise, Idaho, June 1970 to November 1970.

Administrative Aid to Governor, State of Idaho, Gov. Elect Andrus, Boise, Idaho, November 23, 1970 to January 3, 1971.

Assistant Director, Administrative Services, State Capitol, Boise, Idaho, State of Idaho, Governor Andrus, January 4, 1971 to May 23, 1971.

Special Assistant to Governor Andrus, State of Idaho, State Capitol, Boise, Idaho, May 24, 1971 to July 27, 1972.

Special Assistant to the Budget Director, State of Idaho, Gov. Andrus, DE Chilberg, Boise, Idaho, September 1, 1972 to April 21, 1973.

Planner, State Government, Dept. of Environmental and Community Services, Roy Haney, Boise, Idaho, February 25, 1974 to April 26, 1974.

Coordinator, Gov. Cecil D. Andrus, Boise, Idaho, May 1, 1974 to November 30, 1974.

Director, Special Projects, State Government, Boise, Idaho, March 24, 1975 to December 31, 1975.

Special Assistant to the Governor, Gov. Cecil D. Andrus, State Capitol, Boise, Idaho (January 1, 1976–January 1, 1977).

Special Assistant to the Secretary, Cecil D. Andrus, Department of the Interior, Washington, D.C. (January 21, 1977–June 23, 1977).

Deputy Assistant Secretary-Policy, Budget & Administration, Dept. of the Interior, Cecil D. Andrus, Washington, D.C. (June 23, 1977–Present).

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Outstanding Young Man of America.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization, office held (if any), dates.

United Cerebral Palsy of Idaho, Member of Board, 1975–1976.

Jude Home, Inc., Board of Directors, 1976.

Coalition for Advocacy for the Developmentally Disabled, Advisory Board Member, 1976.

Idaho Volunteers in Correction, Member of Board and Vice President, 1972–1974.

Central Volunteer Bureau, Member of Board and Vice President, 1972.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written.

None.

Qualifications: State fully your qualifications to serve in the position to which you have been named.

Future employment relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, where applicable.

2. As far as can be foreseen, state whether

you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Potential conflicts of interest: 1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Divestiture.

Mr. NUNN. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the following nominations for the Air Force: Lt. Gen. Howard M. Fish (age 55), for appointment to the grade of lieutenant general on the retired list and also Lt. Gen. John R. Kelley (age 54), for appointment to the grade of lieutenant general on the retired list; for the Navy, Vice Adm. William R. St. George (age 54), for appointment to the grade of vice admiral on the retired list and six Navy captains for temporary promotion to the grade of rear admiral (list begins with Clinton Hershey Lowery); and, in the Marine Corps, there are nine permanent appointments to the grade of brigadier general (list begins with Richard M. Cooke). I ask that these names be placed on the Executive Calendar.

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

Mr. NUNN. In addition, Mr. President, in the Army there are 66 for appointment to the grade of lieutenant colonel and below (list begins with Stanley E. Reinhart, Jr., to be a permanent professor of the U.S. Military Academy) and 1,895 scholarship students for appointment in the Regular Army to the grade of second lieutenant (list begins with Henry H. Adair, Jr.); in the Navy there are 389 for promotion to the grade of lieutenant (list begins with James S. Appelquist) and in the Navy and Naval Reserve there are 143 for temporary and permanent appointment to the grade of captain and below; and, in the Marine Corps, there are 1,615 temporary and permanent appointments to the grade of lieutenant colonel and below (list begins with Bernard V. Burchette). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD on February 26, 1979, at the end of the Senate proceedings.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. STEVENSON:

S. 580. A bill to establish an Energy Company of America, and for other purposes; to the Committee on Governmental Affairs.

By Mr. STEVENSON (for himself and Mr. MOYNIHAN):

S. 581. A bill to establish an Energy Bank of America to provide supplemental financing and economic assistance for those activities with the greatest potential for assuring energy conservation and adequate energy supplies at reasonable prices for the United States, consistent with protection of the environment, for which private sector financing is either insufficient or available only on terms which are commercially prohibitive, to provide for the development of a national energy policy and make possible its implementation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. NELSON (for himself, Mr. McGOVERN, Mr. MELCHER, Mr. HEINZ, Mr. STAFFORD, Mr. FORD, Mr. PRESSLER, Mr. STEVENS, Mr. LEAHY, Mr. HOLLINGS, Mr. RIEGLE, and Mr. LEVIN):

S. 582. A bill to provide Federal guarantees for State programs designed to assist individuals who, except for their lack of financial means, would be qualified to enter farming on a full-time basis; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. RIBICOFF (for himself, Mr. WEICKER, Mr. McGOVERN, Mr. SARBANES, Mr. RIEGLE, and Mr. MAGNUSON):

S. 583. A bill to provide for the development and implementation of programs for children and youth camp safety; to the Committee on Labor and Human Resources.

By Mr. CHURCH (by request):

S. 584. A bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes; to the Committee on Foreign Relations.

By Mr. JACKSON (for himself and Mr. MAGNUSON):

S. 585. A bill to authorize the Secretary of the Interior to engage in a feasibility study of the Yakima River Basin water enhancement project; to the Committee on Energy and Natural Resources.

By Mr. CHURCH (by request):

S. 586. A bill to authorize appropriations for the Department of State, International Communication Agency, and Board for International Broadcasting for fiscal years 1980 and 1981, and a supplemental authorization for State for fiscal year 1979, and for other purposes; to the Committee on Foreign Relations.

By Mr. SCHWEIKER:

S. 587. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize an evaluation of the risks and benefits of certain food additives; to the Committee on Labor and Human Resources.

By Mr. CHURCH (by request):

S. 588. A bill to amend the Foreign Assistance Act of 1961 to authorize development assistance programs for fiscal years 1980 and 1981, to make certain changes in the authorities of that act, to authorize the establishment of an Institute for Technological Cooperation, and for other purposes; to the Committee on Foreign Relations.

By Mr. BENTSEN (for himself, Mr. JAVITS, Mr. DECONCINI, Mr. HAYAKAWA, and Mr. CHURCH):

S. 589. A bill to restore the deductibility of expenses for attending certain conventions in Mexico and Canada; to the Committee on Finance.

By Mr. JAVITS (for himself, Mr. KENNEDY, Mr. WILLIAMS, Mr. RANDOLPH, Mr. STAFFORD, Mr. RIEGLE, and Mr. INOUYE):

S. 590. A bill to amend the Public Health Service Act to revise and strengthen the program under that act for the regulation of clinical laboratories; to the Committee on Labor and Human Resources.

By Mr. DOLE (for himself, Mr. MOYNIHAN, Mr. BENTSEN, Mr. RIBICOFF, Mr. CRANSTON, Mr. DANFORTH, Mr. SCHWEIKER, and Mr. JAVITS):

S. 591. A bill to amend title XVI of the Social Security Act with respect to presumptive disability, earned income in sheltered workshops, benefits for individuals who work despite a severe medical impairment, and the exclusion of certain work expenses in determining substantial activity; to the Committee on Finance.

By Mr. PRESSLER:

S. 592. A bill to authorize the Corps of Engineers to undertake additional work at the Fort Randall-Lake Francis Case project in South Dakota; to the Committee on Environment and Public Works.

By Mr. WILLIAMS (for himself, Mr. CHILES, Mr. SARBANES, Mr. CHURCH, Mr. HEINZ, Mr. METZENBAUM, Mr. CRANSTON, Mr. STEWART, Mr. TSONGAS, and Mr. GLENN):

S. 593. A bill to amend section 202 of the Housing Act of 1959 to extend the program to provide housing for the elderly or handicapped, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. McGOVERN (for himself, Mr. LAXALT, Mr. BUMPERS, Mr. GRAVEL, Mr. RIEGLE, Mr. BAUCUS, Mr. LEAHY, Mr. HATFIELD, Mr. MATSUNAGA, Mr. CANNON, and Mr. METZENBAUM):

S. 594. A bill to provide for a formal process of State participation and concurrence regarding the management and storage of radioactive materials; to the Committee on Energy and National Resources.

By Mr. TOWER:

S. 595. A bill to amend the Urban Mass Transportation Act of 1964 with respect to labor standards; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DANFORTH (for himself and Mr. HART):

S. 596. A bill to provide a fair procedure for establishing congressional districts; to the Committee on Governmental Affairs.

By Mr. BAYH (for himself, Mr. HATFIELD, Mr. RANDOLPH, and Mr. COHEN):

S. 597. A bill to provide that polling and registration places for elections for Federal office be accessible to physically handicapped

and elderly individuals, and for other purposes; to the Committee on Rules and Administration.

By Mr. BAYH (for himself, Mr. COCHRAN, Mr. ARMSTRONG, Mr. BAKER, Mr. BAUCUS, Mr. BELLMON, Mr. BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. BURDICK, Mr. CANNON, Mr. CHILES, Mr. CRANSTON, Mr. DANFORTH, Mr. DECONCINI, Mr. DOMENICI, Mr. EAGLETON, Mr. FORD, Mr. GARN, Mr. GOLDWATER, Mr. GRAVEL, Mr. HART, Mr. HATCH, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JEPSEN, Mrs. KASSEBAUM, Mr. LEAHY, Mr. LUGAR, Mr. MAGNUSON, Mr. LAXALT, Mr. MATHIAS, Mr. MATSUNAGA, Mr. MCCLURE, Mr. MCGOVERN, Mr. MELCHER, Mr. MORGAN, Mr. MOYNIHAN, Mr. NUNN, Mr. PERCY, Mr. PRESSLER, Mr. PRYOR, Mr. RANDOLPH, Mr. RIEGLE, Mr. ROTH, Mr. SCHMITT, Mr. SIMPSON, Mr. STENNIS, Mr. STEVENS, Mr. STEWART, Mr. STONE, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. WARNER, Mr. WILLIAMS, and Mr. YOUNG):

S. 598. A bill to clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws; to the Committee on the Judiciary.

By Mr. BAYH (for himself and Mr. LUGAR):

S. 599. A bill relating to the Indiana Dunes National Lakeshore, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KENNEDY (for himself, Mr. METZENBAUM, Mr. PRESSLER, Mr. MELCHER, and Mr. MCGOVERN):

S. 600. A bill to preserve the diversity and independence of American business; to the Committee on the Judiciary.

By Mr. PROXMIRE (by request):

S. 601. A bill to increase the number of class C directors of Federal Reserve banks and to make certain changes in the terms and positions of the Chairman and Vice Chairman of the Federal Reserve Board; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MATHIAS (for himself and Mr. STAFFORD):

S. 602. A bill to amend the Internal Revenue Code of 1954 to modify the credit allowed for expenses for household and dependent care services necessary for gainful employment to include credit to individuals for expenses for the care of a mentally or physically handicapped child of such individual and to provide for the exemption from taxation of trusts established to provide care for such children except to the extent of distributions and to provide a deduction for contributions to such trusts; to the Committee on Finance.

By Mr. JAVITS (for himself, Mr. STAFFORD, Mr. CHAFEE, Mr. SCHWEIKER, and Mr. HAYAKAWA):

S. 603. A bill to amend title XIX of the Social Security Act to provide that States may include coverage under medicaid for individuals who perform substantial gainful activity despite a severe medical disability; to the Committee on Finance.

By Mr. HATCH (for himself and Mr. SCHWEIKER):

S. 604. A bill to amend the Small Business Act; to the Select Committee on Small Business.

By Mr. BELLMON (for himself and Mr. DOMENICI):

S. 605. A bill to permit the States to consolidate and reorganize certain food programs administered by the Department of Agriculure for the benefit of needy persons; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MATHIAS:

S. 606. A bill for the relief of Damian Cheong-leen; to the Committee on the Judiciary.

By Mr. WILLIAMS:

S. 607. A bill for the relief of Point Pleasant Hospital, of Point Pleasant, N.J., to the Committee on Armed Services.

S. 608. A bill for the relief of Patsy J. Perry; to the Committee on the Judiciary.

By Mr. TSONGAS:

S. 609. A bill for the relief of Mary N. Panagiotakis; to the Committee on the Judiciary.

S. 610. A bill for the relief of Hanna E. Aboufarah; to the Committee on the Judiciary.

By Mr. BAUCUS (for himself and Mr. DURKIN):

S.J. Res. 47. A joint resolution designating May, 1979, as "Family Camping Month"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STEVENSON:

S. 580. A bill to establish an Energy Company of America, and for other purposes; to the Committee on Governmental Affairs.

By Mr. STEVENSON (for himself and Mr. MOYNIHAN):

S. 581. A bill to establish an Energy Bank of America to provide supplemental financing and economic assistance for those activities with the greatest potential for assuring energy conservation and adequate energy supplies at reasonable prices for the United States, consistent with protection of the environment, for which private sector financing is either insufficient or available only on terms which are commercially prohibitive, to provide for the development of a national energy policy and make possible its implementation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

BLUEPRINT FOR A COMPREHENSIVE ENERGY POLICY

Mr. STEVENSON. Mr. President, now we can look back nostalgically to the time when OPEC controlled the price of oil. Oil prices are rising erratically. The OPEC surplus is heading back to the $60 billion a year level, leaving consumer nations with larger payments deficits and greater temptation to subsidize exports and protect themselves from imports. Oil costs and the infirmities of the world's monetary system are depressing world trade and investment. Slower growth rates in the industrialized nations will diminish export opportunities for the United States and that, combined with higher oil import costs, could perpetuate our $30 billion trade deficit. Inflation will take a turn for the worse, and inflation is now associated with unemployment and recession. The graver portents of the recent events in Iran have to do with political instabilities in many regions of the world, including the Persian Gulf, and now the world has little margin of energy supply for the near term upon which to fall back.

The United States is reacting to crisis with emergency measures to manage oil shortages and with little effort to prevent them. We responded earlier with an Energy Department instead of a comprehensive energy policy. The national energy plan is a collection of easy choices with voluntary "requirements" for conservation and subsidies or tax credits for production. As with most U.S. policies, it lacks an international dimension, although energy supply is rooted in world supplies and consumption. The notion of energy independence was always an illusion. It will be a long time, if ever, before the Nation is self-sufficient. Until then it will remain dependent on undependable foreign sources of oil, unless it takes action. The proposals I suggest would help tide us over until fusion, solar power, coal and other alternative sources can make a significant contribution to the Nation's energy supply.

I am today introducing a bill which would create the Energy Company of America (ECA), whose charter is not to enrich itself, but to produce and buy energy for the Nation. This company, through its own efforts and joint ventures with private companies and foreign governments, would explore for, develop, produce and purchase energy in the United States and throughout the world. As a competitive entity in the oil industry, it could signal an end to costly and inefficient price controls on oil and gas. This bill would deregulate oil and gas when ECA is able to perform as an effective competitor and supply independent refiners and distributors.

The second bill I introduce today would create the Energy Bank of America (EBA), through which Government, in cooperation with private facilities, both foreign and domestic, would assure financing for the development of energy sources too risky or costly for private enterprise alone.

These proposals would provide us with some control of our destiny and give our energy policy an international dimension.

ECA would negotiate with foreign governments for the purchase of crude oil at stable and reasonable prices, rather than leaving this task exclusively to oil companies whose interest is in higher energy prices. The recent experience with Mexico over natural gas and now with oil in Iran, demonstrates again that it is foolish to leave international negotiations to entities accountable to themselves and foreign governments—and not the American people. With an incentive to raise prices and no power to lower them, energy companies in these cases agreed to pay prices in excess of OPEC prices. The United States buys oil like it sells food in the world—for the benefit of its economic adversaries.

Our economic power, in concert with other consuming nations, is the equal of the OPEC countries, but it has not been used. ECA could reflect, not oppose, U.S. policy in negotiations for energy. To say the least, in times of stress it would not cut off fuel to American Armed Forces as have private companies.

It is impossible to estimate with certainty potential oil reserves in the world. But vast quantities of oil and natural gas probably exist in the unexplored regions of Latin America, Asia and Africa.

The oil companies have little access to these resources. Their presence is often made impossible by foreign politics and antagonisms toward multinational oil companies spawned by history. With large investments and contractural obligations in the Middle East and elsewhere, these companies have difficulty diversifying their foreign sources of supply. ECA would be charged with doing so. Instead of seeking to persuade nations in the Middle East to increase production when they have an incentive to decrease production, ECA would cooperate with nations elsewhere that have a strong incentive to increase production. That cooperation would take the form of joint ventures for exploration, development and production, and long-term oil purchase contracts. Such contracts could stabliize U.S. supplies and prices and also provide a basis for financing production in other countries. Such an effort to diversify foreign oil supplies would require the Carter administration to concede that the human rights records of Argentina and other nations with potentials for oil production are no more offensive than those of Iraq or Libya.

Resource availability is not the problem. By reason of inertia, institutional rigidities and world politics, the U.S. Government now makes no direct effort to diversify and expand world oil supplies. The problem is developing and using the world's productive oil capacity. The instabilities associated with rapid development in Iran may prompt other developing nations with potential oil resources to move cautiously. Government-to-government dealings offer an opportunity to break down the barriers to resource development in ways that are mutually acceptable.

ECA would also explore for, inventory and develop domestic oil, gas, uranium and coal resources in the U.S. public domain. The bulk of the Nation's proven and undiscovered energy reserves lies on Federal land, on and off shore. The American people own these resources, yet their Government knows little about their location and extent, and leaves their development and allocation to private oil companies. ECA could develop public energy resources in cooperation with private corporations, to assure supplies for the public and reduce our reliance on undependable foreign sources. It would do so by methods that are environmentally sound, developing new technologies.

The development and production of Federal naval petroleum reserves could proceed systematically, providing supply to meet current needs while maintaining reserves to withstand supply curtailments. ECA could also operate the strategic petroleum reserves.

ECA could return substantial revenues to the Treasury. It could allocate supplies during times of shortage and spur competition, not through costly regulations but as a competitive entity whose production costs and performance would be a matter of public record. Through its production and purchases, ECA could sell oil and oil products to independent refiners and independent marketers who compete with the major oil companies and are dependent on them.

ECA would be authorized to mine and produce coal and uranium, as well as oil and gas, to mill and enrich the uranium it develops, reprocess nuclear fuel and dispose of nuclear wastes. It could engage in research and development for improved methods of exploration, development, production, mining, enrichment, reprocessing, refining, storage and transport of oil, gas, coal, uranium and products derived therefrom. As the Nation increases its dependence on alternative sources of energy, it becomes more important that the Government act to assure their availability. The growing accumulation of coal and uranium reserves by oil companies makes such action the more necessary. Last year's coal strike reemphasizes the vulnerability of energy supplies to the actions of labor unions, foreign governments, and multinational oil companies.

The most promising near-term alternative sources of energy are coal and nuclear fuel. The burning of coal has serious economic and environmental implications. While mine mouth coal fired electrical generating plants are a promising option, the administration proposes to reduce expenditures for plants to test the economic and technical feasibility of technologies for the conversion of coal to liquid and gaseous fuels on a commercial scale. These plants convert coal to forms which can be transported and burned with less environmental degradation and at a cost made feasible by $20 per barrel oil. The Congress should make funds available for an adequate demonstration of coal conversion technologies.

About 18 light water nuclear reactors would make up the expected U.S. shortfall from Iran's curtailed production of oil. In the last 2 years, only six new reactors have been ordered. Plans for 32 reactors have been canceled in the same period. U.S. exports of nuclear reactors have virtually stopped. U.S. manufacturers of nuclear facilities, having lost hundreds of millions of dollars, may be forced to withdraw from the business. And because the United States is now regarded as an unreliable supplier of nuclear facilities and fuels, other nations desperate for energy turn to suppliers less fastidious about environmental and political implications. In the name of nonproliferation the Carter administration has encouraged the proliferation of nuclear energy, including energy from the plutonium cycle, and it has exacerbated the world's energy emergency.

The ECA could reprocess spent fuel rods in order to recover enriched uranium and plutonium for use in reactors when needed. At present these valuable materials are piling up in temporary storage facilities with no means of either using or disposing of them. Reprocessing would produce nuclear waste byproducts which can be disposed of more easily and safely. The use of outer space for disposal, of such wastes should be carefully considered. The design of waste containers which could withstand any adversity during launch or reentry is an engineering job that can be solved. The economics, as against less reliable systems for disposal, should be tested.

ECA's activities could be performed abroad as well as at home. The utilization of remote sensing systems based in space is a promising method of exploration for fuels in the world. NASA should be mandated to operate a global remote sensing system. This system would involve the cooperation of ECA and industry and in time perhaps its operation by industry. It could identify promising areas in the world for exploratory drilling. With some imagination the U.S. could involve many nations in a remote sensing system for many purposes. Soon I will introduce legislation to make that possible.

ECA is an alternative to regulation and nationalization. It would supplement, not supplant, private enterprise. Canada's experience with its national oil corporation, Petro-Canada, has been favorable, even in the view of some who opposed its creation a scant 3 years ago. The British experience also provides useful insights. Those countries, like the Dutch, the French, the Mexicans and many others, have recognized what we in this country have not: the development of energy resources and the security of their supply is too important to be left entirely to oil companies, the largest of which are subject to foreign control.

The private sector alone cannot finance the development and production of the increased energy supplies and distribution systems essential to the Nation's security and prosperity. Lenders and private investors, including the major oil companies, cannot accept the risks entailed in all long-term energy projects, nor the low profit margin on many energy conservation measures. If it is in the Nation's interest to finance housing, food supplies, medical care, and exports, surely it is in its interest to assure the financing of energy supplies upon which all else depends. Federal support for research and development is not enough. So-called demonstration projects are useful, but they must often be replicated on a commercial scale before private financing becomes adequate. Financing is needed to bridge the gap between development and commercial operation. Research and development has reached the point, or will, where commercial application should be attempted in oil shale and tar sands recovery, heavy oils, coal gasification and liquefaction, coal seam methane, large-scale solar energy projects, solid waste utilization, and transportation systems such as the Alaskan gas pipeline. The Nation needs this pipeline whether or not private investors are ready to participate. The private sector by itself will not take on all the risks and large capital investments such projects require. A bank of last resort is needed.

The proposal I introduce differs in material respects from that put forth by former Vice President Rockefeller. First, EBA should support energy development overseas as well as at home. Oil exploration and development must be expanded around the globe. The World Bank has recently begun funding exploration but will cover a small fraction of what is needed. The Eximbank is supporting development of additions to supply in the world—Algerian natural gas,

for example—but its resources are for U.S. export promotion and are inadequate for the task at hand.

Instead of seeking an illusory energy independence, we must relieve ourselves of dependence on undependable foreign sources by increasing domestic supply and diversifying foreign supply, and not fall prey to the drain-America-first syndrome. That is the way to put downward pressure on energy prices—by increasing supply everywhere. And that is the way to enhance our national security.

The financing of energy supply and conservation projects by EBA would be available to public as well as private entities. Municipalities in particular could benefit from access to energy project financing. The bank could finance multiple purpose projects—for example, municipal solid waste treatment plants which provide both waste disposal and energy production.

No one can say how much may ultimately be needed, but I propose that initially $1 billion be appropriated to the bank as capital, and that the bank have authority to issue bonds backed by the full faith and credit of the U.S. Government. Total commitments by the bank could be limited to $20 billion. Of course, the funds should be loaned on a basis that offers a reasonable probability that they will be repaid with revenues from successful energy projects, but it would be foolhardy to insist on early repayment or to shy away from risky projects. EBA would press on with energy projects which are too risky or large for the private sector to fund unaided.

More needs to be done.

Legislation will be considered and should be enacted to expedite the nuclear licensing process and eliminate the uncertainties which have brought the construction of nuclear facilities to a virtual halt. The 12 to 13 years it takes to build a nuclear plant should be reduced to no more than 6. In addition, the United States should move ahead with its plant to test the feasibility of breeder reactors. The nuclear option can be made safe. Of all the near term options, it may threaten the least environmental degradation.

By enhancing supplies of nuclear fuel for reactors at home, we would be perceived to be a more reliable supplier of enriched uranium abroad. That perception, combined with a more realistic nuclear export policy (not permitting exports of any part of the plutonium cycle) would facilitate efforts to safeguard nuclear facilities throughout the world.

Energy conservation remains the least expensive and most effective means of increasing energy supplies. But we have not faced up to the most obvious means of conserving energy. The consumption of gasoline in the United States is sheer profligacy. Its consumption for noncommercial uses can be reduced without adverse economic consequences. Indeed, the economic and environmental consequences of decreased gasoline consumption would be wholesome. Gasoline taxes should be increased to discourage consumption and produce revenues for energy development, efficient transportation systems, tax relief and a balanced budget.

The energy crisis is associated with oil shortages, less clearly with the inflation and economic stagnation caused by energy shortages and high energy prices. But the crisis consists also of deepening payments deficits, overextended credit facilities, and a temptation to subsidize exports while resisting imports. In addition to the threat of trade barriers, domino-like national and commercial insolvencies and declining world trade and investment, financial reserves build up in a handful of producing nations. The investment of these reserves can be influenced by political considerations. The institutions in which they are invested can be controlled or pressured for political purposes. If shifted capriciously from one investment medium to another on short notice, they can also cause serious disequilibria in the world's financial system. The control of these reserves is, like the control of oil itself, a large and tempting source of world power. All of which underscores the importance of a comprehensive energy policy. It also underscores the need for an institutional means of more effectively recycling these monetary reserves back into a shaky world economy. The financial system has worked reassuringly well—but now it is stretched. Some nations are already rescheduling debts. Some financial institutions are overextended. Credit is tight. Expanded IMF resources are necessary. For the longer term a global monetary institution is needed to succeed the IMF, bringing Communist countries and oil producer surpluses into a new global institution and a monetary system which moves the world away from its artificial divisions, unreliable reserve currency and vulnerable monetary fund.

These suggestions, including the twin entities, Energy Company of America (ECA) and Energy Bank of America (EBA), working in concert with themselves and other agencies of the Government, foreign nations and private enterprise on a global scale would give the nation some control of its fate. They invite the United States to reverse its retreat and lead a worldwide assault on the energy crisis.

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

Mr. STEVENSON. I yield.

Mr. MOYNIHAN. This is not the first time I have expressed my admiration for the energy and creativity that the Senator from Illinois has shown in this field. He responds to a question and a need that seems so overwhelming as somehow to repress any initiatives. It is so obvious as to have been overlooked, and I would deem it an honor if he would put the junior Senator from New York down as a cosponsor of the second of the two bills that he has just now introduced.

Mr. STEVENSON. Mr. President, I am grateful to the Senator for his words. He recognizes that the United States, having created an Energy Department, still has not created a comprehensive energy policy and that now, faced more evidently than before, with a crisis, we are reacting with emergency measures with which to deal with shortages and still are not considering the measures with which to end the shortages.

Mr. MOYNIHAN. If I may say so, if ever there were a case of treating symptoms, we see it all about us.

Mr. STEVENSON. There still is no international dimension to our energy policy; and if it were not obvious before, it should be obvious now that for some time to come the United States will remain dependent on undependable foreign sources of energy, unless it begins to act to diversify and increase foreign sources of energy at the same time it is increasing domestic sources of energy.

Mr. MOYNIHAN. Is it not the case that we have no alternative but to respond to the conditions imposed upon us in what one might call a comparable technological mode? The oil producers have produced a kind of economic and geopolitical technology in the multinational monopoly. It is an invention. It never existed before. It would have horrified the world of liberal economics until 20 or 30 years ago. It is a technique.

It is like the Cuban Army as a Third-World weapons system. The Rand Corp. in its most brilliant moment could never have thought up the Cuban Army, an army where white officers go anywhere in Africa and kill anyone, and which is regarded as somehow progressive.

This multinational monopoly is a fact. If we respond to it with the techniques of low-level antitrust action in the United States, confining ourselves to the United States, price regulations, and seeking supplies by looking about, we are dealing with 19th century technology in the face of 20th century fact.

The Senator's energy bond proposal is a response in kind and, absent it, it seems to me we are in the condition of a technologically backward nation confronting something new that we do not know how to deal with.

Mr. STEVENSON addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, before the Senator yields, may I ask a unanimous-consent request?

Mr. MOYNIHAN. I am happy to have the majority leader make a unanimous-consent request.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may speak out of order under the Pastore rule and that the time be equally charged against both sides on the pending question.

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

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. MOYNIHAN. The majority leader is most gracious to keep us in order.

Mr. STEVENSON. Mr. President, the Senator speaks with much wisdom. If it were shared by the Government, the Nation would not be in such a sorry plight today. It was traumatized in Angola, by its experience in Vietnam, unable to distinguish the difference, and now it is traumatized by economic orthodoxies which are rooted in abstractions from the 18th century about the behavior of nations and markets.

The Senator has mentioned OPEC. I have to say to the Senator we can begin to look back nostalgically to the time when OPEC could control the prices of oil.

But having said that, in this world, this very imperfect world, in which the law of supply and demand is stood on its head by nations and by ideas, some of them as ancient as those of the Ayatollah Khomeini, we could react; the consumers in this imperfect marketplace have as much leverage as the producers of oil. But we have left our purchases to a handful of multinational corporations which have very little power or incentive to bargain for lower prices of oil.

Ashland Oil recently broke the OPEC price in Iran. Before that it was the oil companies, the utilities, and the rest of this apparatus which agreed to pay the Mexican Government prices for natural gas that were in excess of the OPEC prices for oil.

In addition to combining and exercising what economic leverage we have, the United States could, it seems to me, also recognize that, pushed to the wall, it has comparable sources of authority. Food, for example, is an infinitely renewable source unlike oil which, managed properly, could be used for humane purposes. It could be used to enlarge our economic advantage throughout the world as well as to restore our political authority.

But we sell food as we buy oil, for the benefit of our adversaries.

Mr. MOYNIHAN. If I may say to the Senator from Illinois—although it is not the best practice to quote oneself—that when OPEC came into existence, I remarked in a commencement address at Stanford University that it seemed to me that this event would lead to the largest expansion of Government power in the economy of the United States of any event since the New Deal; but that it had been forced upon us from the outside, by exogenous events, they would say; and the question was whether we would recognize it early on, and say it was an act that was imposed upon us, and how would we respond?

The alternative was either to take it on and try to create among ourselves institutions that could be effective in representing our interests, or just decline into an endless complexity of small and marginal regulations.

I fear we have done the latter.

Mr. STEVENSON. We have given ourselves the worst of both worlds. We could, with some imagination, contrive methods for involvement by the Government when necessary, but which are far less intrusive, far less burdensome for the entire economy, than a multibillion dollar a year Department of Energy.

The company which would be authorized by the legislation I have introduced not only assures energy supply. Every other country with any resources to develop has such a corporation. In fact, this legislation, a variation of it, was enacted by the Canadians not long ago.

But it could become a far more discrete means of allocating resources in the United States during times of shortages than through regulations of the Department of Energy and, in time, of regulating through healthy competition prices, again without the expensive, burdensome regulations of the Department of Energy.

So I welcome the cooperation of the Senator from New York. I think he speaks with much wisdom, and his words are among the most encouraging that I have heard since I began my own efforts to alert the country to the energy crisis with measures to meet it, in 1970, the year of my election to this body.

I thank the Senator from New York.

Mr. MOYNIHAN. It is we who are in the Senator's debt, and I would like to acknowledge it.

The PRESIDING OFFICER. The bills will be received and appropriately referred.

Mr. MOYNIHAN. I thank the Chair.

By Mr. NELSON (for himself, Mr. McGOVERN, Mr. MELCHER, Mr. HEINZ, Mr. STAFFORD, Mr. FORD, Mr. PRESSLER, Mr. STEVENS, Mr. STEWART, Mr. LEAHY, Mr. HOLLINGS, Mr. RIEGLE, and Mr. LEVIN):

S. 582. A bill to provide Federal guarantees for State programs designed to assist individuals who, except for their lack of financial means, would be qualified to enter farming on a full-time basis; to the Committee on Agriculture, Nutrition, and Forestry.

FARM ENTRY ASSISTANCE ACT

Mr. NELSON. Mr. President, I send to the desk a bill in behalf of myself, Mr. McGOVERN, Mr. MELCHER, Mr. HEINZ, Mr. STAFFORD, Mr. FORD, Mr. PRESSLER, Mr. STEVENS, Mr. STEWART, Mr. LEAHY, Mr. HOLLINGS, Mr. RIEGLE, and Mr. LEVIN to provide Federal guarantees for State programs designed to assist individuals who, except for their financial means, would be qualified to enter farming on a full-time basis.

Mr. President, the last few decades have witnessed a disturbing decline in both the number of family farms and their relative contribution to American agriculture. A large part of the explanation for this trend is the increasing difficulty of entering family farming. As costs become more and more prohibitive, only those who already have substantial assets can get access to credit. The result is that farmland is sold primarily to farmers expanding their operations, to large corporations with the capital to invest in land, either to farm or to develop, or to investors and speculators, many of whom will eventually withdraw the land from farming altogether. Only a fortunate few can gather the resources to begin farming under these circumstances.

The result of this pattern is fewer and larger farms, less land in production, and less business for local rural communities dependent on a family farm economy. Current Federal programs have eased the problem somewhat, but data shows that they have not helped nearly enough. The bill I am introducing today, along with Senators McGOVERN, MELCHER, HEINZ, STAFFORD, FORD, PRESSLER, STEVENS, STEWART, LEAHY, HOLLINGS, RIEGLE, and LEVIN, provides a way to ease entry into farming with a minimum amount of Federal expenditure and involvement.

This bill would authorize the Secretary of Agriculture to guarantee assistance made available through State programs designed to facilitate entry into farming by well-qualified, but low asset individuals. States would design and administer the programs, and would select the applicants for participation.

If a State's program was approved by the Secretary of Agriculture, the Government would guarantee 90 percent of the payments of a program beneficiary on a loan, a contract for deed installment sale, or a lease. Applicants would have to show that the farm they intend to operate is a family-sized unit and that they could operate it in a way that would provide them with an income adequate for living and farm expenses.

States would be encouraged to enact programs that relieve new farmers of a portion of their payments in the early years of operation, either by State loans to cover some of these costs or through other means such as variable repayment mortgages. States with such especially beneficial programs would receive extra guarantee authority, but all States must be able to show that their programs would promote family farming and would be fiscally responsible. Four hundred million in loan guarantees would be authorized annually, 75 percent of which would be distributed according to farm population and 25 percent of which would be granted to States with especially meritorious programs.

Only a fraction of this amount, however, would be needed to be appropriated as a reserve fund, probably no more than 10 percent. The fiscal impact, therefore, will be very small. The Secretary of Agriculture will make a recommendation to Congress on the precise reserve fund needed each year.

The need for this program is very clear. In the last 40 years, the number of farms has been cut by a third, from 6.8 million in 1935 to an estimated 2.3 million in 1978. While the number of farms has declined, the relative importance of the family farm has declined as well. If a family farm is defined as one with no more than 1.5 man/years of outside labor, then family farms account for 90 percent of all farm units, but only 60 percent of the total output. The rapidly growing category of industrially organized farms, on the other hand, accounts for only 2 percent of the farms, but 15–20 percent on the output.

The decline of the family farm, in fact, has recently been thoroughly documented by two congressional agencies: the General Accounting Office, in its study entitled "Changing Character and Structure of American Agriculture," and the Congressional Budget Office in its "Public Policy and the Changing Structure of American Agriculture."

This decline is not a result of inefficiency. According to the GAO, IRS returns show that farms in the typical family farm category are the most efficient of all in terms of costs of production and return on investment. The Con-

gressional Budget Office concluded that even if the Government were to follow a policy that severely restricted farm expansion, food costs would remain basically unaffected. USDA studies have repeatedly confirmed that the family farm is the most efficient sized unit. The basic cause of the decline of the family farm is not, then, any lack of efficiency, but as the Congressional Budget Office stated, a Federal policy that has "led to greater concentration in farming."

Family farming is more than just efficient, however, studies published by the Small Business Committee have provided empirical proof of the commonsense observation that rural communities surrounded by family farms are more vital and prosperous than communities surrounded by large farms. Large farms will get their supplies elsewhere, and the labor force they hire will be much less likely to participate in community life in the same way that independent farmers are.

Unfortunately, family farming is extraordinarily difficult to enter, an observation supported by recent studies. According to a recent report of the Federal Reserve Bank of Kansas City, in 1976 only about 20–25 percent of the land sold for use in farming went to new farmers starting operations. This compares with 60 percent in 1956. A 1973–75 Minnesota study showed that 90 percent of the land is being purchased for expansion. The reason for these trends, of course, is the cost of farmland and equipment.

To capitalize a moderate-sized family farm (sales of $40,000–$60,000 annually), between $250,000 and $575,000 is required, according to the GAO. A recent study by University of Wisconsin researchers found that farmers who actually started operations between 1961 and 1976 averaged $37,000 in funds available for startup costs, and these figures do not reflect the tremendous inflation of the last two decades. When inflation is taken into account, this study suggests that $50,000 or $60,000 in available funds would be required for startup, a sum very few beginning farmers are likely to have. Without these funds, however, creditors are very reluctant to make loans to entering farmers, especially when there is demand for the land from well-established farmers and from wealthy investors.

In the last several years, many States have recognized the seriousness of the problem and have seriously considered legislation to address it. While bills are still pending in many States, two States—Minnesota and North Dakota—have already started programs. The Minnesota program is the most ambitious, guaranteeing loans and payments on contracts, making loans to new farmers to help pay early interest costs, and giving a tax break to sellers who sell to program participants at lower rates.

In the first 14 months of the program, 86 loans were guaranteed. The total staff for the program consisted of three people, and the total administrative cost was only $80,000. The program has been a great success. In fact, retiring farmers are coming to the program in large numbers to ask that they be able to sell under the program to a neighbor, relative, or friend who lacks resources. These sellers are willing to give the buyer special breaks in interest and sale price in return for the State's guarantee.

It is this local participation that is crucial to a program's success, and this bill would guarantee that participation. There is, of course, an existing program under Farmers Home. While this program, under its new regulations, will be of substantial assistance to low-asset entering farmers, Farmers Home officials estimate that two-thirds of the applicants who might qualify are turned down for lack of funds, and many other potentially qualified people never even apply because of the long delays involved in getting Farmers Home assistance. Moreover, Farmers Home has been chronically beset with a shortage of personnel to administer its program.

Even if Farmers Home had the money and the staff, however, it would still be unable to provide credit in a number of situations which are especially well-suited to an entering farmer. Farmers Home cannot, for instance, guarantee payments on a contract for deed sale, in which a seller agrees to sell his farm on a contract, stating that 29 percent will be paid down and the rest paid over 10–20 years, sometimes with a balloon payment at the end. Farmers Home can assist in getting a loan for the down payment, but that is all, and many sellers would be reluctant to sell to a person with no other assets or backing.

Contract sales are rapidly gaining in popularity, however, since they offer the seller substantial capital gains tax advantages. They also offer the buyer a way to purchase a farm with a substantially smaller down payment, and often with interest rates on the contract below bank interest rates. In fact, in many States, most sales of land from one farmer to another are through contracts. In Minnesota, almost all participants in the farm entry program buy through contracts.

The bill I am introducing today would allow a State to use the Federal guarantee to guarantee payments on these contracts. States could then add additional features, such as loans to the farmer to ease the impact of early payments while he is getting established, tax breaks to the seller in return for a lower price for the farm, and agreements with the seller to include special provisions in the contract, such as a long payback time, to make the operation more feasible for the new farmer. Since many retiring farmers would like to sell their farm to a new farmer—perhaps a neighbor or a relative—but are reluctant to take the risk, the contract guarantee procedure offers a way to help everyone out simultaneously.

This is but one example. State designed programs can have tremendous variety—lease guarantees, variable amortization plans, and so forth—with the framework of the bill. States can learn from the experiences of other States which approaches work and which do not. States which do not want to participate do not have to do so.

This bill would provide, therefore, a creative and innovative supplement to Farmers Home. It would take some of the pressure off their overburdened staff, and it would provide hundreds and eventually thousands of opportunities for new farmers who otherwise would have to do something else.

The cost of this program is modest—$400 million per year in guarantee authority. Only a small fraction of this would be needed as appropriations, however. Farmers have a remarkable record of repaying their debts, so the guarantees would rarely be used in all likelihood. The reserve fund necessary to be appropriated to cover this program, therefore, should be small, perhaps 10 percent per year or less, meaning actual annual appropriation of $40 million per year or less.

This small annual appropriation will have very large economic benefits for farm communities and the agricultural economy. I urge all of my colleagues to consider this bill carefully. I believe that if you do, you will support it.

I ask unanimous consent that a copy of the bill, plus a summary and section-by-section analysis of it, be printed in the RECORD.

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

S. 582

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Entry Assistance Act"

SEC. 101. The Congress finds that—

(1) the average size of farms has been increasing, and the number of farms declining. The decline in farm numbers limits rural opportunities both on the farm and in the communities that depend on a strong farm economy;

(2) the cost of entering family farming on a full-time basis has grown substantially in recent decades, making entry into farming almost impossible except for those individuals who inherit a farm or who have considerable financial assets;

(3) because the entry barriers into family farming are so significant, it is increasingly difficult for new farmers or part-time farmers to enter full-time farming, even when they possess the ability to make a good living from farming. Neither the private market nor the existing federal programs can provide the necessary means for such individuals to enter farming;

(4) if new entrants into full-time family farming are discouraged by the high capital barriers, farmland that might otherwise have gone to new farmers will be sold to existing farmers consolidating and expanding their holdings, to non-farming investors for lease to farmers, or to investors who will remove the land from agricultural use. The effect of these acquisitions will be to expand farm size, since new entrants into farming are more likely to enter farming on a smaller scale;

(5) the maintenance of a farm system dominated by family-sized units is and should be a basic goal of American agricultural policy. The maintenance of such a system, however, is only possible if entry into

full-time family farming is possible for those without substantial individual assets;

(6) the most appropriate manner for entry into full-time family farming, and the barriers to such entry, vary by state and region. Any program to provide assistance to those seeking to enter into full-time family farming should be adapted to local conditions; and

(7) federal support for local efforts to aid those interested in and qualified for entry into full-time family farming would help to maintain the family farm system and prevent further consolidation of farm size.

PURPOSES

SEC. 102. The purposes of this Act are to—

(1) establish a program to provide federal guarantees for loans or other forms of assistance to individuals who wish to enter full-time family farming and who are well-qualified to do so in all respects other than their financial assets; and

(2) distribute the guarantees through programs to be established by the individual states.

DEFINITIONS

SEC. 103. As used in this Act—

(a) The term "family farm" means a farm (1) owned and operated or leased and operated by an individual; (2) of a size sufficient to be maintained and operated by such individual and members of his or her family or with no more than the equivalent of one person-year of hired labor; (3) which provides sufficient income by itself in average or better than average agriculture years to enable the individual to meet necessary family and operating expenses, including the maintenance of essential chattel and real property and the payment of debts.

(b) The term "full-time family farmer" means an individual whose primary occupation is the operation of a family farm. An individual with employment off the farm shall not be excluded from this term if such employment is intended only to supplement income provided from the farming operation and does not prevent the individual from performing necessary tasks of the farming operation personally.

(c) The term "Secretary" means the Secretary of Agriculture.

(d) The term "land sales contract" means a contract for the sale of farm land in which the seller agrees to transfer land permanently to the buyer upon completion of the terms of the contract agreed on by the seller and buyer which specifies that no more than 29 percent of the total cost is to be paid in the initial payment, subsequent payments are to be made for not less than ten years, and prior to completion of the terms of the contract, title is to remain in the seller.

(e) The term "variable repayment program" means a program for the repayment of a loan in which the lender and seller agree that the terms of the loan may be subsequently altered to increase the term of the loan, to decrease or defer individual interest or principal payments, or any other agreement designed to decrease payments during periods of financial stress to the borrower.

(f) The term "beneficiary" means an individual receiving assistance under this program.

(g) The term "state" shall include all of the 50 states of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

(h) The term "state agency" shall mean the agency of state government which has the responsibility for administering the farm entry assistance program in that state.

TITLE II.—ESTABLISHMENT OF FARM ENTRY ASSISTANCE PROGRAM

FEDERAL PROGRAM

SEC. 201. (a) The Secretary shall establish within the Department of Agriculture a program to provide financial assistance to individuals who are seeking to establish and operate full-time family farms, who have been approved by appropriate state agencies for participation in the program, and who are qualified under the qualifications set forth in Title III of this Act.

(b) The Secretary, through the program, is authorized to guarantee loans made by any legally organized lending agency to eligible applicants approved for participation in the program and to guarantee the payment of contract obligations on or leases of family farms by eligible applicants approved for participation in the program. No contract guaranteeing any such loan or lease shall require the Secretary to guarantee more than 90 percent of the principal and interest on such loan or more than 90 percent of payments due under such lease or contract.

STATE PROGRAMS

SEC. 202. Participation in the family farm entry program shall be through programs established and administered by the states.

SEC. 203. If a state wishes to participate in the program, the Governor of the state shall submit an application to the Secretary setting forth such information as the Secretary shall require with regard to the operation of the program at the state level. The Secretary shall approve or disapprove any application submitted by a state within 6 months after receipt by the Secretary in accordance with regulations to be issued by the Secretary within 180 days after enactment of this Act. Proposed regulations shall be issued for public comment within 120 days after enactment of this Act.

SEC. 204. A state may amend its program with the approval of the Secretary. Amendments shall be approved or disapproved within 90 days after submission to the Secretary.

SEC. 205. The Secretary shall approve a state program if it includes the following:

(a) A state agency created or designated to administer the program subject to the advice of the advisory committee.

(b) An advisory committee, designated or appointed by the Governor of the state to include local bankers, farmers, agricultural specialists and such other representatives as the Governor may determine necessary, to advise the state agency concerning the administration of the program, including the selection of applicants and the approval of the guarantees to lendors and lessors.

(c) A procedure to assure that the program will select applicants who are likely to repay all obligations.

(d) A procedure to encourage the settlement of family-size farms generally not larger than average family farms for the area by eligible applicants as defined in this Act.

(e) A reasonable likelihood that the program will lead to eventual purchase of all or part of the land operated by program beneficiaries except when a guarantee of a lease is involved.

(f) A reasonable likelihood that the program will make a contribution to the maintenance of a family farm structure in the area.

(g) Adequate administrative mechanisms.

(h) Adequate provisions to assure that leases, contracts or mortgages do not include conditions detrimental to the successful operation of the farm.

SEC. 206. The Farmers Home Administration shall cooperate fully with state agencies in administering the program.

SEC. 207. The Secretary shall periodically review state programs to assure that they continue to meet the requirements of this Act. If any of such requirements are not being met, the Secretary shall notify the state that such a finding has been made. The state shall have six months to revise the program and submit the revised program to the Secretary, who shall approve or disapprove it within 90 days after receipt of the submission. Disapproval shall terminate any further responsibility of the Secretary to provide guarantees to any individuals not * * * state agency. A state which has had a program terminated may reapply at any time.

TITLE III

APPLICATION FOR THE PROGRAM

SEC. 301. Individuals wishing to receive assistance under the program must apply through a qualified state program which has been established pursuant to Title II of this Act.

SEC. 302. In addition to such qualifications as the state may designate, to be eligible for assistance under this Act applicants must meet the following criteria:

(a) Applicants must be seeking to operate a family farm and must be entering farming on a full-time basis for the first time during the ten years prior to the date of application.

(b) Applicants must certify that without the assistance made available through the program, they would be unable to obtain the credit necessary to enter farming on a scale adequate to cover family and farm expenses and to generate a reasonable return on investment in normal or above normal agricultural years for the area. Such certification must include denial of credit on reasonable terms from a commercial source and the Farmers Home Administration. Denial of credit by the Farmers Home Administration due to an excess of applicants will qualify an individual under this section.

(c) Applicants must be able to demonstrate that they are qualified to operate a family farm on a full-time basis. Part of this demonstration shall be a record of direct on-farm experience for not less than one year.

(d) Applicants must have net worths of less than $75,000 in 1979 dollars, as may be adjusted by the Secretary to account for inflation in subsequent years. This limit may be raised by the Secretary to account for special circumstances within a state which may, in his judgment, justify a higher limit.

SEC. 303. Applicants meeting the above criteria and approved by the state agency shall be eligible to receive federal assistance through the state agencies as specified in this Act, upon certification by the state agency that—

(1) the farm unit they are proposing to operate can, if properly managed, generate enough income to cover family and farm expenses in normal or better than normal agricultural years for the area;

(2) the farm unit they are proposing to operate would be the size of a family farm as defined in this Act; and

(3) applicants have met any other criteria the state may have designated concerning farm size and structure.

TITLE IV

FEDERAL ASSISTANCE TO APPLICANTS THROUGH STATE AGENCIES

SEC. 401. Federal assistance to applicants approved through state family farm entry programs shall be made available by the Secretary upon the Secretary's receipt of notifications by the state agency of approval of the applicants. Such assistance shall be in the form of guarantees of loans or leases as specified in section 201 and shall be subject to the requirements of this Title.

SEC. 402. (a) In the event of a default by any beneficiary on a loan guaranteed under this Act, the lender shall notify the state agency. No claim on the guarantee may be filed until the beneficiary shall have been allowed 180 days to remedy any such default.

If the default is not remedied at the end of such period, the lender may file a claim for payment of the amount in default with the state agency and that agency shall forward the claim to the Secretary if the agency agrees that a default has taken place.

(b) Upon receipt of a claim for payment of an amount in default, the Secretary shall determine, with the advice of the state agency, whether the beneficiary is likely to default again. If the Secretary determines that the beneficiary is not likely to default again, the Secretary shall make a loan to the beneficiary for the amount in default. The interest rate on such a loan shall be determined by the Secretary, but not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed 1 percent, as determined by the Secretary, and adjusted to the nearest one-eighth of 1 percent. Any such loan shall be payable in not more than 10 years and secured in such manner as the Secretary determines appropriate.

(c) If the Secretary determines that the beneficiary is likely to default again, the Secretary shall pay the lender the outstanding balance due on the loan, up to the amount guaranteed, and shall take an assignment of all the lender's rights in the loan and interest in any property which served as security for the loan. In the case of default on a loan for the purchase of a farm or equipment, the Secretary may foreclose upon the property and sell it to the highest bidder within one year from the date of foreclosure. Any net proceeds received from such a sale shall be placed in the revolving fund created by section 503 of this Act.

(d) In the event of a second default, the Secretary will remedy the default as outlined in subsection (c).

SEC. 403. In the case of a guarantee of a lease, if a payment is not made within 90 days of its due date, the lessor may request payment from the Secretary. The Secretary shall make 90 percent of all payments due for up to 3 months, in full, within 60 days of the Secretary's certification of the validity of the claim. Such certification shall occur within no more than 30 days after receipt of the lessor's request by the Secretary. The payment shall be a loan to the beneficiary. The interest rate on such a loan shall be determined by the Secretary but not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus not to exceed 1 percent as determined by the Secretary and adjusted to the nearest one-eighth of 1 percent. Any such loan shall be repayable in no more than 5 years. The Secretary shall make two such payments during any ten year period if needed. If the beneficiary fails to make payments within 90 days of their due date after the Secretary has made two previous payments, the lessor may again request payment and the Secretary shall make the payment as above. The Secretary shall, however, notify the lessor that no further payments will be made. The beneficiary shall repay the government for the loans as specified above. In the event of a default on the loan by the Secretary for any of the payments, no penalties shall be applicable but the information shall become part of the beneficiary's record and shall be kept on file with the state agency.

SEC. 404. (a) In the event of a default by any beneficiary on contract payments guaranteed by the Secretary under this act, the seller shall notify the state agency. No claim on the guarantee may be filed until the beneficiary has been allowed 180 days to remedy the default, or such time as the contract may specify, whichever is shorter. If the default is not remedied in this period, the seller may file a claim for the payment of 90 percent of the amount in default with the State agency and that agency shall forward the claim to the Secretary if the agency agrees that a default has taken place.

(b) Upon receipt of a claim for payment of an amount in default, the Secretary shall determine, with the advice of the state agency, whether the beneficiary is likely to default again. If the Secretary determines that the beneficiary is not likely to default again, the Secretary shall make a loan to the beneficiary for the amount in default, following the procedures and conditions established in Sec. 402(b).

(c) If the Secretary determines that the beneficiary is likely to default again, the Secretary shall pay the lender the amount in default. The lender will then have the option of:

(1) Using those remedies available to him in law under the contract, including reassuming the contract and selling the farm unit. In the case in which such an option is chosen, however, the seller must pay 90% of the total contract payments which had been guaranteed by the government up to the point at which default had occurred, or,

(2) Requesting that the Secretary continue to make 90% of the payments due under the contract until such time as the state agency can find another qualified beneficiary to assume the remainder of the contract. At that time, the Secretary will again provide a 90% guarantee of payments on the contract by the beneficiary, and the new beneficiary will be considered in the same category as other beneficiaries beginning their contract payments. States must locate such a new beneficiary within one year of default. Failure to do so will be cause for a review of the consistency of the state program with the purposes of the act.

(d) In the event of a second default, the Secretary will make payments as specified in Sec. 404(a), and proceed as in subsection (c) above.

SEC. 405. (a) Guarantees shall be available for approved applicants under other state programs using approaches other than those specified above, provided that the Secretary determines that they are consistent with the requirements of subsections (c) through (b) of section 205 of this Act. Approaches involving land sale contracts, lessor payments, or land or equipment purchase loans must, however, follow the guidelines set forth in this section.

SEC. 406. Guarantees to lenders shall be available through approved state programs in the following circumstances:

(a) Guarantees shall be available for approved applicants to purchase land sold by the seller pursuant to a land sale contract, provided that the terms of sale call for not less than a ten year repayment period. Programs which encourage sellers to extend the term of repayment beyond ten years shall receive preference. Land sale contracts of less than ten years shall be guaranteed only if the Secretary determines that local conditions are such that allowance of the shorter repayment period will not be likely to cause program beneficiaries to default in non-disaster years.

(b) Guarantees shall be available to approved applicants for loans for the purchase of farm land, for operating purposes, or for both. Programs which encourage lenders to provide for deferred principal payments or other variable repayment approaches shall be given preference. Programs without such approaches shall be approved only if the Secretary determines that such approaches are not necessary in the local area to assure that the Federal government will not have to cover an unreasonable number of defaults.

(c) Guarantees shall be available for approved applicants to make payments to lessors for a period of not more than ten years.

(d) Guarantees shall be available for approved applicants under other state programs using approaches other than those specified above, provided that the Secretary determines that they are consistent with the requirements of subsections (c) through (g) of section 205 of this Act. Approaches involving land sale contracts, lessor payments, or land or equipment purchase loans must, however, follow the guidelines set forth in this section.

SEC. 407. Loan guarantees or lease payment guarantees for loans or leases obtained by fraud shall be invalid.

SEC. 408. Guarantees for loans for the purchase of land shall be made only after the state agency has conducted an appraisal of the land to be purchased and has certified that the price of the land is reasonable based on the market value of other land in that area. Procedures for such appraisal must be included in the state's application to the Secretary.

SEC. 409. Guarantees for the purchase of land or equipment shall not be transferable and shall be terminated upon sale of the equipment or property covered by the guarantee. State programs must include provisions preventing use of the programs for speculative purposes, including a provision that any sale of land by a program beneficiary occurring within 10 years of the issuance of the guarantee shall be to the Secretary at the price at which the land was purchased, adjusted to reflect any change in the consumer price index for the period. In the event of a sale of land to the Secretary, the Secretary shall sell the land within one year to the highest bidder. The state program, however, may allow waiver of the requirement for sale of land to the Secretary in cases of disability, death, or extreme hardship.

TITLE V

FUNDING

SEC. 501. There are hereby authorized to be appropriated to the Secretary such sums as the Congress shall deem necessary for the administration of this Act.

SEC. 502. Commencing with the first fiscal year beginning at least one year after the enactment of this Act, the Secretary shall make available not more than $400 million in guarantees for each of the following four fiscal years. Such guarantees shall be allocated among the states having approved programs under this Act in the following manner:

(a) $100 million shall be allocated to those states with programs of special merit or addressing special needs as determined by the Secretary;

(b) The remainder shall be allocated by the Secretary among the states with approved programs in the proportion that the farm population of such state bears to the total farm population of all of the states with approved programs as determined by the Secretary based on the latest preceding decennial census. Any allocation which remains unobligated at the end of a fiscal year shall revert to the Secretary for allocation in the following year.

SEC. 503. (a) There is hereby created the Farm Entry Assistance Fund (hereinafter called the "Fund") which shall be used by the Secretary as a revolving fund for the discharge of the obligations of the Secretary under contracts guaranteeing loans or leases under this Act.

(b) There are hereby authorized to be appropriated such sums as the Congress shall deem necessary to establish the Fund and

to replenish amounts paid from the Fund to cover defaults on guaranteed loans and other payments pursuant to contracts of guarantee.

TITLE VI

REPORTS

SEC. 601. The Secretary shall report to the Committee on Agriculture, Nutrition, and Forestry, United States Senate, and the Committee on Agriculture, United States House of Representatives, not later than December 31 of each year on the operation of the program under this Act during the preceding fiscal year. The first report shall be made after the first full fiscal year of operation of the program.

SUMMARY OF THE FAMILY FARM ENTRY PROGRAM

The family farm entry program would authorize the Secretary of Agriculture to guarantee assistance made available through state programs to aid new farmers get started in farming.

Under the program, states could design programs to assist new farmers who are well-qualified, but lack the necessary resources to get started in farming. If the Secretary approves the program, he would guarantee the credit portion of the assistance made available. The state would administer the program, including selection of the applicants and supervision of their performance in the program. States could add any additional features to the program they choose, such as loans from the state to help pay for early interest costs or tax reductions to sellers who sell to beginning farmers at lower prices.

In order for a program to qualify, a state would have to show that it would select applicants who have farming skills and experience, and are likely to repay any credit guaranteed. Their net resources must be less than $75,000 in 1978 dollars, and they must be able to demonstrate that they could not obtain credit elsewhere within a reasonable amount of time. They must be entering full-time farming for the first time (part-time farms may apply), and must present a plan for farm operation that is feasible. The farm they plan to operate must not be larger than average size family farms for the area.

Applicants will be selected by the state, with the advice of local advisory committees. States may design their program in any number of ways, including arranging federal guarantees of conventional farm purchase loans, guarantees of payments on installment sale contracts, and guarantees of lease payments. On conventional loans, however, states must arrange the loans so that early interest or principal payments can be deferred (this could be done through state loans for early interest payment or bank agreements to charge less in early years), unless they can present a compelling reason why this is not necessary.

The guarantees will be granted automatically to successful applicants, and will provide 90% of the amount due. If a beneficiary is in default on payments once, the Secretary may make up his payments through a loan to the beneficiary. After the second default, however, the Secretary will be required to fulfill the terms of the contract with the lender or with the seller in an installment sale.

Guarantees will be distributed by formula. 75% will be distributed according to farm population by state, and 25% will be distributed at the discretion of the Secretary to states with especially meritorious programs, such as those that provide loans for early interest payments or special tax breaks for sellers who sell to beginning farmers at lower costs.

$400 million in guarantee authority is provided for fiscal year 1980, but only $40 million will be appropriated as a reserve fund to cover these guarantees.

SECTION-BY-SECTION ANALYSIS OF FAMILY FARM ENTRY PROGRAM

Sec. 101. Findings. This section states that the Congress finds that family farms are declining in number and relative importance and that entry into farming has become increasingly difficult, even for well-qualified people. The high capital barriers to entry means that more and more farmland will be purchased by farmers expanding their operations and by investors and large corporations who may, in some cases, withdraw the land from agricultural use.

Sec. 102. Purposes. This section states that it is the purpose of the act to assist well-qualified new farmers who lack the necessary assets to enter farming on a full-time basis. The assistance will be made available through federal guarantees administered by the states.

Sec. 103. Definitions. A family farm is one operated by an individual large enough to provide an adequate income in normal years, but small enough to be operated with no more than one person-year of outside hired labor.

A family farmer operates the family farm full-time, but is not precluded from working part-time to supplement his income.

Land sale contracts and variable repayment mortgages are defined.

Sec. 201. This section establishes the program at the federal level. 201 (a) and (b) authorize the Secretary to make 90% guarantees of the payments due on loans, land sale contracts or leases made to beneficiaries selected by states having approved farm entry programs.

Sec. 202. Establishes that participation in the program shall be through state programs approved by the Secretary.

Secs. 203 and 204. Establishes time limitations on approval of state programs and amendments to state programs by the Secretary.

Sec. 205. Establishes criteria for approving state programs. Among other criteria, states must create an agency to administer the program, and local advisory boards to participate in administration. Programs must select people who can demonstrate that they have the ability to farm successfully and repay their obligations. Programs must also require that farms purchased or operated in the program must be no larger than average family farms in the area, and must be capable, in the judgment of the Secretary, of making a contribution to the maintenance of family farming in the area.

Sec. 206. Authorizes the Farmers Home Administration to cooperate fully with the states in administering the program.

Sec. 207. Authorizes the Secretary to review the program periodically.

Sec. 301. Specifies that individuals will apply through their state agencies for participation in the program.

Sec. 302. Establishes requirements for applicants wishing to participate. Among other requirements, the applicants must be entering full-time family farming for the first time in ten years, must certify that they could not get credit elsewhere within a reasonable amount of time, must demonstrate that they are qualified to enter full-time farming, and must have net worths under $75,000.

Sec. 303. Establishes that applicants meeting the criteria in 303 may be approved provided that the farm unit they intend to operate is family-sized and is capable of generating an adequate income. States may also specify additional requirements.

Sec. 401. Establishes that federal guarantees will be made available through the states.

Sec. 402. Establishes procedures for defaults on loans. A beneficiary who defaults will have 90% of the amount in default paid to the creditor by the Secretary, with the amount being considered a loan, provided that the Secretary does not determine, on advice of the state, that the beneficiary is likely to default again. In that case, or on the second default, the Secretary will pay 90% of the remaining amount due on the loan, take title to the land, and sell to the highest bidder.

Sec. 403. Establishes procedures for defaults on lease payments. This section again calls for 90% payments of amounts in default, with the amount being considered a loan to the beneficiary, provided default is not likely to occur again. In that case, or in the case of a second default, the 90% amount in default will again be paid, and the guarantee will cease.

Sec. 404. Establishes procedures for payment of defaults on contract obligations in installment sales. The procedure follows that in 402, except that in the event of a default, the seller may exercise his rights in law and reassume the contract (to resell the property) provided that he pays the government 90% of the amount paid on the contract. This provision is designed to prevent sellers from encouraging default so that they can take advantage of the guaranteed payments and then resell the property once it has been partly paid for. If the seller does not reassume the contract, he will receive 90% of the remaining payments due, but the government will direct the state agency to find new applicant to assume the remainder of the contract.

Sec. 405. Specified types of assistance for which guarantees will be available. These include land sale contracts with repayment periods of at least ten years, loans for farmland purchase or the purchase of operating equipment, provided that these loans have provisions for deferral of some portion of the early payments, and guarantees of leases.

Sec. 406. This section specifies that approaches other than those in 405 can be accepted, provided that they meet the criteria of the act.

Sec. 407. Fraudulently obtained guarantees are invalid.

Sec. 408. Guarantees of land purchases may only be made after an appraisal by the state has concluded that the price of the land is consistent with other land prices in the area.

Sec. 409. Establishes procedures for preventing the use of the program for speculation.

Sec. 501. Authorizes funding for the program.

Sec. 502. Authorizes a ceiling of $400 million in guarantees annually for the next four years, and establishes that $100 million will be authorized to be distributed by the Secretary to especially meritorious programs, with the other $300 million distributed by farm population.

Sec. 503. Creates a reserve fund to be established to cover defaults.

Sec. 601. Calls on the Secretary to report on the program annually.

Mr. McGOVERN. Mr. President, I rise as the principal coauthor with my good friend from Wisconsin (Mr. NELSON) to place before the Senate for its consideration the Farm Entry Assistance Act of 1979. It is a bill that comes to grips realistically with one of the most serious economic problems of the agricultural community: The problem of young farmers coping with the realities of financing an economically sound agricultural unit.

Let me say that this problem is not one that has just surfaced. It has been with us for years and conditions are worsening with the passage of time. Each time I go back to South Dakota, I learn anew that the insurmountable financial prob-

lem of young farmers is probably the most pressing credit problem on the scene. The average age of America's farmers is now approaching 55 years and there is no long-range answer to getting the new farmer in business. Indeed, the cynical side of the equation is that a young man planning to enter farming must either inherit land from well-to-do parents or marry into an existing successful operation. How long can we rely on this mechanism as an answer to solving the credit problems of future food producers?

I am not new to this problem, Mr. President. Several years ago, I with nearly 20 cosponsors, introduced the Young Farmers Homestead Act, patterned somewhat after an experiment that has been a success with our neighbors in Canada. I continue to believe that this legislative initiative is the best answer to this pressing problem. Its drawback is not necessarily conceptual. Someday, a program like the Young Farmers Homestead Act will be adopted. Rather, the problem is that it calls for a substantial original outlay of Government funds. In these days of fiscal austerity, there is little reason to believe that any administration would be willing to shoulder the financial commitment to move this type of legislation.

Given this condition, it is not possible to retreat from the problem. It is possible, however, to develop a more modest approach by using convenient credit tools of Government guarantees in concert with money outlays from the private sector.

The bill we propose today would involve the Secretary of Agriculture as a guarantee authority for acceptable programs set up in the several States. States would formulate programs for the selection of qualified young farmer applicants and would administer and oversee the program under their own sovereign authority. From a legal real estate vehicle, the young farmer would select and purchase his farm on a contract for deed with the requirement that it be an economically viable unit. Initially we would envision a guarantee authority of $400 million, distributed to the States in proportion to farm population. The leverage created by a fiscally sound reserve together with the initially relatively low commitment of a contract for deed would create a substantial buying authority, even in the initial years, thus making the fiscal impact somewhat modest in relation to the amount of land that would initially come under contract commitment. An unrecognized meritorious feature would be the IRS benefit to sellers who presumably would desire to sell their inflated land under installment-type contracts, thus minimizing their exposure for capital gains liability under Internal Revenue Code regulations.

Let me say, Mr. President, that this concept is not without precedent. Under its own initiative, the Minnesota State Legislature adopted a similar plan several years ago, admittedly modest to start with, but, nevertheless, a substantial success due to prudent management on the part of Minnesota State officials.

It is not necessary to detail a need for this program, Mr. President. Any Senator with a modicum of agricultural constituency already knows this. The facts are that it takes over a quarter of a million dollars for a young man to start farming. We obviously cannot go very far at either the State or Federal level in extending this needed credit. Thus, it is necessary for us to gather together the most imaginative credit tools whereby we can get the greatest number of acres into a young farmers program for the least number of dollars. Leverage is a credit tool used by virtually all real estate developers. Why cannot we in Government take a page from the developers' handbook and enact legislation which uses the same credit tools? For this reason, I commend this bill to my colleagues and plead for their support. Senator NELSON and I will hold early hearings on this bill and we ask the Secretary and the administration to rise to their own responsibilities and give it the support we think it deserves.

● Mr. HEINZ. Mr. President, I rise today to join my distinguished colleagues, Senator NELSON, Senator MCGOVERN, and Senator STAFFORD, and others in introducing the Farm Entry Assistance Act. I am supporting this bill because I am deeply concerned over the decline of the small family farm. The family farm is not a romantic notion of our distant past; the family farm today plays a key economic role in our society and we in Congress must work to insure its continued viability.

The legislation we are introducing today addresses one of the major difficulties in family farming, the inability of young, talented farmers to purchase or lease small farms. How can we expect the small family farm to continue if those who want to enter agriculture as a career lack the access to credit so sorely needed to have a farm of their own? Statistics reveal that it takes $250,000 to $500,000 to capitalize a moderate size family farm. Clearly a means is needed to allow families the credit to make such an investment. Accordingly, our bill would call on the States to create programs to assist qualified new farmers in getting started by providing Federal credit guarantees. The Secretary of Agriculture would make available to States with approved programs 90 percent guarantees of loans, payments on contract-for-deed, and leases. These guarantees would be available only to those who are entering full-time family farming for the first time, have low personal assets, are experienced and well qualified to farm, and who have been unable to obtain credit elsewhere. Without such action the prohibitive up-front costs of farming will insure that future farms and farmland will be sold primarily to only current farmers who are increasing their holdings, to large corporations with the means to invest in land, or to speculators, who may not even choose to farm the land.

One of the key ingredients of this bill is the emphasis placed on the role of the States. This is not a program that will serve to further bloat the Washington bureaucracy. Rather, the bill encourages States to design and administer their own programs. The States would select the applicants to the program and make the decisions on whether to grant the guarantees. States would be given incentives to link the loan guarantees to other measures such as variable amortization mortgages and tax breaks to farmers who sell to new entrants at lower cost. The Federal Government's involvement would be simply to review and approve the programs to assure fiscal responsibility and to develop certain guidelines so that the programs created help alleviate the problem of family farm entry.

To be sure, this bill will not solve all the problems facing the small family farm. However, I believe it is a positive first step. I am hopeful that through this bill and others, the Congress can engage in a constructive debate that brings the plight of the family farm to the Nation's attention.

It is my belief that if we fail to address this issue the family farm may become an anachronism remembered only in our paintings and literature. Small family farmers would not be the only losers; urban and rural residents alike would suffer the loss.

The decline of the small family farm is clear. Since 1936, the number of farms has declined from 6.8 million to 2.7 million. In 1956, 60 percent of all farm sales were for new starts; by 1978, the percentage was estimated at only 20 to 25 percent. Average farm size has jumped from 197 acres in 1940 to 440 acres in 1974. Only farms with over 1,000 acres have experienced a real rise in farm numbers. Farm population has dropped from over 15.6 million in 1960 to just under 8.3 million in 1976. The largest 20 percent of all farms now make up 80 percent of all gross agricultural sales and the top 2 percent account for about 30 percent of sales.

Disturbing as these statistics are, they are only numbers. In no way can these figures adequately convey both the personal and national loss associated with the disappearance of the family farm.

Now, there are those who say "Yes, the small family farm is dying out, but is it really worth saving?" I would answer yes. Let us reflect for a moment on the importance, unique contribution, and benefits of the family farm.

First, we should reject the philosophy that family farms are simply not economically efficient and have become obsolete in an age of large-scale, mechanized, factory-type farms. Such a view is too simplistic. For example, studies have shown that small farmers realize a relatively larger share of the total net farm income per acre grown, or per dollar invested, than large farmers. Research in California concluded that small farms were not less efficient than large farms in terms of return per dollar of investment, were more efficient in terms of return per acre, and only 5 to 15 percent less efficient in terms of cost per unit of output.

In addition, the economics of the small family farm should not be viewed solely in the context of productivity. To fully realize the economic importance of these units, it is essential to examine the whole fabric of rural life in America.

The growing predominance of larger farms has resulted in an increase in the

number of farmland owners who do not operate or occupy the farm on a day-to-day basis. These owners often do not live in the local community, do not contribute or participate in community efforts and events, and may take the revenues from the farm operation outside the local area. On occasion, these large landowners in search of quick profits may exploit the soil through overcropping, excessive pesticide application, and poor soil conservation practices.

The trend of a few large farms replacing many small family farms makes it increasingly difficult for many small towns in rural America to survive. The local income distribution becomes less balanced. Farm related businesses and local jobs disappear as supplies and equipment come more and more from a few large distribution centers. Local service operations and small firms, dependent on a large class of moderate income farmers, lose their clientele. The independent, self-sufficient, rural, small-town lifestyle, that so many cherish, can quickly become a thing of the past.

The decline in the number of family farms and the inability of young people to get into farming due to the costs involved and lack of access to credit has also increased outmigration problems in many rural communities. The loss of productive young men and women combined with a steadily increasing elderly population, places severe financial burdens on the community. Outmigration can also often result in a loss of potential leadership and a loss of continuity between generations.

The gradual disappearance of the small family farm has serious implications for our entire country. I would raise the question whether large-scale farming consolidation, further concentration of power in the diminished number of farms, and increased specialization does not diminish flexibility in our agricultural economy. Small farmers have traditionally played the role of a kind of shock absorber to carry the country through adverse economic conditions. There exists a certain resilency, continuity and flexibility in the small family farm. The basic structure of family farms—high equity, self-employment, lower operating costs, and the fact that once crops are in the costs of continuing the process until harvest are extremely low—serves as an incentive to maintain output even if product prices fall to disastrously low levels. The existence of the small family farm thus helps to provide a constant food supply at affordable prices.

For these and other reasons, I am convinced that the small family farm plays a unique and crucial role in our society. In examining how we can assure its continued viability, I hope the Congress will look not only at specific problems facing the family farmer such as cash flow, storage, transportation, and availability of credit, but also at whether present Government programs are actually hurting the small family farmer. The General Accounting Office reports that despite the Federal Government's expressed desire to maintain the family farm system, many agricultural programs have the opposite effect. For example, GAO contends that since price support crop allotment programs "have been tied to specific commodities and to volume and acreage, they have tended to benefit larger crop-specific and regional-specific farms. Such programs coupled with changes in technology and economic conditions have encouraged increases in farm size. This has resulted in many small volume farms going out of business. Price support and crop allotment programs have been capitalized into increased land values, often raising the purchase price of the land as well as land rental, thus making it more difficult for new farm operators or land renters to get started or expand their operations."

Similarly, the General Accounting Office has written that present Government tax policies have promoted the trend away from smaller, family-owned and operated farms, while attempting to do the opposite. "Federal income tax laws provide an excellent tax shelter for outside investors. Recent estate tax laws may inhibit sale of farmland outside the owning family, thus creating a 'landed aristocracy' with fewer avenues for new farmers to enter."

I believe we should also take a look at the research and extension activities of the U.S. Department of Agriculture. A report by the Subcommittee on Administrative Practice and Procedure which examined priorities in agricultural research last year makes clear that serious questions exist over USDA bias. Much of the testimony presented contended that USDA has virtually ignored the small family farmer.

In summary, the small family farm is a part of American agriculture we cannot afford to lose. The economic, social, and environmental benefits of small-scale farming clearly refute the adage that bigger is always better. We need to work to resolve the problems facing the small farmer. Some of our efforts should be new programs like loan guarantees to ease the credit obstacles young people face in entering farming. And some of our efforts must be directed toward reevaluating existing programs which may not be achieving their intended results. I am not suggesting we give the small farmer any special treatment, but I question whether we should force him to operate at a disadvantage. We need the small family farmer. Let us not sit quietly and simply watch over his demise.●

By Mr. RIBICOFF (for himself, Mr. WEICKER, Mr. MCGOVERN, Mr. SARBANES, Mr. RIEGLE, and Mr. MAGNUSON):

S. 583. A bill to provide for children and youth camp safety; to the Committee on Labor and Human Resources.

CHILDREN AND YOUTH CAMP SAFETY ACT

● Mr. RIBICOFF. Mr. President, for well over a decade I have addressed this body on the frightful conditions which exist in many summer camps. I have pointed out that while some 8 to 10 million boys and girls attend 10,000 summer camps each year, only 10 States have some type of agency responsible for monitoring camp conditions and operations. It has been almost 13 years since I first introduced legislation establishing a Federal role in encouraging and aiding States to develop health and safety standards for youngsters attending camps. Unfortunately, no affirmative steps have yet been taken.

The rich and rewarding experience which summer camping can offer American youth is often diminished by appalling conditions in far too many camps. All too often there is dangerous equipment, unsafe or improperly operated vehicles, poor sanitation facilities, inadequate medical provisions, untrained personnel, improper supervision, and hazardous activities. Consequently, children have been killed, permanently injured, sexually abused, or suffer accidents requiring medical care.

In March 1978 my constituent, Mitch Kurman of Westport, Conn., presented forceful testimony before the Senate Child and Human Development Subcommittee on the need for Federal camp safety legislation. Mitch lost his own son in a tragic camping accident in Maine and he has devoted many years to documenting camp accidents and unsafe camp conditions throughout the United States. I consider him to be one of the leading experts in this field. He has aroused the conscience of many Americans and I commend him for his tireless efforts and perseverance in behalf of meaningful camp safety standards.

Mr. President, from time to time I hear that there is no proper Federal role in the area of child and youth camp safety. Some maintain that the issue is better left to the individual States. I would be among the first to agree that it is both the duty and function of each State to protect, safeguard, and monitor the health, safety, and welfare of the Nation's youngsters attending youth camps. I must note, however, that only 12 States have some meaningful health and safety regulations and only 28 States have some type of regulation dealing with youth camp safety.

As with Connecticut and a few other States, good safety laws are possible when States want to protect their young campers. Regrettably, all States are not so inclined. Thus, the Federal Government must act where appropriate.

Today I am again introducing legislation to eliminate unacceptable and unsafe conditions which exist in many summer camps. As in either bills I have offered in this area, this measure recognizes that the State should assume responsibility for the development and enforcement of effective youth camp safety standards. It also provides that the Department of Health, Education, and Welfare, operating through an Office of Youth Camp Safety, will develop and issue Federal youth camp safety standards and will provide consultative services to youth camps in States which do not have any State regulations. I have redrafted some aspects of the legislation I offered in the 95th Congress in order to address some of the concerns voiced at last March's hearings.

Mr. President, the bill I am reintroducing today is a necessary and positive ap-

proach to the longstanding problem of camp accidents. It is certainly no panacea. Neither Federal nor State regulations can prevent accidents. The bill nevertheless sets in motion a mechanism for dealing with this persistent problem. It will encourage and assist States in developing proper and effective youth camp standards. It will help furnish the protection our young campers need and deserve.

I ask unanimous consent that the text of my Children and Youth Camp Safety Act and a section-by-section analysis be printed in the RECORD.

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

S. 583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Children and Youth Camp Safety Act."

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to protect and safeguard the health and well-being of the youth of the Nation attending day camps, residential camps, short-term group camps, travel camps, trip camps, primitive or outpost camps, and Federal recreational youth camps, by providing for establishment of Federal standards for safe operation of youth camps, to provide Federal financial and technical assistance to the States in order to encourage them to develop programs and plans for implementing safety standards for youth camps, and to provide for the Federal implementation of safety standards for youth camps in States which do not implement such standards and for Federal recreational youth camps, thereby providing assurance to parents and interested citizens that youth camps and Federal recreational youth camps meet minimum safety standards.

(b) In order to protect and safeguard adequately the health and well-being of the children and youth of the Nation attending camps, it is the purpose of this Act that youth camp safety standards be applicable to intrastate as well as interstate youth camp operators.

CONGRESSIONAL INTENT REGARDING STATE INVOLVEMENT

SEC. 3. It is the intent of Congress that the State assume responsibility for the development and enforcement of effective youth camp safety standards. The Secretary shall provide, in addition to financial and technical assistance, consultative services necessary to assist in the development and implementation of State youth camp safety standards.

DEFINITIONS

SEC. 4. For purposes of this Act—

(1) The term "youth camp" means any residential camp, day camp, short-term group camp, troop camp, travel camp, trip camp, primitive or outpost camp, or Federal recreational youth camp located on private or public land, which—

(a) is conducted as a youth camp for the same ten or more campers under eighteen years of age;

(b) may include activities promoted or advertised as something other than a youth camp, but offers youth camp activities;

(c) may include any site or facility primarily designed for other purposes, such as, but not limited to, any school, playground, resort, or wilderness area; and

(d) may include any site or facility advertised as a "camp" for youth regardless of activities offered.

(2) The term "youth camp activities" includes, but is not limited to, such waterfront activities as swimming, diving, boating, lifesaving, canoeing, sailing, and skindiving; such other activities as archery, riflery, horseback riding, hiking, and mountain climbing, and other sports and athletics; and campcraft and nature study activities, under the auspices of a youth camp operator. The term does not include—

(a) the activities of a family and its guests carried out as a purely social activity;

(b) regularly scheduled meetings of voluntary organizations such as the Girl Scouts or Boy Scouts that do not involve camping experience:

(c) regularly scheduled athletic events that do not include camping experience;

(d) bona fide extracurricular activities conducted under the auspices of the schools;

(e) learning experiences in the arts and drama or conferences of forums; and

(f) activities carried on in private homes.

(3) The term "permanent campsite" means a campground which is continuously or periodically used for camping purposes for a portion of a day by a youth camp operator, which may or may not include temporary or permanent structures and installed facilities.

(4) The term "residential camp" means a youth camp operating on a permanent campsite for four or more consecutive twenty-four-hour days.

(5) The term "day camp" means a youth camp operated on a permanent campsite for all or part of the day but less than twenty-four hours a day and which is conducted for at least five days during a two-week period, but does not include—

(a) swimming facilities operated by a public agency or by a private organization on a membership basis, except where that private organization utilizes such facilities as part of a youth camp;

(b) a day care center except where the center operates a day camp; or

(c) playgrounds and other recreation facilities provided for neighborhood use by local public agencies.

(6) The term "troop camp" means a youth camp which provides youth camp activities conducted for not less than twenty-four hours a day for organized groups of campers sponsored by a voluntary organization serving children and youth.

(7) The term "short-term group camp" means an organized camping activity of more than twenty-four but less than a ninety-six-hour period for groups, clubs and troops of campers sponsored by an organization or person.

(8) The term "travel camp" means a youth camp which provides youth camp activities conducted for not less than twenty-four hours a day and which uses motorized transportation to move campers as a group from one site to another over a period of two or more days.

(9) The term "trip camp" means a youth camp which provides youth camp activities conducted for not less than twenty-four hours a day which moves campers under their own power or by a transportation mode permitting individual guidance of a vehicle or animal from one site to another.

(10) The term "primitive or outpost camp" means a portion of the permanent camp premises or other site, under the control of the youth camp operator at which the basic needs for camp operation, such as places of abode, water supply systems, and permanent toilet and cooking facilities are not usually provided.

(11) The term "Federal recreational camp" means a camp or campground which is operated by, or under contract with, a Federal agency to provide opportunities for recreational camping to campers.

(12) The term "camper" means any child under eighteen years of age, who is attending a youth camp or engaged in youth camp activities.

(13) The term "youth camp operator" means any private or public agency, organization, or person, and any individual, who operates, owns, or controls, a youth camp, whether such camp is operated for profit or not for profit.

(14) The term "youth camp staff" means any person or persons employed by a youth camp operator, whether for compensation or not, to supervise, direct, or control youth camp activities.

(15) The term "youth camp director" means the individual on the premises of any youth camp who has the primary responsibility for the administration of program operations and supportive services for such youth camp and for the supervision of the youth camp staff of such camp.

(16) The term "youth camp safety standards" means criteria issued by the Secretary designed to provide to each camper safe and healthful conditions, facilities, and equipment which are free from hazards that are causing, or are likely to cause death, serious illness, or serious physical harm, including adequate supervision to prevent injury or accident, and safety instruction by properly qualified personnel, wherever or however such camp activities are conducted and with due consideration to the type of camp involved and to conditions existing in nature. The criteria shall be directed toward areas including—but not limited to—personnel qualifications for director and staff; ratio of staff to campers; sanitation and public health; personal health, first aid and medical services; food handling, mass feeding and cleanliness; water supply and waste disposal, water safety; including use of lakes and rivers; swimming and boating equipment and practices; firearms safety; vehicle condition and operation; building and site design; equipment; and condition and density of use.

(17) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(18) The term "State" includes each of the several States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, and the Trust Territories of the Pacific.

(19) The term "serious violation" means any violation in a youth camp if there is substantial probability that death or serious physical harm could result, unless the operator did not, and could not, with the exercise of reasonable diligence know of the presence of the violation.

(20) The term "consultative services" means advice on the interpretation or applicability of the general duty under section 5; of the general duty under State law required by section 8(b)(2); or of youth camp safety standards, and advice on the most effective methods of complying with such duty and such standards.

GENERAL DUTY

SEC. 5. Each youth camp operator shall provide to each camper—

(1) safe and healthful conditions, facilities, and equipment which are free from recognized hazards which cause, or are likely to cause, death, serious illness, or serious physical harm, and

(2) adequate and qualified instruction and supervision of youth camp activities at all times, wherever or however such youth camp activities are conducted and with due consideration existing in nature.

DIRECTOR OF YOUTH CAMP SAFETY

SEC. 6. (a) There is established in the office of the Secretary an Office of Youth Camp Safety which shall be headed by a Director of Youth Camp Safety (hereinafter referred to as the "Director"). In the per-

formance of his functions under this Act, the Director shall be directly responsible to the Secretary.

(b) The Director shall be appointed by the Secretary.

(c) The Director shall report to the President and to the Congress, on or before January 1 of each year, on the activities carried out under this Act, including the statistics submitted to and compiled by the Director under section 11(c), and such report shall include the certification required under section 8(d).

PROMULGATION OF YOUTH CAMP SAFETY STANDARDS

SEC. 7. (a) The Director shall develop, with the approval of the Secretary, and shall by rule, promulgate, modify, or revoke youth camp safety standards. In developing such standards, the Director shall consult with the Federal Advisory Council on Youth Camp Safety established under section 15, with State officials, and with representatives of appropriate public and private organizations, and shall consider existing State regulations and standards, and standards developed by private organizations which are applicable to youth camp safety, and shall make such suitable distinctions in such standards as are necessary and appropriate in order to recognize the differences in conditions and operations among residential camps, day camps, short-term group camps, travel camps, trip camps, primitive or outpost camps, or Federal recreational youth camps. The Director shall promulgate the standards required by this section within one year after the effective day of this Act. Such standards shall take effect in each State at the completion of the first regular legislative session of such State which begins after the date on which such standards are promulgated.

(b) Notwithstanding any other provision of law, the Director shall, before promulgating any standard under subsection (a) or any rule or regulation under any other provision of this Act, transmit such proposed standard, rule, or regulation to each House of the Congress. No such proposed standard, rule, or regulation may take effect if either House of the Congress adopts a resolution, within sixty legislative days of continuous session of the Congress after such proposed standard, rule, or regulation is transmitted by the Director, which disapproves such proposed standard, rule, or regulation. Any such resolution shall void the proposed standard, rule, or regulation involved. The failure of either House of the Congress to adopt any such resolution shall not be considered to be an expression by the Congress that the standard, rule, or regulation involved is within the scope of authority delegated to the Director by this Act.

STATE JURISDICTION AND STATE PLANS

SEC. 8. (a) During the two-year period after the initial promulgation of Federal standards and annually thereafter any State which, at any time, desires to assume responsibility for development and enforcement of comprehensive youth camp safety standards applicable to youth camps therein (other than Federal recreational youth camps operated by a Federal agency) shall submit a State plan for the development of such standards and their enforcement.

(b) The Director shall approve a plan submitted by a State under subsection (a), or any modification thereof, if such plan in his judgment—

(1) designates a State agency as the agency responsible for administering the plan throughout the State,

(2) provides that each youth camp operator shall have the same general duty under State law as is provided under section 5,

(3) provides, after consultation with youth camp operators and other interested parties in that State, for adoption and enforcement of comprehensive youth camp safety standards which standards (and the enforcement of such standards) are or will be at least as effective in providing safe operation of youth camps in the State as the standards promulgated under section 7, and provides that where penalties are not employed as a method of enforcement of such standards a system of licensing and loss of license is in effect which is at least as effective as penalties,

(4) provides for the enforcement of the standards developed under paragraph (3) in all youth camps in the State which are operated by the State or its political subdivisions,

(5) provides a procedure whereby the State agency may petition the appropriate State court to seek injunctive relief to restrain any conditions or practices in any youth camp or any place where camp activities are conducted which are such that a danger exists which would reasonably be expected to cause death or immediate serious physical harm, or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by State law or regulation, which is at least as effective as that provided in section 13,

(6) provides for a procedure for the issuance of variances from standards developed under paragraph (3) upon application by a youth camp operator showing extraordinary circumstances or undue hardship, on terms and conditions at least as effective as that provided in section 14,

(7) provides for consultative services to youth camps in the State with respect to the general duty and comprehensive youth camp safety standards under such State plan,

(8) provides for an inspection of each such youth camp at least once a year during a period that camp is in operation,

(9) provides for a State youth camp advisory committee, to advise the State agency on the general policy involved in inspection and licensing procedures under the State plan, which committee shall include among its members representatives of other State agencies concerned with camping or programs related thereto; persons representative of professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with organized camping; and members of the general public having a special interest in youth camps,

(10) provides for a right of entry and inspection of all such youth camps which is at least as effective as that provided in section 11,

(11) contain satisfactory assurances that such State agency has or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(12) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(13) provides that such State shall coordinate the inspection efforts of such State agency so that undue burdens are not placed on camp operators with multiple inspections,

(14) provides that such State agency will make such reports in such form and containing such information as the Director may reasonably require,

(15) provides assurances that State funds will be available to meet the portions of the cost of carrying out the plan which are not met by Federal funds, and

(16) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting of funds received under this Act.

(c) The Director shall approve any State plan which meets the requirements of subsection (b), but shall not finally disapprove any such plan, or any modification thereof, without affording the State agency reasonable notice and an opportunity for a hearing.

(d)(1) The Director shall review annually each of the State plans which he has approved, and the enforcement thereof, and shall certify that each such plan is administered so as to comply with the provisions of such plan and any assurances contained therein, and report such certification to the Congress in the annual report required under section 6(c).

(2) Whenever the Director finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), and such failure would result in the failure to meet the standards developed by the Director under section 7, he shall (A) notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan; and (B) shall notify such State agency that no further payments will be made to the State under this Act (or in his discretion, that further payments to the State will be limited to programs or portions of the State plan not affected by such failure), until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, no further payments may be made to such State under this Act (or payment shall be limited to programs or portions of the State plan not affected by such failure). Any such failure of a State to comply with any provision of the State plan shall not in any way impede any youth camp therein pending action by the Secretary under this section.

(e) The State may obtain a review of a decision of the Director withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within 30 days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Director. A copy of such petition shall forthwith be served upon the Director and thereupon the Director shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Director's decision in rejecting a proposed State plan or withdrawing his approval of such plan is not supported by substantial evidence the court shall affirm the Director's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code.

(f)(1) The Secretary, at the request of the Director, is authorized to make personnel from the Department of Health, Education, and Welfare, who have the necessary expertise, available to States to assist in developing State plans, and in training State inspectors and other personnel associated with youth camps. The Director may call upon the expertise of organized camping groups for such assistance to Federal and State personnel.

(2) the Secretary, at the request of the Director, shall provide technical assistance and consultative services necessary to assist in the development and implementation of the plan.

GRANTS TO STATES

SEC. 9. (a) The Director shall make grants to the States for the development of State youth camp safety plans in accordance with section 8; to States which have in effect plans approved under section 8; to assist such States with plan initiation and training costs; and to States for the early opera-

tion and improvement of youth camp safety programs. Any grant made under this section shall be based upon objective criteria which shall be established under regulations promulgated by the Secretary in order to insure equitable distribution. No such grant may exceed 80 per centum of the cost of developing and carrying out the State plan.

(b) Payments under this section may be made in installments and in advance or by way of reimbursement with necessary adjustments on account of underpayments or overpayments.

CONSULTATIVE SERVICES AND ENFORCEMENT

SEC. 10(a) Upon the request of any youth camp operator or director, or during any inspection under section 11(a), the Director shall provide consultative services to youth camps in States which do not have in effect a State plan approved under section 8. No citations shall be issued nor shall any civil penalties (except penalties for repeated violations under section 12(b)) be proposed by the Director upon any inspection or visit at which consultative services are rendered, but if, during such inspection or visit, an apparent serious violation of the duty imposed by section 5, of any standard, rule, or order provided pursuant to section 7, or of any regulations prescribed pursuant to this Act is discovered, the Director shall issue a written notice to the youth camp operator describing with particularity the nature of the violation, and the action which must be taken within a reasonable period of time specified by the Director for the abatement of the violation. Where a youth camp operator fails to comply with the abatement instructions within the prescribed period, a citation may be issued as provided in subsection (b) or a civil penalty under section 12 may be assessed. Nothing in this subsection shall affect in any manner any provision of this Act the purpose of which is to eliminate imminent dangers.

(b) The Director shall issue regulations and procedures providing for citations to youth camp operators in States which do not have in effect a State plan approved under section 8 for any violation of the duty imposed by section 5, of any standard, rule or order promulgated pursuant to section 7, or of any regulations prescribed pursuant to this Act. Each citation shall fix a reasonable time for abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to minor violations which have no direct or immediate or serious relationship to safety or health.

(c) The Director shall afford an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to any youth camp operator issued a citation under procedures promulgated pursuant to subsection (b) or subject to penalties under section 12, or under any other procedure applying enforcement by the Director under this Act. Any youth camp operator adversely affected by the decision of the Director after such hearing may obtain a review of such decision in the United States court of appeals for the circuit in which the youth camp in question is located or in which the youth camp has its principal office by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part such decision. A copy of the petition shall forthwith be served upon the Director, and thereupon the Director shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Such decision, if supported by substantial evidence, shall be affirmed by the court. The judgment of the court shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

INSPECTIONS, INVESTIGATIONS, AND RECORDS

SEC. 11(a) In order to carry out his duties under this Act, the Director may enter and inspect any youth camp and its records in States which do not have in effect a State plan approved under section 8, may question employees privately, and may investigate facts, conditions, practices, or matters to the extent he deems it necessary or appropriate. The Director shall inspect each such youth camp at least once a year during the period the camp is in operation.

(b) In making his inspections and investigations under this Act the Director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States, or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides, or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) To determine the areas in which safety standards are necessary and to aid in promulgating meaningful regulations, camps subject to the provisions of this Act shall be required to report annually, on the date prescribed by the Director, all accidents resulting in death, injury, and serious illness, other than minor injuries which require only first aid treatment, and which do not require the services of a physician, or involve loss of consciousness, restriction of activity or motion, or premature termination of the camper's term at the camp. Camps operating solely within a State which has in effect a State plan approved under section 8 shall file their reports directly with that State, and the State shall promptly forward such reports on to the Director. All other camps shall file their reports directly with the Director. The Director shall compile the statistics reported and include summaries thereof in his annual report required under section 6(c).

(d) Any information obtained by the Director, or his authorized representative, under this Act shall be obtained with a minimum burden upon the youth camp operator and with full protection of the rights of youth camp operator and with full protection of the rights of youth camp staff members. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) A representative of the youth camp staff director and a representative authorized by the youth camp staff shall be given an opportunity to accompany the Director or his authorized representative during the inspection. Where there is no authorized youth camp staff representative, the Director shall consult with a reasonable number of youth camp staff members concerning the matters of health and safety.

PENALTIES

SEC. 12. (a) Any youth camp operator who fails to correct a violation for which a citation has been issued under section 10(b) or for which a notice has been issued under section 10(a) within the period permitted for its correction may be assessed a civil penalty of not more than $500 for each day during which such failure or violation continues, until the camp closes in its normal course of business.

(b) Any youth camp operator who willfully or repeatedly violates the requirements of section 5, of any standard, rule, or order promulgated pursuant to section 7, or of any regulations prescribed pursuant to this Act may be assessed a civil penalty of up to $1,000 for each day during which such violation continues, until the camp closes in its normal course of business.

(c) Civil penalties assessed under this Act shall be paid to the Director for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district in which the violation is alleged to have occurred or in which the operator has his principal office.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 13. (a) The United States district courts shall have jurisdiction, upon petition of the Director, to restrain any conditions or practices in any youth camp, or in any place where camp activities are conducted in States which do not have in effect a State plan approved under section 8, which are such that a danger exists which could reasonably be expected to cause death or immediate serious physical harm or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the presence of any individual in locations or under conditions where such imminent danger exists except individuals whose presence is necessary to avoid, correct, or remove such imminent danger.

(b) Upon the filing of any such petition, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any campsite or place of camp activity, he shall inform parents or guardians, camp owners, and camp supervisory personnel and shall assure that all affected campers are so informed of the danger and that he is recomemnding to the Director that relief be sought.

VARIANCES

SEC. 14. The Director, in States which do not have in effect a State plan approved under section 8, upon application by a youth camp operator showing extraordinary circumstances or undue hardship, and upon the determination by a field inspector, after inspection of the affected premises and facilities, that the conditions, practices, or activities proposed to be used are as safe and healthful as those which would prevail if the youth camp operator complied with the standard, may exempt such camp or activity for specific requirements of this Act, but the terms of such exemption shall require appropriate notice thereof to parents or other relatives of affected campers. Such notice shall be given at least annually. Nothing in this Act shall allow the operation of a substandard camp.

FEDERAL ADVISORY COUNCIL ON YOUTH CAMP SAFETY

SEC. 15. (a) The Director shall establish in the Department of Health, Education, and Welfare a Federal Advisory Council on Youth Camp Safety to advise and consult on policy matters relating to youth camp safety, particularly the promulgation of youth camp safety standards. The council shall consist of the Director, who shall be chairman, and fifteen members appointed by him, without regard to the civil service laws, from persons who are specifically qualified by experience and competence to render such service and shall include one representative from the Department of the Interior, the Department of Health, Education, and Welfare, and the Department of Agriculture and the Depart-

ment of Labor. There shall be eight such members so appointed from appropriate associations representing organized camping. There shall be appointed three members from the general public who have a special interest in youth camps.

(b) The Director may appoint such special advisory and technical experts and consultants as may be necessary in carrying out the functions of the council.

(c) Members of the Advisory Council, while serving on business of the Advisory Council, shall receive compensation at a rate to be fixed by the Director but not exceeding $100 per day; including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

ADMINISTRATION AND AUDIT

SEC. 16. (a) The Director is authorized to request directly from any department or agency of the Federal Government information, suggestions, estimates, and statistics needed to carry out his functions under this Act; and such department or agency is authorized to furnish such information, suggestions, estimates, and statistics directly to the Director.

(b) The Director shall prepare and submit to the President for transmittal to the Congress at least once in each fiscal year a comprehensive and detailed report on the administration of this Act.

(c) The Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers and records of States receiving assistance under this Act.

NONINTERFERENCE

SEC. 17. (a) Nothing in this Act or regulations issued hereunder shall authorize the Director, a State agency, or any official acting under this Act, to prescribe, determine, or influence the curriculum, admissions policy, program, or ministry of any youth camp.

(b) Nothing in this Act or regulations issued hereunder shall be construed to control, limit, or interfere with either the religious affiliation of any camp, camper, or camp staff member, or the free exercise of religion of any youth camp which is operated by a church, association, or convention of churches, or their agencies.

(c) Nothing in this Act or regulations issued hereunder shall authorize the Director, a State agency, or any official acting under this Act, to require or authorize medical treatment for a person who objects (or, in the case of a child, whose parent or guardian objects) thereto on religious grounds; nor shall examination or immunization of such person be authorized or required except during an epidemic or threat of an epidemic of a contagious disease.

AUTHORIZATION

SEC. 18. There are authorized to be appropriated $7,500,000 for the fiscal year ending September 30, 1980, and for each of the four succeeding fiscal years, to carry out the provisions of this Act.

EFFECT ON EXISTING LAWS

SEC. 19. (a) Nothing in this Act shall be construed to supersede or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of youth camp operators and campers under any law with respect to injuries, diseases, or death of campers arising out of, or in the course of, participation in youth camp activities covered by this Act.

(b) Notwithstanding the provisions of this Act, no State law which provides youth camp health and safety standards equal to or superior to those promulgated under the provisions of this Act shall be superseded thereby.

SECTION-BY-SECTION ANALYSIS

Sec. 1. "Children and Youth Camp Safety Act."

Sec. 2. Purpose is to protect and safeguard the health and well-being of the Nation's youth attending camps by providing for Federal standards for safe operation, Federal financial and technical aid to States to encourage them to develop programs and plans for implementing youth camp safety standards, and Federal implementation of safety standards in States which do not implement such standards. Declares that youth camp safety standards are to be applicable to intrastate as well as interstate youth camp operators.

Sec. 3. States should assume responsibility for the development and enforcement of effective youth camp safety standards.

Sec. 4. Definitions. Youth camp includes residential, day, short-term, troop, travel, trip, primitive or outpost or Federal recreational youth camps. Also covers a wide variety of camping activities such as swimming, diving, boating, lifesaving, sailing, skindiving, riflery, horseback riding, mountain climbing, campcraft and natural studies. Exempted are activities of a family and guests in a purely social activity, regularly scheduled meetings of groups such as the Scouts, regularly scheduled athletic events not involving camping, extracurricular activities carried on by schools. Definitions are also provided for various types of camps, camp director, camp safety standards.

Sec. 5. Youth camp operators shall provide each camper safe and healthful conditions and adequate supervision to prevent injury and accidents and safe instruction by qualified personnel.

Sec. 6. An Office of Youth Camp Safety is established in the Office of the DHEW Secretary, headed by a Director.

Sec 7. The Youth Camp Safety Director will develop and promulgate Federal youth camp safety standards. He will consult with a Federal Advisory Council on Youth Camp Safety as well as with public and private groups. He will consider existing State regulations and standards and standards developed by private organizations. Before promulgating any standard it shall first be submitted to the Congress and will not be effective if either House of Congress disapproves it within 60 days.

Sec. 8. Any State desiring to develop and enforce camp safety standards shall submit a State plan for the development of such standards and their enforcement. The Youth Camp Safety Director shall approve the plans if they meet certain criteria such as provisions for enforcement, consultative services, State youth camp advisory committee, rights of entry and inspection and satisfactory financial underwriting. The Director shall annually review State plans and can withdraw approval if there is a failure to comply with any provision of the State plan. DHEW can make personnel available to the States to aid in developing State plans and in training State personnel.

Sec. 9. DHEW can make grants to States to develop youth camp safety plans. Grants may be up to 80 percent of the cost of developing and carrying out these plans.

Sec. 10. DHEW can provide consultative services to youth camps in States which do not have in effect an approved State plan. The Director shall issue regulations and procedures providing for citations to youth camp operators in States which do not have an approved State plan and a hearing procedure is established.

Sec. 11. The Director may enter and inspect any youth camp and its records in States which do not have an approved State plan.

Sec. 12. Provides for civil penalties of up to $500 per day during which a failure to correct a violation or violation continues and $1,000 per day for any willful or repeated violations.

Sec. 13. Provides procedures to counteract imminent dangers.

Sec 14. In States which do not have an approved State plan the Director may exempt a camp or activity if the youth camp operator can show extraordinary circumstances or undue hardship.

Sec. 15. A Federal Advisory Council on Youth Camp Safety is established in DHEW to advise and consult on policy matters relating to youth camp safety. The Director will serve as the chairman and it will have 15 members incuding representatives of DHEW, and the Departments of Agriculture, Interior and Labor, eight members representing organized camping groups, and three members of the general public.

Sec. 16. Administration and audit of the program including an annual report to the Congress.

Sec. 17. Specifies that the Director, State agency or any official is not authorized to prescribe, determine or influence the curriculum, admissions policy, program or ministry of any youth camp. The Act and regulations do not interfere with the religious affiliation of any camp, camper or camp staff member or the free exercise of religion.

Sec. 18. Authorizes $7.5 million to be appropriated for Fiscal Year 1979 and for the four succeeding fiscal years.

Sec. 19. The Act does not supersede, enlarge or diminish common law or statutory rights, duties or liabilities of youth camp operators and campers with respect to injuries, diseases, or deaths of campers.●

● Mr. WEICKER. Mr. President, today I am pleased to offer my full support for the Children and Youth Camp Safety Act of 1979. For almost 13 years, my colleague from Connecticut, Senator Ribicoff, has worked to provide meaningful protection for those youngsters who attend our Nation's youth camps. Once again, I am proud to join with him in cosponsorship of a piece of legislation years overdue.

The remarkable truth is that the majority of States make no effort to safeguard our millions of camping youngsters by providing that some minimum safety standards be met. The results of this inaction recur each summer: Drownings, accidental shootings, blindings, and cripplings. To an alarming extent, these are the result of poorly trained camp staffs, many of whom are juveniles themselves, or delapidated facilities that are somehow thought adequate for camping youngsters under the guise of "roughing it."

This problem has repeatedly been brought to the States' attention; yet, the protection necessary to safeguard the health and well-being of our Nation's youth has not materialized. In an effort to eliminate any future deaths or accidents, this bill would provide for Federal financial and technical aid to States to encourage them to develop programs and plans for implementing youth camp safety standards. Furthermore, under this act, a new provision has been added to insure that States and youth camps are not overburdened by unnecessary Federal regulations. This new provision

would essentially direct any Federal standard promulgated by the Office of Youth Camp Safety to the Congress for its approval within 60 days.

Mr. President, I would like to commend Senator RIBICOFF for the work he has done over the years to properly protect the young campers of America. I hope that it will be the last time he must reintroduce this needed legislation.

Now, let us work expeditiously, Mr. President, to see that in this session of Congress prompt and favorable action will be taken to alleviate this persistent problem of camp accidents. Early passage will mean one less summer of disability or death, because of preventable camping accidents.●

By Mr. CHURCH (by request):

S. 584. A bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act, and for other purposes; to the Committee on Foreign Relations.

INTERNATIONAL SECURITY ASSISTANCE ACT OF 1979

● Mr. CHURCH. Mr. President, I introduce by request a bill to authorize appropriations for international security assistance programs for fiscal years 1980 and 1981.

The bill has been requested by the Secretary of State and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the section-by-section analysis, and the letter from the Secretary of State to the President of the Senate dated February 23, 1979.

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

S. 584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Security Assistance Act of 1979".

CONTINGENCIES

SEC. 2. (a) The caption of chapter 5 of part I of the Foreign Assistance Act of 1961 is amended by striking out "Contingency Fund" and inserting in lieu thereof "Contingencies".

(b) Section 451 of the Foreign Assistance Act of 1961 is amended—

(1) by striking out "Contingency Fund" immediately after "Sec. 451." and inserting in lieu thereof "Contingencies"; and

(2) by amending subsection (a) thereof to read as follows:

"(a)(1) Notwithstanding any other provision of law, the President is authorized to use for any emergency purposes not to exceed $10,000,000 in funds made available to carry out any provision of this Act in any fiscal year to provide assistance authorized by this part in accordance with the provisions applicable to the furnishing of such assistance.

"(2) The President shall promptly report to the Speaker of the House of Representatives and to the Committees on Foreign Relations and Appropriations of the Senate each time he exercises the authority contained in this subsection.".

INTERNATIONAL NARCOTICS CONTROL

SEC. 3. Section 482 of the Foreign Assistance Act of 1961 is amended by striking out "$40,000,000 for the fiscal year 1979" in subsection (a) and inserting in lieu thereof "$37,800,000 for the fiscal year 1980".

MILITARY ASSISTANCE

SEC. 4. (a) Section 504(a)(1) of the Foreign Assistance Act of 1961, relating to authorization, is amended to read as follows:

"(a)(1) There are authorized to be appropriated to the President to carry out the purposes of this chapter not to exceed $110,200,000 for the fiscal year 1980. Not more than the following amounts of funds available to carry out this chapter may be allocated and made available for assistance to each of the following countries for the fiscal year 1980:

Country	*Amount*
Portugal	$30,000,000
Spain	3,800,000
Jordan	30,000,000
Philippines	25,000,000

The amount specified in this paragraph for military assistance to any such country may be increased by not more than 10 per centum of such amount if the President deems such increase necessary for the purposes of this chapter.".

(b) Section 506 of the Foreign Assistance Act of 1961, relating to special authority is amended to read as follows:

"SEC. 506. SPECIAL AUTHORITY.—(a)(1) If the President determines and reports to the Congress in accordance with section 652 of this Act—

"(A) that an unforeseen emergency exists which requires immediate military assistance to a foreign country or international organization; and

"(B) that the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except this section;

he may direct the drawdown of defense articles from the stocks of the Department of Defense and defense services of the Department of Defense and military education and training for the purposes of this part, in an aggregate value of not to exceed $10,000,000 in any fiscal year, subject to reimbursement from subsequent appropriations made specifically therefor under subsection (b).

"(2) The President shall keep the Congress fully and currently informed of all defense articles, defense services and military education and training provided under this subsection.

"(b) There are authorized to be appropriated to the President such sums as may be necessary to reimburse the applicable appropriation, fund, or account for defense articles, defense services, and military education and training provided under subsection (a) of this section.".

(c) Section 516(a) of the Foreign Assistance Act of 1961, relating to termination of authority, is amended by striking out all that follows after "before September 30, 1977" and inserting in lieu thereof "and such authorities shall remain available for a period of three years next following any fiscal year after the fiscal year 1977 for which assistance under this chapter has been authorized for a country, to the extent necessary to carry out obligations incurred under this chapter with respect to such assistance for such country on or before September 30 of such fiscal year.".

STOCKPILING OF DEFENSE ARTICLES FOR FOREIGN COUNTRIES

SEC. 5. Section 514 of the Foreign Assistance Act of 1961 is amended—

(a) in subsection (b)(2), by striking out "90,000,000 for the fiscal year 1979" and inserting in lieu thereof "$95,000,000 for the fiscal year 1980"; and

(b) in subsection (c), by inserting "the Republic of Korea or" immediately following "stockpiles located in".

INTERNATIONAL MILITARY ASSISTANCE AND SALES PROGRAM MANAGEMENT

SEC. 6. Section 515 of the Foreign Assistance Act of 1961 is amended—

(a) in subsection (b)(1), by striking out "fiscal year 1979" and inserting in lieu thereof "fiscal year 1980", and by inserting "Greece," immediately after "Panama,"; and

(b) in subsection (f), by striking out "December 31, 1977" and inserting in lieu thereof "December 31, 1978".

SECURITY SUPPORTING ASSISTANCE

SEC. 7. (a) Chapter 6 of part II of the Foreign Assistance Act of 1961 is repealed.

(b) Chapter 4 of part II of the Foreign Assistance Act of 1961 is amended to read as follows:

"Chapter 4—SECURITY SUPPORTING ASSISTANCE

"SEC. 531. AUTHORITY.—(a)(1) The Congress recognizes that under special economic, political, or security conditions the national interests of the United States may require assistance for countries or in amounts and under circumstances which could not be justified solely under chapter 1 of part I. In such cases, the President is authorized to furnish non-military assistance to countries or organizations, on such terms and conditions as he may determine, in order to promote economic or political stability.

"(2) In planning programs under this chapter, primary emphasis should be given to programs intended for economic development. In carrying out such programs, the President shall take into account to the maximum extent feasible the policy directions of section 102.

"(b) In addition to other assistance under this chapter, the President is authorized to furnish assistance to countries and organizations, on such terms and conditions as he may determine, for peacekeeping operations and other activities carried out in furtherance of the national security interests of the United States, including reimbursement to the Department of Defense for expenses incurred pursuant to section 7 of the United Nations Participation Act, as amended.

"SEC. 532. AUTHORIZATION.—(a) In addition to amounts otherwise available for the purpose, there are authorized to be appropriated to the President to carry out the purposes of this chapter for the fiscal year 1980 $1,995,100,000.

"(b) Amounts appropriated to carry out the provisions of this chapter are authorized to remain available until expended.".

(c)(1) Section 502B(d)(2)(A) of the Foreign Assistance Act of 1961 is amended—

(A) by striking out "economic support fund" and inserting in lieu thereof "security supporting assistance"; and

(B) by striking out "or chapter 6 (peacekeeping operations)".

(2) Section 620B of such Act is amended in paragraph (1) by striking out "5, or 6" and inserting in lieu thereof "or 5".

(3) Section 653(b) of such Act is amended—

(A) by striking out "or assistance under chapter 6 of part II of this Act" in each of the two places it appears;

(B) by inserting "or" immediately after the comma following "assistance under chapter 4 of part II of this Act" the first place it appears; and

(C) by striking out "or assistance under chapter 6 of part II" immediately before the comma in paragraph (2).

(4) Sections 669(a) and 670(a) of such Act are each amended—

(A) by striking out "(including assistance under chapter 4 of part II)" immediately after "economic assistance", and by inserting "or security supporting" immediately before "assistance or grant military education"; and

(B) by striking out "providing assistance under chapter 6 of part II," immediately after "training,".

(5) After September 30, 1979, any reference in any law to economic support fund assistance, or to peacekeeping operations assistance, shall be deemed to be a reference to security supporting assistance under chapter 4 of part II of the Foreign Assistance Act of 1961.

INTERNATIONAL MILITARY EDUCATION AND TRAINING

SEC. 8. Section 542 of the Foreign Assistance Act of 1961 is amended by striking out "$31,800,000 for the fiscal year 1979" and inserting in lieu thereof "$32,900,000 for the fiscal year 1980".

TRANSFERS OF DEFENSE ARTICLES, RELATED TRAINING, AND OTHER DEFENSE SERVICES AMONG NATO AND NATO MEMBER COUNTRIES

SEC. 9. Section 3(d)(3)(C) of the Arms Export Control Act is amended to read as follows:

"(C) to transfers among members of the North Atlantic Treaty Organization and between the North Atlantic Treaty Organization and any of its member countries.".

RECIPROCAL QUALITY ASSURANCE, INSPECTION, AND CONTRACT AUDIT SERVICES

SEC. 10. Section 21 of the Arms Export Control Act is amended—

(a) by redesignating subsection (h) thereof as subsection (i); and

(b) by inserting a new subsection (h) to read as follows:

"(h) The President is authorized to provide, without charge, quality assurance, inspection, and contract audit defense services under this section—

"(1) in connection with the placement or administration of any contract or subcontract for defense articles or defense services entered into after the date of enactment of this subsection by, or under this Act on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States government; or

"(2) in connection with the placement or administration of any contract or subcontract for defense articles or defense services pursuant to the North Atlantic Treaty Organization Infrastructure Program in accordance with an agreement under which the foreign governments participating in such program provide such services, without charge, in connection with similar contracts or subcontracts.".

NATO COOPERATIVE PROJECTS

SEC. 11. Chapter 2 of the Arms Export Control Act is amended by adding at the end thereof the following new section:

"SEC. 27. NATO COOPERATIVE PROJECTS.—(a) For the purposes of this section, a 'cooperative project' means a project described in an agreement, entered into after the date of enactment of this section, under which—

"(1) the North Atlantic Treaty Organization, or one or more member countries thereof, agrees to share with the United States the costs of research, development, test and evaluation of certain defense articles, and the costs of any agreed joint production ensuing therefrom, in order to further the objectives of standardization and interoperability of the armed forces of NATO member countries; or

"(2) the North Atlantic Treaty Organization, or one or more member countries thereof other than the United States, agrees to bear the costs of research, development, test, and evaluation of certain defense articles (or categories of defense articles) and to have such articles produced for sale to, and licensed for production within, other participant member countries including the United States, and the United States agrees to bear the costs of research, development, test, and evaluation of other defense articles (or categories of defense articles) and to have such defense articles produced for sale to, and licensed for production within, other participant member countries in order to further the objectives of rationalization of the industrial and technological resources within the North Atlantic Treaty area.

"(b) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under section 21(e) of this Act (and, in the case of agreements under subsection (a)(2) of this section, may reduce or waive the charges for reimbursement of the costs of officers and employees of the United States Government which would otherwise be required) in connection with sales under section 21 and section 22 of this Act in furtherance of cooperative projects. Notwithstanding the provisions of section 21(e)(1)(A) and section 43(b) of this Act, administrative surcharges shall not be increased on other sales made under this Act in order to compensate for reductions or waivers of such surcharges under this section. Funds received pursuant to such other sales shall not be available to reimburse the costs incurred by the United States Government for which reduction or waiver is approved by the President under this section.

"(c)(1) Not less than 30 days prior to signature on behalf of the United States of an agreement for a cooperative project, the President shall transmit to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Armed Services of the Senate a numbered certification with respect to such proposed agreement, setting forth—

"(A) a detailed description of the cooperative project with respect to which the certification is made;

"(B) an estimate of the amount of sales and exports expected to be made or approved under this Act in furtherance of such cooperative project;

"(C) an estimate of the dollar value of any charges expected to be reduced or waived under this section in connection with such cooperative project, such dollar value to consist of expenses that will be charged against Department of Defense funds without reimbursement and amounts not to be recovered and deposited to the general fund of the Treasury;

"(D) an estimate of the dollar value of the costs to be borne by the North Atlantic Treaty Organization or by the member countries thereof in connection with such cooperative project; and

"(E) a statement of the foreign policy and national security benefits anticipated to be derived from such cooperative project.

"(2) The provisions of subsection (b) of section 36 of this Act shall not apply to sales made under section 21 or section 22 of this Act, and the provisions of subsection (c) of section 36 of this Act shall not apply to the issuance of licenses or other approvals under section 38 of this Act, if such sales are made, or such licenses or approvals are issued, in furtherance of a cooperative project.".

FOREIGN MILITARY SALES AUTHORIZATION AND AGGREGATE CEILING

SEC. 12. Section 31 of the Arms Export Control Act is amended—

(a) in subsection (a), by striking out "$682,000,000 for the fiscal year 1978 and $674,300,000 for the fiscal year 1979" and inserting in lieu thereof "$656,300,000 for the fiscal year 1980";

(b) in subsection (b), by striking out "$2,152,350,000 for the fiscal year 1978 and $2,085,500,000 for the fiscal year 1979, of which amount for each such year" and inserting in lieu thereof "$2,063,000,000 for the fiscal year 1980, of which";

(c) in subsection (c), by striking out "fiscal year 1979" and inserting in lieu thereof "fiscal year 1980"; and

(d) in subsection (d), by striking out "$150,000,000" and inserting in lieu thereof "$250,000,000".

REGIONAL CEILING

SEC. 13. Section 33 of the Arms Export Control Act is repealed.

REPORTS TO THE CONGRESS

SEC. 14. (a) Section 36(a) of the Arms Export Control Act is amended by—

(1) striking out "thirty" and inserting in lieu thereof "sixty";

(2) inserting "and" after the semicolon in paragraph (7);

(3) striking out "; and" at the end of paragraph (8) and inserting in lieu thereof a period; and

(4) striking out paragraph (9).

(b) Section 43 of the Arms Export Control Act is amended by adding at the end thereof the following new subsection:

"(c) On or before February 15 of each year the President shall report to the Congress the number of officers and employees of the United States Government carrying out functions on a full time basis under this Act for which reimbursement is provided under subsection (b) of this section or under section 21(a) of this Act.".

DEFINITIONS

SEC. 15. Section 644(d) of the Foreign Assistance Act of 1961 and section 47(3) of the Arms Export Control Act, relating to definitions, are each amended by inserting "(except source material incorporated in defense articles solely to take advantage of high density or other characteristics unrelated to radioactivity)" immediately after "source material".

TRANSFER OF WAR RESERVE MATERIEL AND OTHER PROPERTY TO THE PEOPLE ON TAIWAN

SEC. 16. (a) Notwithstanding any other provision of law, during the calendar year 1980 the President is authorized to transfer to the people on Taiwan, under such terms and conditions as he may deem appropriate, such of the United States war reserve materiel as he may determine that was located on Taiwan on January 1, 1979.

(b) Notwithstanding any other provision of law, during the calendar years 1979 and 1980 the President is authorized to transfer to the people on Taiwan, under such terms and conditions that he may deem appropriate, such rights of the United States in property other than war reserve materiel as he may determine that was located on Taiwan on January 1, 1979.

AMMUNITION SOLD TO THAILAND

SEC. 17. The Royal Thai Government shall be released from its contractural obligation to pay to the United States Government such amount as is due on or before October 30, 1979 as a condition precedent, under the letter of offer accepted by the Royal Thai Government on April 12, 1977, to the transfer of title to the last increment of United States ammunition stocks sold to the Royal Thai Government under such letter of offer pursuant to the Memorandum of Agreement of March 22, 1977 relating to the storage of ammunition in Thailand.

MISCELLANEOUS PROVISIONS

SEC. 18. Authorizations of appropriations and limitations of authority applicable to the fiscal year 1979 as contained in provisions

of law amended by this Act shall not be affected by enactment of this Act.

SEC. 19. There are authorized to be appropriated for the fiscal year 1981 such sums as may be necessary to carry out programs and activities for which appropriations for the fiscal year 1980 are authorized by this Act.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED INTERNATIONAL SECURITY ASSISTANCE ACT OF 1979

I. INTRODUCTION

The proposed International Security Assistance Act of 1979 (hereinafter referred to as "the Bill") amends the Foreign Assistance Act of 1961 (hereinafter referred to as "the FAA"), and the Arms Export Control Act (hereinafter referred to as "the AECA") in order to authorize appropriations to carry out international security assistance programs for the fiscal year 1980, and to make certain changes in the substantive authorities governing those programs. The Bill also contains authorizations for certain economic assistance programs and, in accordance with the Congressional Budget Act of 1974, requests authorizations for the fiscal year 1981.

II. PROVISIONS OF THE BILL

Section 1. Short Title.

This section provides that the Bill may be cited as the "International Security Assistance Act of 1979."

Section 2. Contingencies.

This section consists of two subsections, as follows:

(a) This subsection amends chapter 5 of part I of the FAA, relating to the contingency fund, by retitling it "Contingencies".

(b) This subsection retitles section 451 of the FAA "Contingencies", vice "Contingency Fund", and amends subsection (a) thereof to authorize the President to use not more than $10,000,000 in funds made available under any other provision of the FAA in any fiscal year in order to provide assistance under part I for any emergency purpose. Any such assistance would be subject to the terms and conditions of the FAA governing such assistance, and the President would be required to report to the Congress promptly upon each exercise of this contingency authority.

Section 3. International Narcotics Control.

This section amends section 482 of the FAA to authorize not to exceed $37,800,000 in fiscal year 1980 appropriations for the international narcotics control program.

Section 4. Military Assistance.

This section consists of three subsections, as follows:

(a) This subsection amends section 504(a)(1) of the FAA to authorize appropriations of not to exceed $110,200,000 for carrying out military assistance programs in the fiscal year 1980. The amount of such assistance which may be provided is specified with respect to each of four designated countries. These allocations may be increased by not more than 10 percent if deemed necessary for the purposes of the chapter. With respect to those four countries, the amended section 504(a)(1) constitutes the specific authorization required by section 516(a) of the FAA. The military assistance program for the fiscal year 1980 is made up of new budget authority plus reimbursements to the military assistance account. It is estimated that approximately $55,800,000 of the total program will be used to pay administrative and related expenses. The total program of $144,600,000 in the fiscal year 1980 will require the appropriation of $110,200,000. The amount requested includes funds to reimburse the Department of Defense for the cost of overseas management of security assistance programs, as required by section 515 of the FAA.

(b) This section amends section 506 of the FAA, relating to special authority, to authorize the President to furnish not to exceed $10,000,000 in defense articles and defense services, and military education and training, in any fiscal year to meet unforeseen emergencies requiring immediate military assistance to a country or international organization. The use of such emergency authority is conditioned upon the President's determination and report to the Congress that such an emergency exists and that it cannot be met under the authority of the AECA or any other law. Appropriations to reimburse the Department of Defense for any such articles, services, or training are authorized by the amended section 506.

(c) This subsection amends section 516(a) of the FAA to provide that the military assistance authorities of the FAA shall remain available for a period of no more than three years following the expiration of the last fiscal year (after the fiscal year 1977) for which military assistance is authorized for a country in order to carry out obligations incurred under the military assistance chapter of the FAA during such fiscal year with respect to such country. This provision obviates the need under the present section 516(a) to amend that section each year to provide such authority with respect to each country for which no further military assistance is authorized.

Section 5. Stockpiling of Defense Articles for Foreign Countries.

This section consists of two subsections, each amending section 514 of the FAA, as follows:

(a) This subsection amends section 514(b)(2) of the FAA to establish a ceiling of $95,000,000 on the aggregate value of additions made in the fiscal year 1980 to overseas stockpiles of defense articles (other than in NATO countries) which are to be designated as war reserve stocks for allied or other foreign forces (WRSA). The United States retains title to any stocks so designated. Section 514(a) prohibits the transfer of such defense articles to a foreign country except under the authority of the FAA or of the AECA, and within the limitations and funds available under those acts.

(b) This subsection amends section 514(c) of the FAA to authorize the establishment of stockpiles in the Republic of Korea outside a United States military base or a military base used primarily by the United States. At present, such stockpiles may be established only in countries members of the North Atlantic Treaty Organization. This amendment will facilitate the establishment of needed WRSA stockpiles in the Republic of Korea.

Section 6. International Military Assistance and Sales Program Management.

This section amends section 515(b)(1) of the FAA to authorize the assignment, in the fiscal year 1980, of more than six military personnel to perform security assistance management functions in each of fourteen countries: Portugal, Spain, Jordan, the Philippines (that is, those countries for which military assistance in the fiscal year 1980 is authorized by section 504(a)(1) of the FAA, as amended by section 4 of the Bill), Greece, Turkey, Indonesia, Thailand, Korea, Panama, Morocco, Iran, Kuwait, and Saudi Arabia. The assignment and functions of such personnel will continue to be governed by the terms and conditions set forth in section 515 of the FAA.

This section also amends section 515(f) of the FAA to provide that the number of defense attaches performing security assistance management functions in a foreign country may not exceed the number of attaches authorized to be assigned to that country on December 31, 1978.

Section 7. Security Supporting Assistance.

This section consists of three subsections, as follows:

(a) This subsection amends part II of the FAA by repealing chapter 6 thereof, relating to peacekeeping operations and other programs carried out in furtherance of the national security interests of the United States. Programs hitherto authorized under chapter 6 of part II would be carried out under chapter 4 of part II, as amended by section 7(b) of the Bill.

(b) This section amends chapter 4 of part II of the FAA by redesignating that chapter as "Security Supporting Assistance" and by recasting it to consist of two sections:

New section 531 provides for basic authority to carry out security supporting assistance programs, comprising "non-military assistance . . . in order to promote economic or political stability". Section 531 programs intended for economic development are to be carried out to the extent feasible in accordance with the general policy guidelines applicable to economic assistance under part I of the FAA. Subsection (b) of new section 531 provides additional authority to provide assistance for activities in furtherance of the national security interests of the United States. This authority also would permit reimbursement to the Department of Defense for expenses incurred by that Department in connection with the peacekeeping activities carried out under the authority of the United Nations Participation Act of 1945, as amended, and for which reimbursement is not sought from the United Nations.

New Section 532 of the FAA authorizes appropriations of $1,995,100,000 to carry out security supporting assistance programs in the fiscal year 1980.

(c) This subsection makes a number of technical, conforming changes to the FAA and related statutes in order to take into account the repeal of chapter 6 of part II and other changes to the FAA made by sections 7(a) and (b) of the Bill.

Section 8. International Military Education and Training.

This section amends section 542 of the FAA to authorize appropriations of $32,900,000 to carry out grant international military education and training programs in the fiscal year 1980.

Section 9. Transfers of Defense Articles, Related Training and Other Defense Services among NATO and NATO Member Countries.

This section amends section 3(d)(3)(C) of the AECA to exempt from the requirement for thirty calendar days advance notice to the Congress of the intention of the United States to consent to the transfer of FMS or MAP origin defense articles, related training, or other defense services among NATO member countries or between NATO and any of its member countries. The requirement for prior United States consent to any such transfers would continue to apply, as would all other substantive and procedural third-party transfer criteria under the AECA. The purpose of the existing section 3(d)(3)(C) of the AECA is to facilitate NATO standardization and other cooperative military supply efforts involving the purchase by NATO or a NATO government of defense articles, related training and other defense services under FMS for transfer within the Alliance. The current reference in that subsection to "cross-servicing arrangements"—which this amendment deletes—could be read, however, as limiting the scope of transfers within the Alliance. This amendment makes clear that such a narrow interpretation is not intended.

Section 10. Reciprocal Quality Assurance, Inspection, and Contract Audit Services.

This section amends the AECA to add a new section 21(h) to the AECA to authorize the President to furnish, without charge, quality assurance, inspection, and contract audit defense services in two sets of circumstances: (1) in connection with contract placement or administration for defense articles or services entered into by, or under the AECA on behalf of, a NATO member pursuant to an agreement whereby the member government provides such services on a reciprocal, non-reimbursable basis to the United States Government, or (2) in connection with contract placement or ad-

ministration pursuant to the NATO Infrastructure Program, under an agreement whereby the participating governments provide such services on a reciprocal, non-reimbursable basis for NATO Infrastructure. The quality assurance, inspection, and contract audit services that would be furnished under this authority would extend to commercial contracts as well as to FMS procurement contracts entered into pursuant to section 22 of the AECA. Agreements would only be established with those countries capable of providing specific services to the United States on a reciprocal basis. This authority is necessary to enable the United States Government to fulfill certain obligations under existing agreements with Canada, and will facilitate NATO infrastructure efforts.

Section 11. NATO Cooperative Projects.

This section amends the AECA to add a new section 27 to the AECA to encourage NATO cooperative projects of a cost-sharing nature or where research and development responsibilities with respect to various "families of weapons" are allocated by agreement of two or more NATO member governments. This new section consists of three subsections, as follows:

(a) This subsection defines the "cooperative projects" to which the provisions of section 27 would apply; (1) those involving agreement between NATO or one or more NATO member countries and the United States to share with the United States research, development, test, evaluation, and production costs of certain defense articles, where such sharing is intended to further the standardization and interoperability of the armed forces of NATO member countries; and (2) the so-called "family of weapons" projects, in which NATO or NATO members agree to bear research, development, test, and evaluation costs for certain defense articles, or categories of defense articles, for sale to NATO members (including the United States), and in return the United States agrees to bear such costs for other defense articles or categories of defense articles for sale to NATO and participating NATO members, in furtherance of the rationalization of NATO industrial and technological resources.

(b) This subsection authorizes the President to reduce or waive charges for United States research and development, plant and production equipment use, and administrative services costs, in connection with FMS sales made in furtherance of the projects described in new subsection (a), and for the direct costs of United States Government officers and employees otherwise chargeable as a "defense service" in connection with sales under subsection (a)(2). In addition, the worldwide administration surcharge imposed on all FMS sales under section 21 (e)(1)(A) may not be increased insofar as it applies to other FMS sales in order to compensate for any such reduction or waiver, nor may funds received from such other sales be used for that purpose.

(c) This subsection provides that the the President must transmit to the Congress a detailed certification describing the cooperative project in question (including an estimate of the amount of sales to be made and exports to be licensed), and the benefits to the United States expected to be derived from such a project, not less than 30 days prior to signature of a cooperative project agreement on behalf of the United States. The advance notification requirements of sections 36 (b) and (c) of the AECA would not apply to FMS sales made, and export licenses and other approvals issued, in furtherance of the cooperative project with respect to which such a certification is made.

Section 12. Foreign Military Sales Authorization and Aggregate Ceiling.

This section consists of four subsections, each amending section 31 of the AECA, as follows:

(a) This subsection amends section 31(a) to authorize appropriations of not to exceed $656,300,000 for the fiscal year 1980 to carry out FMS credit and loan guaranty programs under the AECA.

(b) This subsection amends section 31(b) to establish a ceiling of $2,063,000,000 for the fiscal year 1980 on the aggregate total of credits extended, and the principal amount of loans guaranteed, pursuant to the AECA, and to allocate not less than $1,000,000,000 of that aggregate total to Israel.

(c) This subsection amends section 31(c), relating to terms and conditions governing repayment by Israel of financing extended pursuant to the AECA, to make that subsection applicable to such financing extended in the fiscal year 1980.

(d) This subsection amends section 31(d), relating to the ceiling on the aggregate acquisition cost of excess defense articles sold under the AECA or granted under the FAA, to increase that ceiling from $150 million to $250 million.

Section 13. Regional Ceiling.

This section amends the AECA to repeal section 33 thereof, which imposes a ceiling of $40,000,000 on the amount of military assistance under the FAA, and financing under the AECA, which may be furnished to African countries in any fiscal year. Because the authorized FMS financing program for African countries in each of the past several fiscal years has exceeded this ceiling, it has been necessary in each of those years for the President to exercise his waiver authority under section 33(b) of the AECA. Repeal of section 33 will eliminate this unnecessary burden on the President and will take into account the FMS financing levels actually authorized each year by the Congress.

Section 14. Reports to the Congress.

This section consists of two subsections, each amending the AECA as follows:

(a) This subsection amends section 36(a) of the AECA to require that the quarterly reports to the Congress on commercial and FMS sales and exports be submitted within sixty days of the close of the quarter to which they relate, vice thirty days under present law. This change will enable the preparation of more useful and accurate reports in that it would permit more time in which to compile and analyze the relevant data.

This subsection also amends section 36(a) of the AECA by striking paragraph (9) thereof, relating to defense services being performed by officers and employees of the United States on a sales basis under section 21(a) of the AECA. The bulk of the information provided under the deleted paragraph would continue to be furnished as part of the report required by section 43(c) of the AECA, as added by section 14(b) of the Bill.

(b) This subsection amends section 43 of the AECA to add a new subsection (c) requiring the President to report to the Congress, on or before February 15 of each year, the number of officers and employees of the United States performing functions on a full-time basis under the AECA for which reimbursement is provided under section 43(b) of the AECA (that is, out of the charges for administrative expenses incurred in carrying out functions primarily for the benefit of a foreign country), or under section 21(a) of the AECA (sales of defense services). This change takes into account the recently-established SAMAS reporting requirement in connection with Department of Defense budgetary projections. In addition, this new reporting requirement would be more realistic than that under the present section 36(a)(9) of the AECA in that it would include personnel costs reimbursed from administrative surcharge collections as well as personnel costs reimbursed directly by FMS purchasers under specific sales cases.

Section 15. Definitions.

This section amends section 644(d) of the FAA and section 47(3) of the AECA, each relating to the definition of "defense article", to provide that the exclusion from such definition of "source material" (as defined by the Atomic Energy Act of 1954, as amended) shall not include source material which may be incorporated in other defense articles solely to take advantage of its density of other non-atomic characteristics. This amendment would permit the sale of defense articles incorporating depleted uranium (DU, or staballoy) on a government-to-government (FMS) basis under the AECA. DU is a heavy, dense metal of extremely limited residual radioactivity and which is useful in effective anti-tank ammunition and as aircraft ballast. At present, by virtue of the blanket exclusion of "source material" from the definition of "defense article" for FMS purposes, such articles may not be sold under FMS, although their export may be licensed under section 38 of the AECA if sold to eliminate an inadvertent and anomalous prohibition on the FMS sale of defense articles utilizing DU for its non-atomic characteristics only, and would not affect the licensing responsibilities of the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended.

Section 16. Transfer of War Reserve Materiel and Other Property to the People on Taiwan.

This section gives the President authority to transfer to the people on Taiwan rights held by the United States Department of Defense in military-related materiel and property located on Taiwan. Under this section, the President has discretionary authority to transfer the rights in that materiel and property which he deems appropriate for transfer, and under terms and conditions that he determines. Such transfers would not be subject to any terms and conditions that would otherwise be imposed by any other provision of law. This discretionary authority is limited to transfer to the people on Taiwan only of Department of Defense-held rights to materiel and property located on Taiwan as of January 1, 1979.

This section consists of two subsections, as follows:

Subsection (a) gives the President the discretionary authority to transfer to the people on Taiwan during the calendar year 1980 United States war reserve materiel located on Taiwan and under the control of the Department of Defense as of January 1, 1979.

Subsection (b) gives the President discretionary authority to transfer Department of Defense-held rights in other property located on Taiwan to the people on Taiwan during the calendar years 1979 and 1980. Under this subsection, the President can transfer both property that the Department of Defense has control of outright, and other Departmnet of Defense-held rights in property, such as rights to installations and improvements placed on Taiwan-owned real property by the United States. Residual United States rights in equipment previously furnished under the military assistance (MAP) program would be transferred under this subsection.

Section 17. Ammunition Sold to Thailand.

This section releases the Royal Thai Government from its obligation to pay the United States for the last increment of ammunition stored in Thailand by the United States and sold to the Royal Thai Government under an FMS letter of offer accepted by the Thais on April 12, 1977. The Royal Thai Government would not be released from any other obligation (including pay-

ment for previous increments) under that letter of offer, and would remain liable for repayment of any FMS financing extended to the Royal Thai Government for previous increments of ammunition sold under that letter of offer. No other Thai obligations under other letters of offer or FMS financing arrangements would be affected.

Section 18 and 19. Miscellaneous Provisions.

Section 18 provides that authorizations and limitations applicable to the fiscal year 1979 by provisions of law amended by the Bill will not be affected by enactment of the Bill. This is to take into account the possibility that the Bill will become law prior to the end of fiscal year 1979.

Section 19 authorizes appropriations for the fiscal year 1981 of such sums as may be necessary to carry out programs and activities for which fiscal year 1980 appropriations are authorized by the Bill. This section is necessary in order to comply with the Congressional Budget Act of 1974.

THE SECRETARY OF STATE,
Washington, February 23, 1979.

Hon. WALTER F. MONDALE,
President of the Senate.

DEAR MR. PRESIDENT: On behalf of the Executive Branch, I hereby transmit a bill to authorize international security assistance programs for the fiscal years 1980 and 1981. Through these programs, the United States assists friendly and allied nations to acquire and maintain the capability for their own defense and to cope with political, economic, and military crises. These programs are essential for the attainment of our own foreign policy goals in an increasingly complex and interdependent world.

The bill will authorize both military and economic forms of security assistance, with the greater part of the funds requested intended for non-military security supporting assistance programs. Of this economic component, a preponderance of the funds will go toward our programs in the Middle East and make a direct contribution to the furtherance of a climate conducive to peace in that region. Some of the funds intended for military programs will enable the United States to continue security cooperation with those countries where we maintain overseas bases or other important military facilities. Funding for international narcotics control programs is also provided for in the bill.

In addition to the necessary authorizations of appropriations for the fiscal years 1980 and 1981, the bill will make several substantive changes in the authorities governing security assistance programs. On the economic side, the bill amends the Foreign Assistance Act of 1961 to merge the authorities for the economic support fund and for peacekeeping operations into a single security supporting assistance account. In this regard, the bill preserves most of the features of the former authorities, but under a single assistance category. We believe that such a reconstitution will obviate the need to draw distinctions between programs contained in one account as opposed to the other, and that a single account is desirable in the interest of the effective and efficient implementation of this important form of assistance.

In addition, the bill contains a number of provisions designed to facilitate military cooperation with our Allies in the North Atlantc Treaty Oorganization. The bill amends the Arms Export Control Act to remove certain procedural impediments to effective intra-alliance efforts at cooperative weapons development and production projects, while preserving the essentials of United States Government controls over defense articles and defense services furnished under that Act. We believe that these changes in existing law are important if the United States is to maintain its role in NATO rationalization, standardization, and interoperability efforts.

Apart from the authorization of funds for ongoing military programs, the bill contains authority for two extraordinary transfers that we consider to be of particular significance. First, the bill authorizes the transfer to the people on Taiwan during the calendar year 1980 of Department of Defense war reserve materiel located on Taiwan as of January 1, 1979, and during the calendar years 1979 and 1980 of United States rights in property other than war reserve materiel located on Taiwan as of January 1, 1979. Second, the bill provides that repayment shall not be required from the Government of Thailand for the last increment of United States ammunition stored in Thailand and sold to the Government of Thailand under the Arms Export Control Act. This is intended to help Thailand strengthen its defense capability in view of the unstable conditions prevailing in Southeast Asia.

Other substantive changes to existing law made by the bill include a revised economic assistance contingency authority and a comparable military assistance authority, an amendment to the definition of "defense article" for military assistance and foreign military sales purposes so as to permit the government-to-government transfer of conventional defense articles incorporating depleted uranium, and certain changes in reporting requirements under the Arms Export Control Act.

The programs authorized by this bill are essential elements of the foreign and national security policies of the United States. They have been formulated so as to be as effective and efficient as possible in an era of necessary budget constraint. In addition, these programs reflect our continued commitment to human rights and conventional arms transfer restraint as major United States foreign policy goals.

With particular regard for the authorization being requested in this bill for security assistance programs for Greece and Turkey, I hereby certify, in accordance with section 620C(d) of the Foreign Assistance Act of 1961, as amend, that the furnishing of such assistance to Greece and Turkey will be consistent with the principles set forth in section 620C(b) of that Act. The explanation of the reasons for this certification in each case is contained in the congressional presentation materials for the fiscal year 1980 security assistance program.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation to the Congress and that its enactment would be in accord with the program of the Persident.

I urge early passage of the enclosed legislation.

Sincerely.

CYRUS VANCE.

By Mr. JACKSON (for himself and Mr. MAGNUSON):

S. 585. A bill to authorize the Secretary of the Interior to engage in a feasibility study of the Yakima River Basin water enhancement project; to the Committee on Energy and Natural Resources.

YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT

● Mr. JACKSON. Mr. President. for myself and the senior Senator from the State of Washington, I am sending to the desk a bill which would authorize the Secretary of the Interior to undertake a feasibility grade study of the proposed Yakima River water enhancement project which would be located in the Yakima River Valley in Washington State.

This proposal is the culmination of years of effort on the part of the people of the Yakima Valley in concert with the government of the State of Washington. As my colleagues know, the history of irrigated agriculture in the Yakima Valley goes back to the late 1800's when pioneer settlers first diverted stream flows to irrigate crops. As each success brought further efforts, irrigated agriculture in the valley grew to regional and national importance. In spite of success, the people of the valley have continued to look toward the future and the full development of the water and land resources of the area for the benefit of the region and the Nation.

In 1977, severe drought conditions throughout the Western States and in particular the Yakima Valley, focused attention on the need for further efforts to both expand and assure existing water supplies. In addition, as available supplies were reduced, disputes arose as to how the remainder was to be equitably distributed.

The legislation which I am today introducing will go far toward providing answers to the questions surrounding the future of water supplies in the Yakima Valley and what course we should pursue in resolving the problems presented by future drought and existing dispute.

As proposed, the measure authorizes the Secretary of the Interior to undertake a comprehensive feasibilty investigation of five potential reservoir storage sites and one reregulating reservoir site in the Yakima Basin. Premilinary estimates indicate that up to 30,000 acres of land could receive new water supplies and 70,000 acres presently irrigated would receive supplemental water supplies. In addition there would be substantial benefits to water quality and fisheries habitat throughout the Yakima River system. The proposal is truly multipurpose as flood control and hydroelectric generation are integral parts of the study plan.

It is, of course, impossible to say at this time what the results of the feasibility study will be. However, the preliminary work carried out by the State of Washington's Department of Ecology and existing studies by the Department of the Interior all point the way toward authorization of a comprehensive study of the additional water resource potential in the valley. I have long advocated that we should look at the entire resource base in the area and that we should not address related water problems on a piecemeal basis. The proposed Yakima River Basin water enhancement study will provide that framework.

Mr. President, I must express my personal thanks at this time to the State of Washington and the members of the Yakima Indian Tribe without whose cooperation and strong support this proposal would have been impossible to achieve. I hope that this spirit will continue for the benefit of all the citizens in the valley.●

By Mr. CHURCH (by request):

S. 586. A bill to authorize appropriations for the Department of State, International Communication Agency, and Board for International Broadcasting

for fiscal years 1980 and 1981, and a supplemental authorization for State for fiscal year 1979, and for other purposes; to the Committee on Foreign Relations.

FOREIGN RELATIONS AUTHORIZATION ACT, 1980 AND 1981

● Mr. CHURCH. Mr. President, I am introducing today the "Foreign Relations Authorization Act of 1980 and 1981." This legislation consolidates the administration's requests for the authorization of appropriations for the Department of State, the International Communication Agency and the Board for International Broadcasting for fiscal years 1980 and 1981. This bill also contains a supplemental authorization request for the State Department for fiscal year 1979.

Hearings on this legislation will be held before the Foreign Relations Committee on March 28–29, 1979, and a markup session is scheduled for April 3, 1979.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

TITLE I—DEPARTMENT OF STATE

Sec. 101.—Authorization of Appropriations.

Subsection (a).—This subsection provides an authorization of appropriations for the Department of State in accordance with the provisions of Section 407(b) of the Foreign Assistance Act of 1971. The proposed Act authorizes funds to be appropriated for the fiscal years 1980 and 1981 by category.

Category (1).—Authorizes appropriations under the heading "Administration of Foreign Affairs" for fiscal years 1980 and 1981. This category provides the necessary funds for the salaries, expenses and allowances of the officers and employees of the Department, both in the United States and abroad. It includes funds for executive direction and policy formulation, conduct of diplomatic relations with international organizations, domestic public information activities, central program services, and administrative and staff activities. This category also provides for representational expenses in accordance with Section 901 of the Foreign Service Act of 1946, as amended. Further, it provides funds for such activities as the acquisition, operation and maintenance of office space and living quarters for American staff abroad; funds for relief and repatriation loans to United States citizens abroad and for other emergencies of the Department; and payments to the Foreign Service Retirement and Disability Fund. The amount included in this category for FY 1981 is the Department's best estimate at this time; however, significant events could alter this amount.

Category (2).—Authorizes appropriations for fiscal years 1980 and 1981 under the heading "International Organizations and Conferences". This category provides the necessary funds for United States contributions of its assessed share of the expenses of the United Nations and other international organizations of which we are a member. Also included are the necessary funds for the missions which represent the United States at the headquarters of certain international organizations in which the United States has membership or participates pursuant to treaties, conventions or specific Acts of Congress. In addition, provision is made for funding of official United States Government participation in regularly scheduled or planned multilateral intergovernmental conferences, meetings and related activities, and for contributions to international peacekeeping activities in accordance with international multilateral agreements. The amount included in this category for FY 1981 is the Department's best estimate at this time; however, significant events could alter this amount.

Category (3).—Authorizes appropriations for fiscal years 1980 and 1981 under the heading "International Commissions". This category provides funds necessary to enable the United States to meet its obligations as a participant in International Commissions and includes expenses of the American Section (U.S. and Canada), the International Boundary and Water Commission (U.S. and Mexico) and the International Fisheries Commissions. The amount included in this category for FY 1981 is the Department's best estimate at this time; however, significant events could alter this amount.

Category (4).—Authorizes appropriations for fiscal years 1980 and 1981 under the heading "Migration and Refugee Assistance" to enable the Secretary of State to provide assistance to migrants and refugees, both on a multilateral basis through contributions to organizations such as the Inter-governmental Committee for European Migration and the United Nations High Commissioner for Refugees, and on a unilateral basis through assistance to refugees designated by the President, as authorized by law. The amount included in this category for FY 1981 is the Department's best estimate at this time; however, significant events could alter this amount.

Category (5).—Provides authorization of such amounts as may be necessary for appropriations for mandatory increases resulting from adjustments in salary, pay, retirement, other employee benefits as authorized by law, foreign currency exchange rates, U.S. assessed contributions to international organizations and for other nondiscretionary costs. This provides authorization of appropriations to meet mandatory items which are unanticipated at the time of budget formulation and which have a material impact upon the operations and fiscal resources of the Department. The clause has been expanded this year to clarify its applicability to mandatory increases caused by foreign currency exchange rate fluctuations adversely affecting the dollar and to cover additional assessed contributions to international organizations. This clause is particularly necessary this year in light of the Department's request for a two year authorization.

Subsection (b).—This subsection provides the customary extension of availability of funds beyond the end of the fiscal year. This authority is required to enable the Department to retain funds appropriated for construction projects, the completion of which extends beyond a single fiscal year, and to fund international conferences.

Subsection (c).—This subsection provides that any unappropriated portion of one of the first four authorization items contained in subsection (a) of this bill, may be considered an authorization for another of those items, provided that no item is increased by more than 10 percent.

Sec. 102. U.S.-Yugoslavia Agreement.

This legislation would authorize $7,000,000, following entry into force of a five year bilateral science and technology agreement between the U.S. and Yugoslavia, for payment at any time of the U.S. share of expenses of the agreement.

A similar five-year Agreement on Science and Technology Cooperation was signed between the United States and Yugoslavia on May 18, 1973. The Agreement established a U.S./Yugoslav Joint Board on S&T Cooperation and funding for selected projects through a joint fund of U.S.-owned Yugloslav dinars and a matching dinar amount from the Yugoslav government. Projects selected by the Joint Board were in the areas of agriculture, energy, ecology, technology, health, and transportation.

The President has approved the continuation of the agreement for an additional five year period since it has proven to be mutually advantageous to both countries. However, since the supply of U.S.-owned dinars is nearing depletion, the President has decided to seek funding for the program in the FY 1980 budget through a one-time appropriation of $7,000,000 to cover the United States share over the second five-year period of the Agreement.

In the initial five years of this program, the U.S./Yugoslav Joint Board on S&T Cooperation has involved eight U.S. agencies with all six of Yugoslavia's constituent republics in a total of 140 projects. Over 1,000 persons from both countries have travelled in connection with these projects.

Sec. 103.—Supplemental Authorization for fiscal year 1979 for the Migration and Refugee Assistance Appropriation.

The amendment provides additional authorization of $53,257,000 to cover the costs associated with a fiscal year 1979 supplemental appropriation funding the costs of increased flows of refugees from the Soviet Union, Eastern Europe and Indochina.

The United Nations High Commissioner for Refugees will receive an additional $15,000,000 from the supplemental appropriation. The increased contribution will assist in meeting the increased care and maintenance, and third country resettlement costs, associated with the dramatically increased flow of Indochinese refugees.

Increased costs amounting to $37,757,000 are expected to occur in the United States Refugee Program. These costs represent the care and maintenance costs of Soviet and East European refugees and resettlement costs associated with those refugees and the Indochinese refugees who qualify for resettlement in the United States.

Inflation and the reduced exchange value of the dollar versus the Swiss Franc have had a severe budgetary impact on the Intergovernmental Committee for European Migration. The United States assessment for the administrative budget of this organization has, therefore, been raised by $500,000.

TATLE II—INTERNATIONAL COMMUNICATION AGENCY

Section 201.—This section authorizes appropriations for the U.S. International Communication Agency (USICA) in accordance with the provisions of Section 701(a) of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1476(a)). The proposed authorization will enable the Agency to carry out international communication, educational, cultural and exchange programs under the United States Information and Educational Exchange Act of 1948, as amended; the Mutual Educational and Cultural Exchange Act of 1961, as amended; and Reorganization Plan Numbered 2 of 1977.

The authorization request covers all activities of the Agency under the following subsections:

Subsection (1).—This subsection provides $432,782,000 to fund Agency operations in fiscal year 1980 under four appropriations as they are now reflected in the "Budget of the United States Government". The four appropriation accounts are:

Salaries and Expenses, $403,265,000, providing operating resources for all international communications, educational, cultural and exchange programs of USICA. The amount requested for fiscal year 1980 represents an increase of $28.5 million over the amount appropriated to date and pending for fiscal year 1979. The increase will cover the increased costs of continuing current activities and will provide $5.8 million for program increases, primarily in the exchange of persons program.

Salaries and Expenses (Special Foreign Currency Program), $13,012,000, providing resources for USICA operating expenses in excess currency countries. The increase of $2.7 million over the 1979 level is required to meet added built-in requirements.

Center for Cultural and Technical Interchange between East and West, $14,835,000, providing funds for a grant to the East-West Center in Hawaii. The increase of $1.3 million over the 1979 level is requested primarily to meet added built-in costs.

Acquisition and Construction of Radio Facilities, $1,670,000, providing resources to meet continuing engineering, research and major maintenance needs. The decrease of $18 million is attributable to the completion of funding in 1979 of several major relay station augmentation projects.

Subsection (2).—This subsection provides $466,179,000 to fund Agency operations in fiscal year 1981. A request for fiscal year 1981 is in keeping with the provisions of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344) requiring advance fiscal year authorization of appropriations.

The amount requested is intended to cover projected increases in operating costs in 1981 for USICA programs contained in the fiscal year 1980 budget. It also provides for a further increase of $5 million in the exchange of persons programs.

The 1981 authorization amount is necessarily the level assumed for USICA in the projections contained in the President's fiscal year 1980 budget. As such, it reflects the economic and budget assumptions used in formulating that budget. Changes in those assumed conditions or in demands for communication program responses to the changing world situation and foreign policy needs could alter the request. Such changes can not now be predicted.

Subsection (3).—Authorizes appropriations for increases in Federal pay, retirement, and other employee benefits as authorized by law which occur from time to time. This subsection further provides authorization of appropriations to meet other nondiscretionary cost increase items which cannot be forecast accurately at the time the basic budget estimates are being prepared, and which would have a material impact upon the operations and fiscal resources of the International Communication Agency. This authorization permits more rapid and responsive action to meet increased costs resulting from such items as adverse currency exchange fluctuations.

TITLE III—BOARD FOR INTERNATIONAL BROADCASTING

Section 301(a).—This paragraph authorizes funds for the Board to carry out its functions during fiscal year 1980.

Section 301(b).—This paragraph authorizes funds for the Board to carry out its functions during fiscal year 1981. It also provides $5,000,000, to remain available until expended, only for the downward fluctuations in foreign currency exchange rates in order to maintain the budgeted level of operation for RFE/RL, Inc.

Section 302.—This section provides for the repeal of Section 307 of the Foreign Relations Authorization Act, Fiscal Year 1979, concerning the use of broadcasting facilities by Communist countries. Section 307 amended the Board for International Broadcasting Act of 1973 (22 U.S.C. 2871-2877) by adding at the end thereof the following new section:

"Use of broadcasting facilities by Communist countries

"Sec. 9. No funds or other assistance may be provided by the Board under this Act to RFE/RL, Incorporated, if RFE/RL, Incorporated, permits any Communist country (within the meaning of section 620(f) of the Foreign Assistance Act of 1961) to use its broadcasting facilities unless that Communist country permits RFE/RL, Incorporated, to use that country's broadcasting facilities on a comparable basis."

The Board believes that the above section, as presently worded, would restrict the ability of the Administration to negotiate a cessation of the jamming of RFE/RL broadcasts.

By Mr. SCHWEIKER:

S. 587. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize an evaluation of the risks and benefits of certain food additives; to the Committee on Labor and Human Resources.

FOOD ADDITIVE SAFETY AMENDMENTS OF 1979

● Mr. SCHWEIKER. Mr. President, today I am introducing a bill to authorize evaluation of the risks and benefits of food additives regulated under the Federal Food, Drug and Cosmetic Act.

On Friday, the National Academy of Sciences submitted its food safety policy report to Congress and the Food and Drug Administration, as required under legislation we passed last session delaying FDA's proposed saccharin ban, pending further study. The NAS attempted to sort out the maze of Federal food regulatory policy and emerged with a clear call for legislative reform. The report supports the basic concept of legislation I introduced in March of 1977, providing for risk-benefit assessments of food additives as the keystone of a rational food safety policy, and outlines a decisionmaking framework for allowing food additives to remain on the market in the future.

It is widely acknowledged that current food law is seriously defective in not allowing for the possibility that a food additive, which may pose some risk of cancer, may at the same time have benefits, including health benefits, that justify its continued use in the absence of acceptable substitutes. The purpose of the Delaney clause in existing law is to insure that unsafe, cancer-causing substances do not enter the food supply. That general purpose is still valid, but I believe that it is time to change the Delaney clause's absolute requirement that any additive found to cause cancer in humans or animals must be banned. In light of our increased scientific sophistication in detecting risks, and the fact that there may be substantial health risks entailed if some additives are banned, my bill will give Federal officials some flexibility in administering the food safety laws in a way that will safeguard the public health.

Clearly, we cannot have a risk-free food supply. As the saccharin case so vividly illustrates, the public neither expects nor desires such an unrealistic policy goal. The answer, in my view, is to provide for risk-benefit assessment. I know that such evaluations cannot be precise, but here as in so many other fields, we must act in the absence of perfect knowledge.

Specifically, this legislation would allow the Secretary of Health, Education, and Welfare to make a finding that the benefits of permitting continued use of a food additive outweigh the risks to human health posed by its continued use. The Secretary would have to consult with an advisory committee composed of trained scientists, consumer representatives, industry representatives, nutritionists, and other experts. He would have to provide a reasonable opportunity for comments from interested persons, and his finding could not take effect until 120 days after it was published in the Federal Register.

In making his evaluation of an additive, the Secretary would specifically be required to take into consideration such factors as the reliability of any tests performed with the additive, intake levels, ways to minimize human exposure to any risk posed by the additive, environmental effects, nutritional effects, and other considerations relating to the general public interest.

This bill represents a starting point for consideration of the more comprehensive measures proposed in the NAS report. Further congressional action needs to be taken to insure that, insofar as possible, the same rational standard of risk-benefit analysis is applied to all food additives, though obviously some benefits, such as coloring, weigh less heavily than others. The NAS report also suggests broadening the range of food additive regulatory options available to the FDA to include such alternatives as labeling requirements, phased withdrawal of the additive from the market, and restricted distribution of the additive in bulk foods while continuing its availability for specific populations who benefit from its use. We should consider other "technology-forcing" measures that will encourage the development of substitutes that provide the same benefits at less risk. Consumer information and education should be improved so that truly informed choices are possible in the marketplace. Lastly, a phased transition period from the current system of additive regulation to the new, single-standard system should be carefully constructed.

In the specific case of saccharin, Congress may find it necessary to extend the current law's postponement of a ban until such comprehensive changes in food regulatory laws as I have suggested are implemented.

One aspect of the NAS report that concerns me, and, I might add, also troubles FDA Commissioner Donald Kennedy, is its proposed delegation of a great deal of discretionary authority to Federal regulatory officials. We in Congress have a responsibility to review these proposals very carefully and insure that those charged with agency decisionmaking have adequate guidance in the law and are accountable to us and to the public they serve. This is not to say that the Congress should involve itself in technical consideration of scientific evidence for each separate substance, but we must all realize the inherently subjective and political nature of decisions about whether a certain level of risk, as assessed scientifically, is an acceptable level of risk. We have a responsibility to be diligent in writing laws that will protect the public health and insure that the American people do not face unnecessary and substantial risks of serious harm as the result of unsafe, cancer-causing food additives.

The issue of saccharin, and food safety

policy in general, is highly controversial. Even the experts do not agree, as the need to place minority views in the NAS report attests. I know that the Subcommittee on Health and Scientific Research, on which I serve as ranking Republican, will be grappling with these difficult issues in the coming weeks. The issues merit careful, serious consideration, and the bill I introduce today is a step in that direction.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 587

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food Additive Safety Amendments of 1979".

SEC. 2. Section 409(c)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)) is amended—

(1) by inserting "(A)" after "(3)", by striking out "(i)" and "(ii)" in subparagraph (A), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), by inserting "(I)" after "shall not apply with respect to", and by inserting after the semicolon the following: "(II) any food additive to be used as an ingredient of food for human consumption if, upon petition setting forth the grounds therefor, the Secretary has, in accordance with the subparagraph (B), made and published in the Federal Register a finding that, based on all the data presented, the benefit to the general public from permitting the use of the additive outweighs any risk to human health that permitting such use may present"; and

(2) by adding at the end the following:

"(B)(i) A finding described in subparagraph (A)(i)(II) may be made only after the Secretary has received and considered the recommendations respecting such finding submitted by an advisory committee appointed by the Secretary from (I) individuals who are qualified by scientific training and experience to evaluate the carcinogenic effect of the food additive with respect to which such finding would be made and to evaluate the other effects of the use of such additive, (II) persons representative of the interests of consumers and the food additive industry affected, and (III) nutritionists, economists, scientists, and lawyers. The Secretary shall also provide reasonable opportunity for interested persons to comment on such a finding, and such a finding shall not take effect until the expiration of one hundred and twenty days after it is published in the Federal Register.

"(ii) In making such a finding with respect to a food additive, the Secretary shall consider and in the finding—

"(I) evaluate the intake level at which the food additive causes cancer in animals in relation to the reasonably expected intake level of the additive by humans,

"(II) evaluate the quality of any test data and the validity of any tests which may have been performed on the food additive,

"(III) assess human epidemiological and exposure data respecting food additive and statistical data on human consumption of it,

"(IV) evaluate any known biological mechanism of the carcinogenic effect of the food additive,

"(V) evaluate the means available to minimize human exposure to the risks presented by the food additive and the adequacy of the data available on such means, and

"(VI) evaluate the probable effects of prohibiting the use of the food additive and evaluate the probable effects of permitting its use, such evaluations to be made in accordance with the following priorities: first, health risks and benefits; second, nutritional needs and benefits and the effects of the nutritional value, cost, availability, and acceptability of food; third, environmental effects; and fourth, the interests of the general public.".●

By Mr. CHURCH (by request):

S. 588. A bill to amend the Foreign Assistance Act of 1961 to authorize development assistance programs for fiscal years 1980 and 1981, to make certain changes in the authorities of that act, to authorize the establishment of an Institute for Technological Cooperation, and for other purposes; to the Committee on Foreign Relations.

INTERNATIONAL DEVELOPMENT ASSISTANCE ACT OF 1979

● Mr. CHURCH. Mr. President, I introduce by request a bill to authorize appropriations for foreign assistance development programs for fiscal years 1980 and 1981, and for other purposes.

The bill has been requested by the Acting Secretary of State and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the section-by-section analysis, and the letter from the Acting Secretary of State to the President of the Senate dated February 24, 1979.

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

S. 588

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "International Development Assistance Act of 1979".

TITLE I—DEVELOPMENT ASSISTANCE

AGRICULTURE, RURAL DEVELOPMENT, AND NUTRITION

SEC. 2. The first sentence of section 103(a)(2) of the Foreign Assistance Act of 1961 is amended to read as follows: "There are authorized to be appropriated to the President for purposes of this section, in addition to funds otherwise available for such purposes, $715,366,000 for the fiscal year 1980 and $789,000,000 for the fiscal year 1981.".

POPULATION AND HEALTH

SEC. 3. The first sentence of section 104(g) of the Foreign Assistance Act of 1961 is amended to read as follows: "There are authorized to be appropriated to the President, in addition to funds otherwise available for such purposes—

"(1) $216,321,000 for the fiscal year 1980 and $255,000,000 for the fiscal year 1981 to carry out subsection (b) of this section; and

"(2) $146,573,000 for the fiscal year 1980 and $210,000,000 for the fiscal year 1981 to carry out subsection (c) of this section.".

EDUCATION AND HUMAN RESOURCES DEVELOPMENT

SEC. 4. The second sentence of section 105(a) of the Foreign Assistance Act of 1961 is amended to read as follows: "There are authorized to be appropriated to the President for purposes of this section, in addition to funds otherwise available for such purposes, $119,497,000 for the fiscal year 1980 and $140,000,000 for the fiscal year 1981, which amounts are authorized to remain available until expended.".

TECHNICAL ASSISTANCE, ENERGY, RESEARCH, RECONSTRUCTION, AND SELECTED DEVELOPMENT PROBLEMS

SEC. 5. Section 106(b) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(b) There are authorized to be appropriated to the President for purposes of this section, in addition to funds otherwise available for such purposes, $136,122,000 for the fiscal year 1980 and $180,300,000 for the fiscal year 1981, which amounts are authorized to remain available until expended.".

ENERGY PROGRAMS

SEC. 6. (a) Section 119 of the Foreign Assistance Act of 1961 is amended by amending the section caption to read "Energy Programs."

(b) Such section is further amended by redesignating existing subsection (a) as subsection (b) and by inserting the following new subsection (a) immediately after the section caption:

"(a) The Congress finds that energy production and conservation are vital elements in the development process and that energy shortages in developing countries severely limit the development progress of such countries. Inadequate access by the poor to energy sources as well as the prospect of depleted fossil fuel reserves and higher energy prices require an enhanced effort to expand the energy resources of developing countries, primarily through greater emphasis on renewable sources. Renewable and decentralized energy technologies have particular applicability for the poor, especially in rural areas.".

(c) Such section is further amended by redesignating existing subsection (b) as subsection (d) and by inserting the following new subsection (c) between subsections (b) and (d), as so redesignated by this subsection and subsection (b) of this section:

"(c) Such programs may include research, development, demonstration, and application of suitable energy technologies (including use of wood); analysis of energy uses, needs, and resources; training and institutional development; and scientific interchange.".

SAHEL DEVELOPMENT PROGRAM—IMPLEMENTATION

SEC. 7. Section 121(c) of the Foreign Assistance Act of 1961 is amended by inserting the following sentence immediately after the first sentence of section 121(c): "In addition to the amount authorized in the preceding sentence, and funds otherwise available for such purposes, there is authorized to be appropriated to the President $160,000,000.".

RELATIVELY LEAST DEVELOPED COUNTRIES

SEC. 8. Section 124(c)(2) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new sentence: "Amounts due and payable during fiscal year 1980 and fiscal year 1981, respectively, to the United States from relatively least developed countries, on loans made under this part, or any predecessor legislation, are authorized to be used in accordance with the provisions of paragraph (1) of this subsection, in an amount not to exceed $18,800,000 for fiscal year 1980 and $18,200,000 for fiscal year 1981.".

AMERICAN SCHOOLS AND HOSPITALS ABROAD

SEC. 9. Section 214(c) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(c) To carry out the purposes of this section, there are authorized to be appropriated

to the President $15,000,000 for the fiscal year 1980 and $20,000,000 for the fiscal year 1981, which amounts are authorized to remain available until expended.".

HOUSING AND OTHER CREDIT GUARANTY PROGRAMS

SEC. 10. (a) Section 222(a) of the Foreign Assistance Act of 1961 is amended—

(1) in the second sentence by striking out "$1,180,000,000" and inserting in lieu thereof "$1,505,000,000"; and

(2) in the third sentence by striking out "1980" and inserting in lieu thereof "1982".

(b) Section 222A(h) of the Foreign Assistance Act of 1961 is amended by striking out "until September 30, 1979" and inserting in lieu thereof "through September 30, 1982".

(c) Section 223(f) of the Foreign Assistance Act of 1961 is amended—

(1) by striking out everything after "not" in the first sentence through "exceeds" in the second sentence and by inserting in lieu thereof "exceed"; and

(2) by striking out "such Department" in the second sentence and inserting in lieu thereof "the Department of Housing and Urban Development".

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 11. Section 302(a)(1) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(a)(1) There are authorized to be appropriated to the President for grants to carry out the purposes of this chapter, in addition to funds available under any other Acts for such purposes, $277,190,000 for the fiscal year 1980 and $315,325,000 for the fiscal year 1981.".

INTERNATIONAL DISASTER ASSISTANCE

SEC. 12. Section 492 of the Foreign Assistance Act of 1961 is amended by striking out "$25,000,000 for the fiscal year 1979" and inserting in lieu thereof "$25,000,000 for the fiscal year 1980 and $25,000,000 for the fiscal year 1981".

COMPLETION OF PLANS AND COST ESTIMATES

SEC. 13. Section 611(b) of the Foreign Assistance Act of 1961 is amended by striking out "Memorandum of the President dated May 15, 1962" and inserting in lieu thereof "Principles and Standards for Planning Water and Related Land Resources, dated October 25, 1973".

REIMBURSABLE DEVELOPMENT PROGRAMS

SEC. 14. Section 661 of the Foreign Assistance Act of 1961 is amended in the first sentence by striking out "$3,000,000 of the funds made available for the purposes of this Act for the fiscal year 1979" and inserting in lieu thereof "$3,800,000 of the funds made available for the purposes of this Act for the fiscal year 1980 and $5,000,000 of the funds made available for the purposes of this Act for the fiscal year 1981".

OPERATING EXPENSES

SEC. 15. Section 667(a) of the Foreign Assistance Act of 1961 is amended—

(1) by striking out "fiscal year 1979" and inserting in lieu thereof "fiscal years 1980 and 1981"; and

(2) in paragraph (1) by striking out "$261,000,000" and inserting in lieu thereof "$268,000,000 for the fiscal year 1980 and $285,000,000 for the fiscal year 1981".

REGISTRATION OF PRIVATE VOLUNTARY AGENCIES

SEC. 16. Sections 123(b), 607(a), and 635 (c) of the Foreign Assistance Act of 1961 and sections 104(f) and 202(a) of the Agricultural Trade Development and Assistance Act of 1954 are amended by striking out the words "Advisory Committee on Voluntary Foreign Aid" and "Advisory Committee" wherever they appear and inserting in lieu thereof "Agency for International Development".

MISCELLANEOUS REPEALS

SEC. 17. Section 105(c), the last sentence of section 111, section 113 (b) and (c), section 118(c), and section 620(o) of the Foreign Assistance Act of 1961 are repealed. Subsection (d) of section 113 of such Act is redesignated as subsection (b).

ADJUSTMENT OF AUTHORIZATION ACCOUNT LEVELS

SEC. 18. Appropriations for the fiscal year 1981 are authorized to be made to carry out sections 103 through 106 of the Foreign Assistance Act of 1961, in an amount up to 10 percent greater for any such section than the amount authorized by that Act for the fiscal year 1981 for such section; except that the total amount appropriated for the fiscal year 1981 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 may not exceed the total amount authorized by that Act for such sections for the fiscal year 1981.

EFFECTIVE DATE

SEC. 19. The amendments made by this Title shall take effect on October 1, 1979.

TITLE II—INSTITUTE FOR TECHNOLOGICAL COOPERATION

STATEMENT OF POLICY

SEC. 20. As declared by Congress in the Foreign Assistance Act of 1961, as amended, a principal objective of the foreign policy of the United States is the encouragement and sustained support of the people of developing countries in their efforts to acquire the knowledge and resources essential to development and to build the economic, political, and social institutions which will improve the quality of their lives. The Congress reaffirms the profound humanitarian and foreign policy concerns of the United States in the economic and social progress of the developing countries and in the alleviation of the worst physical manifestations of poverty in these countries.

In furtherance of that objective, the Congress recognizes that developing countries require extensive scientific and technological capacity in order to deal effectively with their development problems, relate to the industrialized nations, and constructively participate in the shaping of a mature world order.

It is therefore in the mutual interest of the United States and the developing countries to increase scientific and technological cooperation and jointly to support long-term research on those critical problems that impede development and limit efficient use of the world's human, natural, and capital resources.

INSTITUTE FOR TECHNOLOGICAL COOPERATION

SEC. 21. To strengthen the capacity of the people of developing countries to solve their development problems through scientific and technological innovation, to foster research on problems of development, and to facilitate scientific and technological cooperation with developing countries, the President is hereby authorized to establish an Institute for Technological Cooperation (hereinafter referred to as "Institute"), which shall be subject to the foreign policy guidance of the Secretary of State.

FUNCTIONS OF THE INSTITUTE

SEC. 22. (a) In carrying out its purposes, the Institute shall have the following functions:

(1) assist developing countries to strengthen their own capacity to generate, adapt, utilize and disseminate knowledge and technologies necessary for their development;

(2) support research, in the United States and in developing countries, on critical development problems, with emphasis on those which affect the lives of the majority of the people in developing countries;

(3) foster the exchange of scientists and other technical experts with developing countries, and other forms of exchange and communication to promote the joint solution of problems of mutual concern to the United States and developing countries;

(4) advise and assist other agencies of the United States Government in planning and executing policies and programs of scientific and technological cooperation with developing countries;

(5) facilitate the participation of private United States institutions, businesses, and individuals in research, training and other forms of cooperation with developing countries;

(6) gather, analyze, and disseminate information relevant to the scientific and technological needs of developing countries.

(b) For purposes of carrying out the functions of the Institute, the President may utilize, in addition to authorities conferred herein, such authority contained in the Foreign Assistance Act of 1961, as amended; the Foreign Service Act of 1946, as amended; Title V of the Foreign Relations Authorization Act, Fiscal Year 1979; and Title IV of the International Development and Food Assistance Act of 1978, as the President deems necessary.

(c) The Institute shall carry out its functions in consultation and cooperation with the agencies of the United States Government, international organizations, and agencies of other governments engaged in promoting economic, social and technological development in developing countries.

(d) The President shall prescribe appropriate procedures to assure coordination of the activities of the Institute with other activities of the United States Government in furthering the use of science and technology in the cause of development.

GENERAL AUTHORITIES

SEC. 23. To carry out the purposes and functions of the Institute, the President may—

(1) make and perform contracts and other agreements with any individual, institution, corporation, or other body of persons however designated, within or without the United States, and with governments or government agencies, domestic or foreign;

(2) make advances, grants, and loans to any individual, institution, corporation or other body of persons however designated, within or without the United States, and to governments or government agencies, domestic or foreign;

(3) employ such personnel as necessary and fix their compensation;

(4) make provision for compensation, transportation, housing, subsistence (or per diem in lieu thereof), and health care or health and accident insurance for foreign nationals engaged in activities authorized by this Title while they are away from their homes, without regard to the provisions of any other law;

(5) accept and use money, funds, property and services of any kind by gift, devise, bequest, grant or otherwise in furtherance of the purposes of the Institute;

(6) acquire by purchase, lease, loan, bequest, or gift and hold and dispose of by sale, lease, loan, or grant, real and personal property of all kinds;

(7) prescribe, amend, and repeal such rules and regulations as may be necessary to the conduct of the business of the Institute;

(8) utilize information, services, facilities, officers, and employees of any agency of the United States Government;

(9) establish a principal office in the United States and such other offices within or without the United States, as may be necessary;

(10) make such expenditures as may be necessary for administering the provisions of this Title;

(11) adopt, alter and use an official seal for the Institute, which shall be judicially noticed;

(12) take such other actions as may be necessary and incident to carrying out the functions of the Institute.

DIRECTOR OF THE INSTITUTE

SEC. 24. (a) There shall be a Director of the Institute (hereinafter referred to as the "Director") who shall be the chief executive officer of the Institute. The Director shall be appointed by the President by and with the advice and consent of the Senate, and shall receive compensation at the rate provided for Level III of the Executive Schedule under Section 5314 of Title 5 of the United States Code.

(b) The President may exercise any authorities conferred upon him by this Title through the Director or any other agency or officer of the United States Government as he shall direct. The Director or head of any such agency or any such officer may delegate to any of his subordinates authority to perform any of such functions.

DEPUTY DIRECTOR AND OTHER STATUTORY OFFICERS

SEC. 25. (a) A Deputy Director of the Institute shall be appointed by the President by and with the advice and consent of the Senate. The Deputy Director shall receive compensation at the rate provided for Level IV of the Executive Schedule under Section 5315 of Title 5 of the United States Code;

(b) The Deputy Director shall perform such duties and exercise such powers as the Director may prescribe;

(c) The President may establish up to two additional positions in the Institute to be compensated at the rate provided for Level V of the Executive Schedule under Section 5316 of Title 5 of the United States Code.

COUNCIL ON INTERNATIONAL TECHNOLOGICAL COOPERATION

SEC. 26. (a) In order to further the purposes of the Institute, the President is authorized to establish a Council on International Technological Cooperation (hereinafter referred to as the "Council").

(b) The Council shall—

(1) advise the Director with respect to the policies, programs, and procedures of the Institute;

(2) make recommendations to the Director on the use of the resources available to the Institute; and

(3) advise the Director on matters involving the activities of the Institute overseas and appropriate relationships with the private sector, within and without the United States.

(c) The Council shall consist of up to twenty-five members selected by the President, one of whom the President shall designate as Chairman. The members of the Council shall be selected from among—

(1) citizens of the United States who are widely recognized for their broad knowledge of, or expertise in, science and technology, or their interest in the scientific and technological problems of developing countries;

(2) citizens of foreign countries who by their knowledge and expertise are capable of providing advice and guidance to the Institute on the application of science and technology to the problems of developing countries, except that not more than one-third of the membership of the Council shall consist of members who are citizens of foreign countries; and

(3) up to five members of the Council may be officials of the United States Government, one of whom shall be the Secretary of State or his designee.

(d) Members of the Council who are not officials of the United States Government shall be entitled to compensation, not to exceed the daily equivalent of the highest rate which may be paid to an employee under the General Schedule established by section 5332 of Title 5 of the United States Code, while in the performance of their duties under this Title, and to reimbursement for expenses and per diem in lieu of subsistence while away from their homes, or regular places of business, in accordance with the provisions of Section 5703 of Title 5 of the United States Code for persons in government service employed intermittently. Members of the Council who are not officials of the United States Government shall not be deemed officers, employees, or otherwise in the service or employment of the United States Government for any purpose, except that members of the Council who are United States citizens shall be deemed Government employees for the purposes of sections 202, 203, 205, 207–209 of Title 18 of the United States Code.

INSTITUTE FELLOWSHIPS

SEC. 27. (a) The President is authorized to award up to twenty fellowships annually for periods up to two years, such awards to be renewable for an additional period not to exceed two years, to individuals who have demonstrated exceptional competence and ability in the fields of scientific, technological, economic or social endeavor selected by the Institute for concentration. The awards shall be made so as to encompass a wide diversity of disciplines and backgrounds, and shall be made on the basis of criteria established by the President upon the advice of the Council. Up to ten of the awards in any year may be made to citizens of countries other than the United States. Individuals awarded fellowships shall be designated as Institute Fellows.

(b) The President may assign Institute Fellows to undertake such activities, in the United States or abroad, as will further the purposes of the Institute.

(c) The amount of the awards made pursuant to this Section shall be established by the President, but shall not in any case exceed the highest rate which may be paid to an employee under the General Schedule established by Section 5332 of Title 5 of the United States Code. In addition, where appropriate, the President may make provision for transportation, housing (when assigned outside country of residence), subsistence (or per diem in lieu thereof), and health care or health or accident insurance for Institute Fellows and their dependents while engaged in activities authorized by this Title.

(d) Except as provided otherwise in this section, Institute Fellows shall not be deemed employees or otherwise in the service or employment of the United States Government. Institute Fellows shall be considered employees for purposes of compensation injuries under chapter 81 of Title 5 of the United States Code and the tort claim provisions of chapter 171 of Title 28 of the United States Code. In addition, Institute Fellows who are United States citizens shall be considered Government employees for purposes of sections 202, 203, 205, 207–209 of Title 18 of the United States Code.

(e) Alien participants in any program of the Institute, including Institute Fellows and their dependents, may be admitted to the United States if otherwise qualified as nonimmigrants under Section 101(a)(15) of the Immigration and Nationality Act, as amended, for such time and under such conditions as may be prescribed by regulations promulgated by the Secretary of State and the Attorney General.

CONFLICT OF INTEREST

SEC. 28. Members of the Council and Institute Fellows shall avoid any action which might result in, or create the appearance of, a conflict of interest, including but not limited to:

(1) using their office or position for private gain;

(2) giving preferential treatment to any person;

(3) making recommendations or decisions relating to any activity authorized by this Title in other than an impartial and independent manner;

(4) misusing Government property or official information obtained through their office or position which has not been made available to the general public; or

(5) affecting adversely the confidence of the public in the integrity of the Institute.

APPROPRIATIONS

SEC. 29. There are hereby authorized to be appropriated to the President to carry out the provisions of this Title, in addition to funds otherwise available for such purposes, $25,000,000 for the fiscal year 1980, and $40,000,000 for the fiscal year 1981. Funds appropriated under this Section are authorized to remain available until expended.

ANNUAL REPORT

SEC. 30. Within ninety days after the end of each fiscal year, the President shall submit to Congress a complete and detailed report of the Institute's operations during such fiscal year.

MISCELLANEOUS PROVISIONS

SEC. 31. (a) Section 5314 of Title 5 of the United States Code, relating to Level III of the Executive Schedule, is amended by adding at the end thereof the following:

"(67) Director, Institute for Technological Cooperation."

(b) Section 5315 of Title 5 of the United States Code, relating to Level IV of the Executive Schedule, is amended by adding at the end thereof the following:

"(122) Deputy Director, Institute for Technological Cooperation."

(c) Section 5316 of Title 5 of the United States Code, relating to Level V of the Executive Schedule, is amended by adding at the end thereof the following:

"(144) Additional officers, Institute for Technological Cooperation (2)."

(d) The number of positions published pursuant to section 5311(b)(1) of Title 5 of the United States Code is hereby increased by four.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED INTERNATIONAL DEVELOPMENT ASSISTANCE ACT OF 1979

I. INTRODUCTION

The proposed International Development Assistance Act of 1979 (hereinafter referred to as the "bill") in Title I is essentially an amendment to the Foreign Assistance Act of 1961, as amended (hereinafter referred to as the "Act"). Title I also includes several freestanding provisions not made a part of the Act. A major purpose of the bill is to provide authorization for appropriations for activities under the Act for the fiscal years 1980 and 1981. The bill contains authorizations for appropriations for development assistance activities only. The fiscal year 1980 authorization levels requested for programs under part I of the Act are those set forth in the President's fiscal year 1980 budget. The fiscal year 1981 authorization levels are those approved by the Office of Management and Budget

Title II of the bill authorizes the establishment of an Institute for Technological Cooperation under the foreign policy guidance of the Secretary of State. The bill contains authorization for appropriations for the Institute of $25 million for fiscal year 1980 and $40 million for fiscal year 1981. The proposed Institute is an important new initiative to strengthen the capacity of the United States Government to provide scientific and technological assistance to developing countries. The Institute will carry out programs of research, scientific exchange, and institutional strengthening in developing countries in close collaboration with other agencies engaged in related develop-

ment activities. The Institute will be headed by a Director, who would receive advice from a council on international technological cooperation. A program of fellowships permits the Institute to select outstanding individuals to undertake scientific and research activities for limited periods of time in support of the Institute's goals. The new Institute will add a valuable new means of cooperating with other nations on technological matters for the benefit of developing countries and in our own national interest.

The principal substantive amendments under the development assistance title are: a restatement of policy for energy programs emphasizing renewable energy technologies; an increase in the no-year authorization for the Sahel Development Program in Africa; use of the authority provided in section 124 of the Act for retroactive terms adjustment on amounts falling due during fiscal years 1980 and 1981 to the United States from the relatively least developed countries on loans made under part I of the Act; an increase in the guaranty authority for the Housing Guaranty program and a change in the formula for calculation of maximum interest rates on loans guaranteed; and a provision authorizing appropriations in fiscal year 1981 for chapter 1 programs in amounts up to 10% greater than authorized dollar levels for that year for any given account so long as the total amount authorized for chapter 1 programs is not exceeded.

II. PROVISIONS OF THE BILL

Title I—Development Assistance

Section 1. Short title.

This section provides that the bill may be cited as the "International Development Assistance Act of 1979".

Section 2. Agriculture, rural development and nutrition.

This section amends section 103 of the Act, which authorizes programs in agriculture, rural development and nutrition. Section 103(a)(2) of the Act is amended to authorize $715,366,000 for the fiscal year 1980 and $789,000,000 for the fiscal year 1981 to carry out programs under section 103. Agriculture, rural development and nutrition will continue to receive primary emphasis under this authorization.

Section 3. Population and health.

This section amends section 104 of the Act, which authorizes programs of population planning and health. Section 104(g) of the Act is amended to authorize $216,321,000 for the fiscal year 1980 and $255,000,000 for the fiscal year 1981 for population planning programs and $146,573,000 for the fiscal year 1980 and $210,000,000 for the fiscal year 1981 for health programs.

Section 4. Education and human resources development.

This section amends section 105 of the Act, which authorizes programs of education and human resources development. Section 105(a) of the Act is amended to authorize $119,497,000 for the fiscal year 1980 and $140,000,000 for the fiscal year 1981 for programs relating to education and human resources development.

Section 5. Technical assistance, energy, research, reconstruction and selected development problems.

This section amends section 106 of the Act, which authorizes programs relating to technical assistance, energy, research, reconstruction and selected development problems. Section 106(b) of the Act is amended to authorize the appropriation of $136,122,000 for the fiscal year 1980 and $180,300,000 for the fiscal year 1981 for such programs.

Section 6. Energy programs.

This section amends section 119 of the Act by (1) changing the section caption to read "Energy Programs"; (2) by adding a new subsection (a) which states the findings of Congress that energy production and conservation are vital elements in the development process and that an enhanced effort to increase the access of the poor to energy sources and to expand the energy resources of developing countries, primarily through greater emphasis of the renewable resources, is required; and (3) by adding a new subsection (c) which includes an illustrative list of energy programs which may be pursued, including research, development, demonstration, and application of suitable energy technologies; analysis of energy uses, needs, and resources; training and institutional development; and scientific interchange.

Existing subsections (a) and (b) of section 119 of the Act remain unchanged, but are redesignated as subsections (b) and (d), respectively.

Section 7. Sahel development program—implementation.

This section amends section 121(c) of the Act to authorize, in addition to amounts previously authorized, $160,000,000 for the Sahel Development program on a "no-year" basis. Section 121(c) of the Act currently authorizes on a "no-year" basis a total amount of $200,000,000 for the Sahel Development program in Africa, so the new total authorized amount will be $360,000,000. Amounts appropriated for the program through fiscal year 1979 total $125,000,000.

Section 8. Relatively least developed countries.

This section amends section 124(c) of the Act to provide retroactive terms adjustment during fiscal years 1980 and 1981 for relatively least developed countries on outstanding loans made under part I of the Act. Pursuant to the provisions of section 124 of the Act, the President may on a case-by-case basis allow relatively least developed countries to deposit local currency into special accounts for development uses in amounts equivalent to dollar payments due to the United States in a given year in place of repayment. Authorization for implementation of this provision for eligible countries is included in the amount of $18,800,000 for the fiscal year 1980 and $18,200,000 for the fiscal year 1981.

Section 9. American schools and hospitals abroad.

This section amends section 214 of the Act, which authorizes assistance to schools and hospitals located outside the United States which serve as demonstration centers for American ideas and practices and are sponsored or founded by United States citizens. Section 214(c) of the Act is amended to authorize $15,000,000 for the fiscal year 1980 and $20,000,000 for the fiscal year 1981 for the American Schools and Hospitals Abroad programs.

Section 10. Housing and other credit guaranty programs.

These sections amend title III of chapter 2 of part I of the Act, relating to housing and other credit guaranty programs.

Section 10(a) amends section 222(a) of the Act by increasing the maximum guaranty authority for housing guaranty programs to $1,505,000,000. This represents an increase of $325,000,000 from the current level of $1,180,000,000. Section 10(a) also extends the period of program authorization through September 30, 1982.

Section 10(b) amends section 222A(h) of the Act to extend program authority for the issuance of guaranties under the Agricultural and Productive Credit and Self-Help Community Development Programs through September 30, 1982.

Section 10(c) amends section 223(f) of the Act by deleting the existing formula for establishing interest rates on loans guaranteed under the Housing Guaranty program on the basis of a range establishing both minimum and maximum interest rate levels. The existing formula is replaced by a new formula for setting maximum interest rates without specifying minimum interest rates. It continues to be tied, as under current legislation, to not more than 1% above the maximum interest rate allowable on mortgages insured by the Department of Housing and Urban Development.

Section 11. International organizations and programs.

This section amends section 302 of the Act, which authorizes grants to international organizations for their programs. Section 302(a)(1) of the Act is amended to authorize appropriations for grants in the amount of $277,190,000 for the fiscal year 1980 and $315,325,000 for the fiscal year 1981 for these programs.

Section 12. International disaster assistance.

This section amends section 492 of the Act, which authorizes funds for international disaster assistance. Section 492 of the Act is amended to authorize appropriations of $25,000,000 in each of the fiscal years 1980 and 1981.

Section 13. Completion of plans and cost estimates.

This section amends section 611(b) of the Act, which relates to plans and cost estimates for water or related land resource construction projects financed under the Act. Section 611(b) of the Act requires that a cost-benefit analysis be carried out for such water-related projects according to the procedures of a Memorandum of the President dated May 15, 1962. Since that document has been superseded by a later document on the same subject, this technical amendment updates the statutory reference by citing the document entitled "Principles and Standards for Planning Water and Related Land Resources, dated October 25, 1973".

Section 14. Reimbursable development programs.

This section amends section 661 of the Act, which authorizes use of a specified amount of funds made available for the purposes of part I of the Act in order to stimulate reimbursable development programs. Section 661 of the Act is amended to allow use of up to $3,800,000 and $5,000,000, respectively, of the funds made available for the purposes of the Act for the fiscal year 1980 and the fiscal year 1981.

Section 15. Operating expenses.

This section amends section 667 of the Act, which authorizes funds for operating expenses of the Agency for International Development. Section 667(a) of the Act is amended to authorize $268,000,000 for the fiscal year 1980 and $285,000,000 for the fiscal year 1981 for operating expenses.

Section 16. Registration of private voluntary agencies.

This section amends sections 123(b), 607(a), and 635(c) of the Act and sections 104(f) and 202(a) of the Agricultural Trade Development and Assistance Act of 1954, as amended, to change the responsibility for registration of private voluntary agencies for assistance under the foreign assistance program from the Advisory Committee on Voluntary Foreign Aid to the Agency for International Development. References to the Advisory Committee on Voluntary Foreign Aid in the context of responsibility for registration of private voluntary agencies are changed wherever they appear to references to the Agency for International Development.

Section 17. Miscellaneous repeals.

This section repeals section 105(c), the last sentence of section 111, section 113 (b) and (c), section 118(c), and section 620(o) of the Act. Section 105(c) is an outdated provision of the Act relating only to specified uses of funds authorized for the fiscal years 1977 and 1978. The last sentence of section 111 of the Act is an outdated provision re-

lated only to specified use of funds authorized for the fiscal year 1978. Section 113 (b) and (c) are outdated provisions requiring the submission to the Congress of a report which has already been submitted. Section 118(c) of the Act is an outdated provision requiring submission of a report to the Congress which will have been submitted before the passage of this bill. Section 620(o) of the Act is an obsolete provision requiring that consideration be given to excluding from assistance any country which seizes or imposes any penalty or sanction against any United States fishing vessel on account of its fishing activities in international waters. This provision relates back to past controversies between the United States and certain foreign countries over the right of such countries to establish fishing jurisdiction over their coastal waters out to a 200-mile limit. Since the United States now has also adopted that same 200-mile limit and recognizes the right of other countries to do so, this provision has become obsolete.

Section 18. Adjustment of authorization account levels.

This section is a freestanding provision in the bill which authorizes appropriations in the fiscal year 1981 for the programs authorized in chapter 1 of the Act in an amount up to 10% greater than the dollar amount authorized for any given account, provided that the total amount authorized for chapter 1 programs is not exceeded. This section provides authority for appropriations in the fiscal year 1981 for given accounts in chapter 1 to be greater than the amounts authorized for such accounts for the fiscal year 1981 in this bill; but in order to meet the requirement that the total authorization level for chapter 1 programs is not increased, any increases in given chapter 1 accounts would have to be matched by corresponding decreases of authorized levels in other chapter 1 accounts.

Section 19. Effective date.

This section is a freestanding provision which provides that the amendments made by Title I shall take effect on October 1, 1979.

Title II—Institute for Technological Cooperation

This is a freestanding title which authorizes the President to establish an Institute for Technological Cooperation (the "Institute") to assist developing countries through science and technology.

Statement of Policy

Section 20. Purpose. This section sets forth the fundamental policies and principles underpinning the programs of the Institute. The section begins by referring to the Foreign Assistance Act of 1961 and by emphasizing that the purposes of the Institute are consistent with the development assistance philosophy enunciated in section 101 of the Foreign Assistance Act of 1961, as amended (the "FAA"):

"A principal objective of the foreign policy of the United States is the encouragement and sustained support of the people of developing countries in their efforts to acquire the knowledge and resources essentia lto development. . . ."

The section reaffirms the humanitarian and foreign policy concern of the United States in the economic and social progress of the developing countries and in the alleviation of poverty. The section recognizes the importance of science and technology in development and the mutual gains for developed and developing countries that will derive from expanded programs in this area. It further recognizes the importance of strengthening the capacity of developing countries to generate technology and to participate more effectively in common efforts to shape a better world order.

Background. This section is designed to provide a coherent link between the important purposes set forth in the FAA and the programs of science and technology contained in this Title.

Institute for Technological Cooperation

Section 21. Purpose. Section 21 authorizes the President to establish the Institute for the purposes of:

(1) strengthening the capacity of the people of developing countries to solve their development problems through scientific and technological innovation;

(2) fostering research on problems of development; and

(3) facilitating scientific and technological cooperation with developing countries.

The Institute shall operate under the foreign policy guidance of the Secretary of State.

Background. The legislation authorizes the President to establish an Institute which will provide scientific and professional direction to programs of capacity-building, research and technological cooperation for development. The Institute would be established in order to provide for a sustained, long-term effort in bringing scientific and technological skills to bear on the solution to critical development problems. The structure of the Institute provides a unique means for directly engaging United States and developing country scientists and technologists in joint programs of research and programs to build the capacities of developing country institutions.

The purposes of the Institute derive from the basic purposes of the FAA. The Institute is distinguished from the Agency for International Development which administers Part I of the FAA, by the Institute's primary focus on science and technology, and by its promotion of programs of technological cooperation with developing countries on both development problems of the poor and those concerning global maintenance such as environment and energy. The specific purposes of the Institute address the serious limitations in the knowledge and capacity available to solve problems of the majority of the population in developing countries. Specific agronomic, biological, immunological and environmental factors have inhibited the effectiveness of technology transferred directly or adapted from the developed countries; social, cultural, and economic factors have also prevented effective transfer and application of such technology for the benefit of the majority of people in these countries. Mobilizing the scientific and technological skills in the U.S., collaboratively with those in developing countries, provides a valuable tool in addressing these obstacles. The processes of joint research, analysis, and training should not only provide answers to some of the most important problems, but are aimed at building relevant skills in the developing countries for addressing their own development problems in the future.

Functions of the Institute

Section 22. Purpose. Section 22(a) sets out six functions by which the Institute should carry out its purposes. These include:

(1) strengthening institutional capacity to solve development problems in the developing countries themselves;

(2) supporting research on critical development problems, especially those which affect the majority of the population in developing countries;

(3) fostering the exchange of scientists and information to promote the joint solution of problems of mutual concern to the U.S. and developing countries;

(4) advising and assisting other U.S. Government agencies in the application of science and technology to development;

(5) facilitating private sector participation in scientific and technological cooperation with developing countries; and

(6) providing information on science and technology of use to developing countries.

Section 22(b) provides that the President may utilize the authorities of the FAA, the Foreign Service Act of 1946, as amended, Title V of the Foreign Relations Authorization Act, Fiscal Year 1979, and the unified personnel provision of Title IV of the International Development and Food Assistance Act of 1978, in addition to the authorities in this Title, to carry out the functions of the Institute.

Section 22(c) states that the Institute should carry out its functions in consultation and cooperation with other governmental institutions—domestic, foreign, and international—engaged in promoting development.

Section 22(d) empowers the President to prescribe appropriate procedures to assure coordination of the Institute's activities with other activities of the U.S. Government aimed at furthering development through science and technology.

Background. The six functions of the Institute relate to, strengthen, and in some cases add to the development assistance principles set forth in section 102(b) of the FAA.

The first function, strengthening local institutional capacity for problem solving, parallels sections 102(b)(1), 102(b)(2), and 102(b)(3) of the FAA, which emphasize local responsibility for development. This function aims at improving skills and capacities which enhance people's ability to satisfy basic human needs in the developing countries and which provide the scientific and technological capacity to enable countries to provide for their own growth and the welfare of their populations on a continuing basis.

The second function, supporting research on critical development problems, follows closely the language of section 102(b)(5) of the FAA, and places emphasis on problems which affect the majority of the population in developing countries. Such research will not always assure a direct, immediate benefit for the poor, but will be managed so as to find solutions to the problems of the poor.

"Research" is furthermore assumed to include, wherever appropriate, the necessary development and testing of research results to demonstrate their value to the poor, to developing country governments and institutions, and to donor agencies. Research will also be conducted on other problems of mutual concern to the United States and the developing countries.

The third function is designed to promote joint work with developing country scientists on problems of mutual concern to the U.S. and those countries. This is intended to include exchange of information, cooperative research undertakings, exchange of teachers, joint teaching, and other activities which promote joint solution to those problems. Problems of mutual concern include those in which the U.S. has a general policy interest, such as those related to poverty in the developing countries, and those problems in the developing countries whose study or solution could enhance the health, economy, or other aspects of American life. Programs contributing to these objectives would be undertaken with middle-income developing countries, on a cost-shared basis, as well as with the poorer developing countries in order to, among other things, gain as fully as possible from the technological skills and capacities emerging in those countries.

The fourth function directs the Institute to work with other government agencies engaged in programs of scientific and technical cooperation with developing countries in order to maximize benefits and assure efficiency. The fifth function requires the Institute to facilitate private sector participation in development, a similar emphasis to that found in section 102(b)(8) of the FAA. The sixth function stresses the importance of gathering, analyzing, and disseminating information relevant to solving development problems.

Collectively, the six functions provide

the outline of an Institute which will and sustained problem-solving. The Institute should, with this legislative charge, be at the forefront of new knowledge relating to development: its functions of exchanging scientist, disseminating information, and facilitating private sector activities should ensure its capacity to stay abreast of new information and discoveries; its support for collaborative research and training should enable it to contribute substantially to overcoming technological and other obstacles which inhibit development. The results of its programs would contribute to the more efficient use of other development assistance funds.

Section 22(b), (c) and (d) are designed to ensure close coordination and cooperation between the Institute and other agencies and institutions, domestic or foreign, engaged in development activities. Sections (c) and (d) particularly provide sufficient flexibility for the Institute to work with or relate to AID or any other successor organization. Section 22(c) parallels in part the principle set forth in section 102(b)(11) of the FAA and is consistent with Title V of the Foreign Relations Authorization Act, Fiscal Year 1979.

General Authorities

Section 23. Purpose. Section 23 sets forth the general authorities granted to the President by which he shall carry out the purposes and functions of the Institute. Such powers or authorities are:

(1) the making and performance of contracts and agreements;

(2) the making of advances, grants, and loans;

(3) the establishment of a personnel system, subject to general civil service rules and regulations;

(4) the utilization of the talents of foreign nationals by payment of compensation and their expenses while assisting the work of the Institute;

(5) the acceptance of money, funds, property, and services for Institute use;

(6) the acquisition and disposition of property of all kinds;

(7) the establishment of Institute rules and regulations to guide its operations;

(8) the ability to utilize the services, information, and employees of any agency;

(9) the establishment of a principal office and other necessary offices;

(10) the making of necessary expenditures;

(11) the use of an official seal for the Institute; and

(12) such other actions as may be necessary and incident to carrying out functions of the Institute.

Background. The general authorities are necessary powers which enable the President to carry out the functions of the Institute. Such grant of authorities to the President in this Title to carry out the work of the Institute is consistent with the grant of authorities to the President in the FAA and enables the President to exercise such authorities directly through the Institute or through any agency or administrative arrangement he chooses.

The general authorities require little background information beyond the explanation contained in the purposes above. The personnel provision in (c) permits the establishment of a personnel system adapted to the needs of the Institute but subject to civil service laws and regulations, including the recently enacted Civil Service Reform Act of 1978. That Act contains provisions for a Senior Executive Service, and sets mandatory ceiling limits on the numbers of positions in that category as well as for scientific and professional personnel. The Institute would require the allocation of a certain number of positions in each category for its effective operation.

At the same time AID is preparing a new personnel system in response to Title IV of the International Development and Food Assistance Act of 1978. The President is also empowered pursuant to section 22(b) of this Act to use the authority contained in Title IV as well as authorities from the FAA of 1961 and the Foreign Service Act of 1946, to establish a personnel system adapted to the needs of the Institute, but patterned after that designed for AID to the extent desirable.

The establishment of offices of the Institute abroad would be subject to the concurrence of the Secretary of State, if this authority is delegated to the Director or other officers of the U.S. Government.

Section 23(d) is necessary to permit the Institute to utilize fully the services of foreign nationals in planning and reviewing the activities of the Institute. The involvement of foreign nationals, particularly those from developing countries, is a unique and crucial element in the operational style of the Institute.

Director of the Institute

Section 24. Purpose. Section 24(a) establishes the office of Director of the Institute, who shall be the chief executive officer of the Institute. He shall be appointed by the President by and with the advice and consent of the Senate, and receive compensation at the rate provided for Level III of the Executive Schedule.

Section 24(b) enables the President to exercise the authorities of this Title through the Director or any other agency or officer.

Background. This section establishes the Director as the chief executive officer of the Institute. Section 24(b) enables the President to exercise the authorities of this Title through the Director or any other agency or officer, consistent with whatever organizational structure for U.S. foreign assistance programs is established. Depending on the organizational structure established, the Director may report directly to the President or indirectly to him through his designee, as may be provided for in anticipated reorganization of the foreign assistance agencies and programs.

Deputy Director and Other Statutory Officers

Section 25. Purpose. This section establishes the position of Deputy Director of the Institute to be appointed by the President by and with the advice and consent of the Senate. He shall perform such duties and exercise such powers as the Director may determine, and receive compensation at the rate provided for Level IV of the Executive Schedule. The section also provides for up to two additional officers appointed by the President to be compensated at the rate provided for Level V of the Executive Schedule.

Background. This section establishes the positions of Deputy Director and up to two additional officers for the Institute.

Council on International Technological Cooperation

Section 26. Purpose. This section authorizes the President to establish a Council on International Technological Cooperation to advise the Director. The Council has three specific duties:

(1) to advise on policies, programs, and procedures of the Institute;

(2) to make recommendations on the use of resources available to the Institute (such as appropriated funds, gifts and donated services, and the scientific and technical resources at the disposal of the Institute);

(3) to advise on the overseas activities of the Institute, and the appropriate relationships with the private sector.

Section 26(c) provides that the Council shall consist of up to 25 members selected by the President, one of whom shall be designated chairman by the President. Up to one-third of the membership of the Council may be non-citizens of the U.S. Up to five officials of the U.S. Government may be designated members of the Council, one of whom shall be the Secretary of State or his designee.

Section 26(d) enables the non-official members of the Council to be compensated for their services at rates no higher than the highest daily rate for an employee under the Civil Service system and to be reimbursed for their travel and per diem expenses. Compensation of members of the Council does not make them officers or employees of the U.S. Government for any purpose, including the requirements of taking an oath of allegiance to the United States (Section 3331 of Title 5 of the U.S. Code), an unwarranted and unnecessary burden on the foreign members of the Council. However, members of the Council who are United States citizens are subject to the conflict of interest provisions of Title 18 of the U.S. Code as they apply to Government employees.

Background. The Council may be established in order to provide a strong and informed body to advise the Director on the work of the Institute. Members are to be selected from among citizens of the United States and citizens of other countries whose knowledge enables them to provide advice and guidance to the Institute on the application of science and technology to development problems. Members ought to be selected so as to provide a breadth of views and representation from United States and foreign universities and research institutions, private and voluntary organizations, business, and other organizations concerned with development.

The President shall designate one of the members to be Chairman. Meetings should be held with sufficient frequency to keep the members fully informed of the activities of the Institute. The terms of the members may be set by the President, but they should be staggered to permit continuity of advice.

The Council should set its manner of conducting business, subject to the Federal Advisory Committee Act.

The specified duties of the Council are not intended to limit the activities of the Council, but to define its particular areas of responsibility. It is the intent of the legislation that the Director shall actively seek the advice of the Council and keep the members fully and currently informed regarding the policies and activities of the Institute so that they may discharge their responsibilites properly.

The involvement of non-citizen members of the Council, especially those from developing countries, is an especially important feature designed to secure diverse opinions and to ensure that the Institute remains relevant to developing country needs. Their participation makes it inappropriate to apply such provisions of law as an oath of allegiance to the U.S. required of U.S. officers and employees.

Institute Fellowship

Section 27. Purpose. Section 27 establishes a program of Institute Fellowships. Up to twenty fellowships may be awarded annually for periods up to two years, with the possibility of renewal for an additional period of two years. Thus, the number of fellowships at any one time would not exceed forty. The awards are to be made to individuals who have demonstrated exceptional competence and ability in their fields of endeavor. During the period of their tenure as Fellows they are to undertake activities that will further the work of the Institute, whether in the U.S. or abroad, as the President may determine. In some circumstances, Institute Fellows would be engaged in research on critical development problems. Up to ten of the awards in any one year may be made to foreign nationals in order to utilize exceptional talent worldwide.

Section 27(c) sets a ceiling on the amount of the awards at a level no higher than the highest rate for an employee under the Civil

Service system. In addition, Fellows may be provided transportation, housing, subsistence (or per diem in lieu thereof), and health care or insurance where appropriate, in the United States or abroad, when engaged in Institute activities.

Section 27(d) provides that Institute Fellows shall not be deemed employees or otherwise in the service or employment of the United States Government. The exceptions would provide coverage by workmen's compensation and the Federal Tort Claims Act. In the case of United States citizens Institute Fellows would be considered Government employees insofar as they are subject to the conflict of interest provisions of Title 18 of the U.S. Code.

Section 27(e) provides authority for noncitizens, including Institute Fellows, engaged in Institute activities to obtain nonimmigrant visas to the U.S. under section 101(a)(15) of the Immigration and Nationality Act. This provision is similar to section 635(f) of the FAA and section 9 of the Peace Corps Act.

Background. Institute Fellowships are a principal means of mobilizing scientific talent in the cause of development. Fellows may be utilized in activities that will further the purposes of the Institute. The fellowships, similar to those provided by the National Institutes of Health, provide a means for bringing into the Institute scientists and technical professionals, both senior and junior, whose careers are with universities, the private sector, or in governments overseas, but who are prepared to spend two to four years devoting their skills to the problems of development. They will provide the Institute non-career expertise, and help encourage scientists to work on development problems during their careers. The inclusion of scientists from developing countries adds relevance to the Institute's focus and will help establish a cooperative network of scientists and technical specialists working on common problems in developing countries. Up to ten of the fellowships awarded in any one year may be to foreign nationals. The amount of the awards shall be set by the President, but the amount may not exceed the highest salary for an employee under the Civil Service system. While Institute Fellows are not considered Government employees or officials, it is the intent of the legislation that Fellows will participate fully in programs and activities of the Institute.

Conflict of Interest

Section 28. Purpose. Section 28 provides standards of ethical conduct which shall apply to members of the Council and Institute Fellows. These are similar to those governing employees and special government employees provided for in Executive Order No. 11222 of May 8, 1965. U.S. citizens who are Council members or Institute Fellows, and regular employees of the Institute would also be governed by applicable provisions of the U.S. Code.

Background. A special conflict of interest provision is necessary to cover members of the Council and Institute Fellows who are declared by statute not to be employees or otherwise in the service or employment of the United States Government. The provision is intended to require standards of conduct of the same quality of integrity required of United States Government employees. U.S. citizen Fellows and members of the Council who are U.S. citizens are also covered by the statutory provisions in Title 18 of the U.S. Code which relate to conflict of interest for Government employees.

Appropriations

Section 29. Purpose. Section 29 authorizes appropriations of $25 million for FY 1980 and $40 million for FY 1981, in addition to funds that may be otherwise available from other legislation. Funds appropriated are authorized to remain available until expended.

Background. This section provides a two-year authorization for the Institute, and authorizes funds appropriated to remain available until expended.

Annual Report

Section 30. Purpose. Section 30 requires the Institute to produce an annual report on its operations for Congress.

Background. This section provides for the usual report by a Federal Government entity to Congress on its activities. This enables the Congress to exercise its oversight functions with respect to the Institute.

Miscellaneous Provision

Section 31. These provisions add the four Presidentially-appointed positions authorized in sections 24 and 25 of this Act to the relevant sections of Title 5 of the U.S. Code, and enable these four positions to be added to the number promulgated under section 5311(b)(1) of Title 5 of the U.S. Code.

DEPARTMENT OF STATE,
Washington, February 24, 1979.

Hon. WALTER F. MONDALE,
President of the Senate.

DEAR MR. PRESIDENT: Enclosed herewith is the proposed International Development Assistance Act of 1979, an Act to authorize appropriations for foreign assistance development programs for the fiscal years 1980 and 1981, the establishment of an Institute for Technological Cooperation, and for other purposes. The bill contains authorization for appropriations for development assistance activities only. The fiscal year 1980 authorization levels requested are those set in the President's fiscal year 1980 budget. The fiscal year 1981 authorization levels are those approved by the Office of Management and Budget.

Title II of the bill authorizes the establishment of an Institute for Technological Cooperation under the foreing policy guidance of the Secretary of State. The bill contains authorization for appropriations for the Institute of $25 million for fiscal year 1980 and $40 million for fiscal year 1981. The proposed Institute is an important new initiative to strengthen the capacity of the United States Government to provide scientific and technological assistance to developing countries. The Institute will carry out programs of research, scientific exchange, and institutional strengthening in developing countries in close collaboration with other agencies engaged in related development activities. The Institute will be headed by a Director, who would receive advice from a council on international technological cooperation. A program of fellowships permits the Institute to select outstanding individuals to undertake scientific and research activities for limited periods of time in support of the Institute's goals. The new Institute will add a valuable new means of cooperating with other nations on technological matters for the benefit of developing countries and in our own national interest.

The enclosed bill also includes amendments of a technical nature intended to simplify and remove obsolete provisions of the Foreign Assistance Act of 1961, as amended. The principal substantive amendments included in Title I of the bill relating to development assistance are: a restatement of policy for energy programs emphasizing renewable energy technologies; an increase in the no-year authorization for the Sahel Development Program in Africa; and use of the authority provided in section 124 of the Foreign Assistance Act of 1961, as amended, for retroactive terms adjustment on amounts falling due on loans made under part I of that Act during fiscal years 1980 and 1981 from the least developed countries.

The Office of Management and Budget advises that there is no objection to the presentation of this proposal to the Congress and that its enactment would be in accord with the program of the President.

Sincerely,

WARREN CHRISTOPHER,
Acting Secretary.

By Mr. BENTSEN (for himself, Mr. JAVITS, Mr. DECONCINI, Mr. HAYAKAWA, and Mr. CHURCH):

S. 589. A bill to restore the deductibility of expenses for attending certain conventions in Mexico and Canada; to the Committee on Finance.

MEXICAN AND CANADIAN BUSINESS MEETINGS

Mr. BENTSEN. Mr. President, Senator JAVITS and I are introducing a measure today that is intended to remove a major irritant in our bilateral relations with Mexico and demonstrate our willingness to work with our North American neighbors to resolve problems of mutual concern.

Specifically, we are proposing to amend the tax code so as to remove certain restrictions on tax deductions for attending business meetings in Canada and Mexico. Under the terms of this legislation a convention, educational seminar, or similar meeting held in Mexico or Canada would be treated for tax purposes as if it were held in the United States or its possessions.

Mr. President, this country has traditionally focused its foreign policy attention on remote areas of potential conflict or strategic importance. In the process, we tend to overlook the fact that our relationship with our North American neighbors has a unique character and significance. We share common borders and a common destiny with both Mexico and Canada. Our futures are irrevocably intertwined.

Clearly, Mr. President this special relationship argues for special treatment whenever possible and consistent with our own best interests.

President Carter's visit to Mexico last month, together with the ongoing publicity concerning Mexico's vast energy resources, have helped focus public attention on the importance of U.S.-Mexican relations. As we move to establish a stronger, more enduring basis for our bilateral relations with Mexico, it will obviously be incumbent on both nations to seek out areas of cooperative endeavor and mutual advantage.

After accompanying President Carter on his trip to Mexico, and as a result of my experience in interparliamentary conferences with our Mexican counterparts, I can attest that the existing limitations and restrictions on foreign conventions are of deep concern to the Mexican Government. For further evidence of this concern, I refer my colleagues to Senator JAVITS' excellent report on the recent Quadripartite meeting which appears on page 3583 of the March 1 RECORD.

There can be no question, Mr. President, that foreign convention restrictions in the 1976 law have had a severe, adverse impact on Mexico's tourism industry. The number of people attending conventions in Mexico has been reduced

by approximately one-half, a development that could cost Mexico as much as $80 million a year.

Tourism, which is both labor-intensive and an important foreign exchange earner, is vital to Mexico's economic well-being. And a prosperous, stable Mexico well disposed toward the United States is an increasingly important element in our foreign policy.

I submit, Mr. President, that removal of the foreign convention limitations, as they apply to Mexico and Canada, would have important symbolic and practical benefits for the future of our friendship with these nations. It would provide concrete evidence to Mexico in particular that the United States of America is prepared to help resolve the problems and develop the friendship inherent in our relationship.

Mr. President, the high unemployment rate and the underemployment rate in Mexico are of concern to us. Part of the unemployment has been exported to the United States. One of the ways we can help overcome it is by helping them promote labor-intensive industry within their own country. It is important to the future of Mexico as well as of the United States. The population of Mexico will double in 19 years. The fact that Mexico must be politically and economically stable is very important to this country.

I am delighted to join Senator JAVITS in this measure.

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

Mr. BENTSEN, I yield.

Mr. JAVITS. Mr. President, I express my great pleasure in joining Senator BENTSEN, whom I have joined in other matters, in sponsoring this legislation which is a direct outgrowth of his work on the U.S.-Mexico Quadripartite Commission. My report of the last meeting of that commission, which dealt with tourism, is the one to which the Senator referred. He realizes for both of us, in introducing this bill, the urgent requirements of Mexico to realize progress in its tourism industry.

A former President of Mexico, Miguel Aleman, who was elected in 1945, heads their public effort so far as tourism is concerned. He was at the meeting to which I just referred. Their minister of tourism and many other officials as well as business leaders attended the meeting in Manzanillo.

I associate myself completely with the reasons for this action and for the introduction of this bill as advanced by Senator BENTSEN. In view of his membership on the Committee on Finance, where he is one of the senior members, I am very hopeful that this particular provision may be wrapped into some appropriate bill at the earliest time. This is a way in which we can show Mexico that we mean what we say when we state our cooperation.

I also hope that, with the cooperation of Senator BENTSEN, we may go on in the Quadripartite Commission with other elements of the Mexican economy. The work of the U.S.-Mexican Quadripartite Commission, and this bill in particular, will reduce the pressure of undocumented aliens on the border through an expanded and more productive Mexican economy. I submit that is the single best way in which to deal with this very vexing problem.

Also, the President of the United States has spoken most glowingly of Senator BENTSEN's role in the President's visit and talks with President Lopez Portillo. I congratulate Senator BENTSEN upon that role in the highest interests of our country.

Mr. BENTSEN. I thank the distinguished Senator from New York.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the measure introduced by Senator BENTSEN.

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

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the measure.

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

Mr. JAVITS. Mr. President, I thank both Senators for joining us in this effort.

● Mr. JAVITS. Mr. President, I join with Senator BENTSEN today in introducing legislation to amend our tax laws in order to remove what has unintentionally become a major obstacle to development of Mexico's tourism sector. As Senator BENTSEN has so ably described, our Tax Code's restriction on foreign convention business deductions needlessly obstructs Mexico's efforts to develop this vital sector of its economy. While this legislation would offer nondiscriminatory treatment for both Canada and Mexico and, in my judgment, would symbolize properly the neighborly relations among the North American nations that for so long have been neglected, its main result is likely to assist Mexico's economic development.

As I indicated in my report of March 1 to the Senate on my trip to Mexico, the recent success of the United States-Mexico Quadripartite Commission in tourism in establishing a meaningful dialog between United States and Mexican private sectors and in coordinating investment projects in developing sectors of the Mexican economy has not only been recognized by Mexican President Lopez Portillo but also by own own Government. This legislation would be a fine step in eliminating certain roadblocks to development.

The tourism is recognized as central to Mexico's development strategy as it is a prime generator of employment and foreign exchange. The United States-Mexico Quadripartite Commission has chosen to focus initially on this sector to target U.S. investment funds. Enactment of this legislation would help us meet that goal and demonstrate the Commission's effectiveness in eliminating in the United States official barriers that tend to inhibit Mexico's economic development and may stand in the way of improved United States-Mexico relations.

I want to express my gratitude to my dear friend and colleague from Texas for his efforts on behalf of this legislation and also for his long-standing support for the United States-Mexico Quadripartite Commission.●

By Mr. JAVITS (for himself, Mr. KENNEDY, Mr. WILLIAMS, Mr. RANDOLPH, Mr. STAFFORD, Mr. RIEGLE, and Mr. INOUYE):

S. 590. A bill to amend the Public Health Service Act to revise and strengthen the program under that act for the regulation of clinical laboratories; to the Committee on Labor and Human Resources.

CLINICAL LABORATORY IMPROVEMENT ACT OF 1979

● Mr. JAVITS. Mr. President, I introduce the Clinical Laboratory Improvement Act of 1979 (S. 590). The bill is cosponsored by six Senators: Senators KENNEDY, WILLIAMS, RANDOLPH, STAFFORD, RIEGLE, and INOUYE.

The bill is the successor to two previous Senate-passed bills, S. 1737 in the 94th Congress and S. 705 in the 95th Congress. S. 590, as did its predecessors, extends the existing program of licensure based on uniform standards of quality to all large laboratories, regardless of location or affiliation. The bill responds to the problems which compromise—both in economic and human terms—the quality and efficacy of medical laboratory testing, a key element in health care for all Americans.

Mr. President, there are deep problems in the quality of medical lab services:

When a patient dies, a child develops severe retardation, or when cancer in a patient goes undiagnosed, all because a laboratory test was incompetently conducted or read:

When key laboratory personnel—medical technologists—testify to the need for employee protection provisions in law so they can come forward freely to tell us in Congress the truth about the quality and accuracy of lab work, and any fraud and corruption in the medical laboratory business;

When a 1976 HEW survey of 200 medicare clinical laboratories revealed serious deficiencies in 74 percent of the labs inspected;

When proficiency test results administered by the Center for Disease Control reveal continuing failures by some laboratories correctly to identify any of the five test samples that make up the proficiency test;

When the Department of Health, Education, and Welfare testifies that an average between 8 percent and 25 percent of all laboratory tests are inaccurate, depending upon the procedure tested;

When an estimated two million medical laboratory results every day are in error, resulting in a higher rate of unnecessary hospitalization, unneeded surgery, inappropriate treatment, undiscovered disease, injury and even death.

Mr. President, there is in addition larceny in the laboratory and it must be stopped:

When, according to a U.S. Senate subcommittee, there is rampant fraud in clinical laboratories;

When, because "certain criminal elements are involved in the purchase of laboratories," there is a major fraud

investigation in New York City by the U.S. attorney's office;

When the Government Accounting Office—GAO—the investigatory arm of Congress—reports that its examination in four States and the District of Columbia shows physician markups of 151 percent in their billing to medicare and medicaid for patient lab work done at independent lab services.

These are not isolated instances. The litany of shocking truths about clinical labs is documented in testimony on problems of medicaid fraud and abuse before the House Subcommittee on Oversight and Investigations; the Senate Subcommittee on Long-Term Care report on fraud and abuse among clinical laboratories; and the hearings before the Health Subcommittee of the Senate Labor and Human Resources Committee.

This is a problem which cries out for reform, and I believe the bill I introduce today, which is substantially similar to last year's Senate-passed bill, marks an historic milestone in a national commitment to provide quality laboratory testing and honest laboratory business administration.

These problems in clinical laboratory performance have been compounded by the bureaucratic problems attendant on Federal responsibility for assuring the quality of laboratory activities. There are three different agencies responsible for administering the clinical laboratory program—CDC, HCFA, and the FDA—and the record demonstrates that one agency often does not know what the other is doing. Attempts to define and coordinate these responsibilities through a series of proposed interagency agreements within HEW have not proven effective. Particularly with reference to the quality of laboratory work reimbursed through the medicare program, the Department has compiled a sad record of years of bureaucratic backbiting and infighting, indecisiveness, and inaction. I do not believe that an effective, coordinated program can be established within HEW absent the clear statutory mandate embodied in CLIA. In my judgment, this lack of administrative commitment and direction has hampered the effort to improve laboratory performance in the field.

In comparison with last year's bill, which passed the Senate by unanimous consent, this bill rationalizes and simplifies the existing patchwork of overlapping, confusing, and incomplete jurisdictional arrangements without creating a new Federal bureaucracy. Instead, the program is carefully integrated into the existing program of medicare certification that already applies to a majority of large laboratories and which is staffed and administered by State personnel in every State. States would be fully reimbursed for their enforcement expenses through the usual medicare agreements with the Secretary of Health, Education, and Welfare.

The important function of the Center for Disease Control is preserved through its responsibility to develop the national standards, to provide technical assistance, and to monitor the adequacy of State enforcement.

The key provisions of the bill:

First. Expand the existing licensure program now in place for interstate laboratories to cover large laboratories which perform services related to patient care.

Second. Establish national standards for licensure designed to assure accurate procedures and services, including standards relating to quality control, recordkeeping, proficiency testing, and personnel qualifications.

Third. Direct the Secretary to administer this program through the existing State medicare certification system for both medicare and nonmedicare laboratories within each State.

Fourth. Authorize the Secretary to take necessary actions to revoke or suspend licenses against laboratories which do not meet applicable standards.

Fifth. Require the Secretary to delay the application of personnel standards for 2 years to laboratories located within a rural area.

Sixth. Permit the Secretary to exempt laboratories in physicians' offices, or in group practices of five or fewer physicians, which perform only routine laboratory tests or which participate in a proficiency testing program.

Seventh. Exempt both research and insurance laboratories from national standards.

Eighth. Provide for criminal penalties for individuals who operate unlicensed laboratories or who engage in fraud, kickbacks, or bribes in connection with laboratory services.

Ninth. Provide for technical assistance to States medicare programs and to laboratory personnel; $10 million annually is authorized for purposes of such technical assistance.

Tenth. Require HEW to conduct studies of clinical laboratory quality assurance programs, and to report to the Congress with respect to results and recommendations.

Eleventh. Limit medicare reimbursement to physicians for laboratory services performed elsewhere to either an identified nominal collecting and handling fee, in addition to the lab's charge, or to the lowest locally available charge for the laboratory service performed.

Twelfth. Limit medicare reimbursement to hospital-associated pathologists to payments for only those services personally performed or directed by the pathologist. Disallows reimbursement based upon a percentage of the hospital's income or laboratory billings to the extent that it exceeds a reasonable salary or fee for the service actually performed plus costs.

The need for this legislation is great. Medical laboratory testing occupies an increasingly vital place in both diagnostic and preventive medicine. Nearly 5 billion tests are done annually at a cost of over $12 billion, or about 10 percent of our annual expenditures for medical care. I believe that every person is entitled to protection from inaccurate and unreliable results because of a failure of laboratories to observe basic quality standards and procedures. Every person is entitled to have professionally qualified personnel performing this vital work.

This bill's fundamental goal is medical laboratory improvement, upon which our public health depends. Yet until this bill is enacted into law, I believe that essential medical laboratory improvement to cover those which should be covered remains illusory.

Mr. President, I ask unanimous consent that the text of this bill and a summary be printed in the RECORD.

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

S. 590

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clinical Laboratory Improvement Act of 1979".

FINDINGS

SEC. 2. The Congress finds that—

(1) clinical laboratory testing is a vital element of health care throughout the Nation;

(2) health care in this Nation will only be effective and of high quality if procedures utilized for testing by clinical laboratories assure accurate and reliable results;

(3) it is essential to the public interest that the health and welfare of consumers of health care be protected by requiring that all clinical laboratories comply with uniform standards to assure accurate and reliable testing by laboratories;

(4) testing in clinical laboratories which do not comply with such standards can be performed at less expense and thus such laboratories are able to compete unfairly with the clinical laboratories which do comply with such standards;

(5) requiring compliance with standards to assure accurate and reliable testing by clinical laboratories which operate in interstate commerce without provision for requiring compliance with such standards by other clinical laboratories will discriminate against and depress interstate commerce and adversely burden, obstruct, and affect such commerce; and

(6) all clinical laboratory testing is either in interstate commerce or substantially affects such commerce; and

(7) consequently, regulation by the Secretary in cooperation with the States as contemplated by the amendment made by this Act is appropriate to prevent and eliminate burdens upon interstate commerce, to effectively regulate interstate commerce, and to protect the health and welfare of consumers of health care.

AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Part H of title III of the Public Health Service Act is amended to read as follows:

"PART H—CLINICAL LABORATORIES

"DEFINITIONS

"SEC. 370. As used in this part—

"(1) The terms 'laboratory' and 'clinical laboratory' mean (A) a facility for the biological, microbiological, serological, chemical, immunohematological, radioimmunological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, humans, or (B) a facility for the collection, processing, and transmission of such materials for such purposes, other than a facility exclusively engaged in the collection or processing of human blood or its components intended for transfusion or further manufacturing.

"(2) The term 'interstate commerce means trade, traffic, commerce, transportation, transmission, or communication be-

tween any State, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, and any place outside thereof, or within the District of Columbia.

"LICENSES

"SEC. 371. (a) The Secretary shall establish and have in effect within 24 months after the date of enactment of this section a system for the licensure of all clinical laboratories subject to national standards in effect under section 372. A clinical laboratory subject to the national standards in effect under section 372 shall not perform any tests or provide any services 36 months after the date of enactment of this section unless such laboratory has in effect a valid license issued under this section. A license issued under such system for a clinical laboratory (1) shall specify the categories of tests and procedures which such laboratory may perform, and (2) shall be valid for such period as the Secretary may prescribe not in excess of 24 months. A clinical laboratory may, at the discretion of the Secretary, perform tests and provide services during the period its application for a license is pending.

"(b) The system established under subsection (a) shall require the following as a condition to the issuance or renewal of a license under the system:

"(1) the submission of an application in such form and manner as may be prescribed by the Secretary, and

"(2) a determination by the Secretary that the applicant meets the national standards in effect under section 372.

"(c)(1) If the Secretary finds, after reasonable notice and opportunity for a hearing, that—

"(A) a clinical laboratory licensed under this subsection is not in compliance with applicable national standards in effect under section 372, or

"(B) such laboratory has (i) failed to comply with reasonable requests of the Secretary for any information, specimens, or tests on specimens, as the Secretary deems necessary to determine the laboratory's continued eligibility for its license under this subsection or continued compliance with applicable national standards in effect under section 372, or (ii) refused a request of the Secretary or any officer, employee, or agent duly designated by him for permission to inspect or monitor the laboratory and its operations, specimens, and relevant records at any reasonable time,

the Secretary may revoke such laboratory's license for the remainder of its term or may limit or suspend such laboratory's license until such laboratory has demonstrated to the satisfaction of the Secretary that the laboratory is in compliance with such national standards or such requests will be complied with, as the case may be.

"(2) If the Secretary finds, after reasonable notice and opportunity for a hearing (in accordance with the procedures specified in section 1869 (c) of the Social Security Act), that a clinical laboratory licensed under this section—

"(A) has been guilty of misrepresentation in obtaining the license;

"(B) has engaged or attempted to engage in, or represented itself as entitled to perform, any laboratory test or procedure or category of tests or procedures not authorized by the license;

"(C) has engaged in a billing practice under which charges for laboratory services provided a patient, on whose behalf reimbursement (in whole or in part) for such charges is provided funds under any Federal program, are made at a higher rate than charges for comparable services provided a patient for whom such reimbursement is not made;

"(D) has offered, paid, solicited, or received any kickback, bribe, finder's fee, rebate, or other illegal remuneration but excluding any discount or other reduction in price and excluding any amount paid by an employer for employment in the provision of the services, directly or indirectly, overtly or covertly, in cash or in kind in connection with the provision of clinical laboratory services; or

"(E) has engaged in any false, fictitious, or fraudulent billing practice for the purposes of obtaining payment under any program the funds for which are provided in whole or in part by the United States,

the Secretary may revoke such license for the remainder of its term or may make the laboratory or any person determined by the Secretary to have made the misrepresentation described in subparagraph (A) or to have engaged in any activity described in subparagraphs (B), (C), (D), or (E) ineligible to apply for a license under this subsection for such period (not to exceed 24 months) as the Secretary may prescribe, or take both such actions. A billing practice which results in different charges for the same laboratory services solely because of differences in administrative costs related to receiving reimbursement for the provision of such services shall not be considered a billing practice described in subparagraph (C).

"(3) Any person who is convicted under section 375 or under section 1877 or 1909 of the Social Security Act after the date of enactment of the Clinical Laboratory Improvement Act of 1979 for a violation occurring after such date shall not be eligible to apply for a license under this subsection for a clinical laboratory during the 10-year period beginning on the date of such person's judgment of conviction. Where the person so convicted has a direct or indirect ownership or control interest of 5 percent or more in the laboratory involved in such violation, or is an officer, director, agent, or managing employee (as defined in section 1126(b) of the Social Security Act) of such laboratory, the Secretary may revoke the license of such laboratory.

"NATIONAL STANDARDS

"SEC. 372. (a) Within one year after the date of the enactment of the Clinical Laboratory Improvement Act of 1979, the Secretary shall publish proposed national standards for clinical laboratories. Within 180 days after such standards are proposed, the Secretary shall promulgate such standards with such modifications as the Secretary deems appropriate and such standards shall take effect upon their promulgation. Standards under this subsection may be amended by the Secretary.

"(b) National standards promulgated under subsection (a) for clinical laboratories, designed to assure consistent performance by clinical laboratories of accurate and reliable laboratory tests and other procedures and services, shall—

"(1) require clinical laboratories subject to the standards to maintain appropriate quality control programs,

"(2) require such laboratories to maintain such records, equipment, and facilities as may be necessary for the proper and effective operation of such laboratories,

"(3) require satisfactory performance by such laboratories based upon periodic proficiency tests developed in accordance with subsection (d) (3),

"(4) to the extent necessary to insure the accuracy and reliability of the performance of tests and services by such laboratories, prescribe qualifications for directors and supervisory personnel of, and laboratory technical personnel employed in, such laboratories which qualifications shall (A) not be limited solely to education requirements but shall include, where appropriate, training, experience, and examination requirements, (B) include requirements designed to insure the continued competence of laboratory personnel, and (C) take into account advances in the sciences and improvements in the technology utilized in laboratory testing which may require specialty personnel,

"(5) contain adequate provisions for inspecting laboratories and enforcing and monitoring the enforcement of standards, and

"(6) include such other requirements as the Secretary determines necessary to assure consistent performance by such laboratories of accurate and reliable tests and other procedures and services.

"(c) Standards prescribed under subsection (b) for clinical laboratories may vary on the basis of the type of tests, procedures, or services performed by such laboratories or the purposes for which such tests, procedures, or services are performed.

"(d) Within one year after the date of the enactment of the Clinical Laboratory Improvement Act of 1979, the Secretary, in consultation with appropriate professional organizations, shall—

"(1) develop job-related proficiency and practical examinations (including reasonable standards for determining successful completion of such examinations) as determined necessary by the Secretary for personnel in clinical laboratories which examinations reflect the nature of the work performed by such personnel,

"(2) develop mechanisms designed to assure the continued competence of such personnel, and

"(3) develop standards for the proficiency testing of clinical laboratories which standards—

"(A) shall require such tests to be administered at least annually to all laboratories subject to the national standards in effect under subsection (a);

"(B) shall require a system of on-site testing, including supervised unannounced on-site testing, of the proficiency of a laboratory in the examination of specimens; and

"(C) may require a system for the testing of a laboratory's proficiency in the examination of specimens under which system the laboratory is not informed that its proficiency is being tested (commonly referred to as 'blind proficiency testing').

"(e) The examinations developed under paragraph (1) of subsection (d) shall be required to be administered only during the 24-month period immediately following the initial administration of such examinations.

"(f) (1) National standards for clinical laboratories in effect under section 372 shall be administered and enforced by the Secretary and shall, except as provided in this subsection, apply to each clinical laboratory which is engaged in commerce.

"(2) During the two-year period beginning on the date that national standards for clinical laboratories first take effect under section 372 the provisions of such standards prescribing qualifications for laboratory personnel shall not apply to a clinical laboratory which—

"(A) the Secretary determines is located in a rural area (as defined by the Secretary) in which individuals with the qualifications prescribed by such provisions are not available,

"(B) performs services solely for hospitals and licensed physicians, dentists, or podiatrists (or any combination of such practitioners) located within such a rural area, and

"(C) provides the Secretary satisfactory assurances that it will take such actions as may be necessary to train individuals to meet such qualifications or to employ individuals with such qualifications.

"(3) (A) Upon such conditions as the Secretary may by regulation prescribe, the Secretary may exempt from the national

standards for clinical laboratories any clinical laboratory—

"(i) which is located in the office of, and operated by, a licensed physician, dentist, or podiatrist, or a group of not more than five such practitioners, or in a rural health clinic, as defined in section 1861 (aa) (22) of the Social Security Act, and

"(ii) in which the only tests or procedures which are performed are routine tests or procedures (as determined by the Secretary) performed by such a practitioner or clinic in connection with the treatment of the patients of such practitioner (or practitioners) or clinic.

"(B) If the Secretary finds, after reasonable notice, that a laboratory granted an exemption under subparagraph (A) is not a laboratory which is described by clauses (i) and (ii) of subparagraph (A) or that such laboratory has engaged in misrepresentation in obtaining the exemption, the Secretary shall withdraw the exemption granted such laboratory.

"(C) The national standards for clinical laboratories may not apply to any clinical laboratory described in of subparagraph (A) (i) if the laboratory successfully participates in a proficiency-testing program approved by the Secretary and if the laboratory has submitted to the Secretary in accordance with this paragraph notice of its participation in such a program. The notice required by this paragraph shall be made in such form and manner as the Secretary shall prescribe. The Secretary may not approve a proficiency testing program for purposes of this paragraph unless the program operator has entered into an agreement with the Secretary to provide information to the Secretary respecting the results of the proficiency tests administered under such program.

"(D) The Secretary shall exempt, on such terms and conditions as may be appropriate, from the national standards for clinical laboratories any laboratory in which the tests or procedures which are performed are primarily tests or procedures for biomedical or behavioral research.

"(E) The Secretary shall exempt, on such terms and conditions as may be appropriate, from the national standards for clinical laboratories any laboratory in which the only tests or procedures performed are tests or procedures for persons engaged in the business or insurance solely for the purpose of determining whether to write an insurance contract or determining eligibility for payments under an insurance contract.

"(4) Any clinical laboratory in interstate commerce shall, during the period beginning on the date of the enactment of the Clinical Laboratory Improvement Act of 1979, and ending on the date such laboratory is required to have in effect a license issued under this section, comply with the licensing requirements in effect under section 353 prior to the date of enactment of the Clinical Laboratory Improvement Act of 1979.

"AGREEMENTS

"SEC. 373. (a) The Secretary may enter into agreements with qualified nonprofit private entities which, as determined by the Secretary, have adopted and implemented laboratory standards at least as stringent as those in effect under section 372, under which agreements such entities shall make such inspections as the Secretary may require to determine if clinical laboratories are in compliance with applicable standards, administer such proficiency tests as the Secretary may require for clinical laboratories, or administer such examinations of laboratory personnel as the Secretary may require.

"(b) Where a State agency or local agencies demonstrate that sufficient qualified personnel are available to them to permit the effective enforcement of this part, and in the case of any State which has an agreement with the Secretary under section 1864 of the Social Security Act with respect to clinical laboratories, the Secretary shall amend such agreement with respect to any such State which is able and willing to do so to provide that the State agency or local agencies which are utilized under such agreement with respect to clinical laboratories will be utilized for the purpose of determining whether clinical laboratories in such State meet the requirements for a license under section 371.

"FEDERAL CLINICAL LABORATORIES

"SEC. 374. (a) Federal clinical laboratories under the jurisdiction of the Secretary shall be subject to national standards in effect under section 372 and any other Federal clinical laboratory in a State shall be subject to such standards unless (1) the laboratory is under the jurisdiction of any of the Armed Forces of the United States or the Administrator of Veterans' Affairs, or (2) the agency which has jurisdiction over such laboratory has in effect standards for such laboratory which are no less stringent than the national standards in effect under section 372.

"(b) The Secretary shall bring the national standards in effect under section 372 to the attention of the Secretary of each military department and the Administrator of Veterans' Affairs so that such standards may be considered and applied, as appropriate, by such Secretaries and Administrator to clinical laboratories under that jurisdiction.

"PROHIBITED ACTS; REMEDIES

"SEC. 375. (a) Whoever—

"(1) knowingly and willfully solicits, or knowingly and willfully accepts, directly or indirectly, any specimen for a laboratory test or other laboratory procedure by a clinical laboratory which is required to have in effect a license issued under section 371 and which does not have such a license in effect or which is not authorized by its license to perform such test procedure shall be fined not more than $25,000 or imprisoned for more than 5 years, or both; or

"(2) (A) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for a license under this part;

"(B) having knowledge of the occurrence of any event affecting the initial or continued right to any such license, conceals or fails to disclose such event with an intent fraudulently to secure or hold such license when no license is authorized; or

"(c) having made application to receive a license for a specific use and having received it, knowingly and willfully converts such license to an unauthorized use,

shall—

"(i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the obtaining of a license, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than 5 years or both, or

"(ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both.

"(b) (1) Whoever solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly, or covertly, in cash or in kind—

"(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service described in this part; or

"(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or items described in this part.

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

"(2) Whoever offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

"(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service described in this part, or

"(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item described in this part,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

"(3) Paragraphs (1) and (2) shall not apply to—

"(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this part; and

"(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

"(c) Whenever the Secretary has reason to believe that continuation of any activity by a clinical laboratory required to be licensed under this section by the Secretary would constitute a substantial risk to the public health, he or she may bring suit in the United States district court for the district in which such laboratory is situated to enjoin continuation of such activity and, upon proper showing, a temporary injunction or restraining order against continuation of such activity pending issuance of a final order by the court shall be granted without bond.

"(d) (1) No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation or the terms, conditions, or privileges of his employment solely because the employee (or any person acting pursuant to a request of the employee) has—

"(A) commenced or caused to be commenced, or is about to commence or cause to be commenced a proceeding under this part;

"(B) testified or is about to testify in any such proceeding; or

"(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this part. "(2) (A) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 60 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Such 60-day period shall be tolled during the pendency of any grievance procedures or other efforts at conference, conciliation, or mediation. Upon receipt of such a complaint, the Secretary of Labor shall notify the person named in the complaint of the filing of the complaint.

"(B) (i) Upon receipt of a complaint filed under subparagraph (A), the Secretary of Labor shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary of Labor shall complete such investigation and shall notify the complainant (and any person acting with the authority of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursu-

ant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary of Labor shall, unless the proceeding on the complaint is terminated by the Secretary of Labor on the basis of a settlement entered into by the Secretary of Labor and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or dismissing the complaint. An order of the Secretary of Labor providing for the relief prescribed by clause (ii) shall be made on the record after notice and opportunity for agency hearing. The Solicitor of Labor shall, with the consent of the employee, represent such employee at any such hearing.

"(ii) If in response to a complaint filed under subparagraph (A) the Secretary of Labor determines that a violation of paragraph (1) has occurred, the Secretary of Labor shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (III) the award of compensatory damages, and (IV) where appropriate, the award of exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as dedetermined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(3)(A) Any employee or employer adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days from the issuance of the final order. Review shall conform to chapter 7 of title 5 of the United States Code.

"(B) An order of the Secretary of Labor, with respect to which review could have been obtained under subparagraph (A), shall not be subject to judicial review in any criminal or other civil proceeding.

"(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary of Labor shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts of the United States shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

"(5) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his or her employer (or any agent of the employer), deliberately causes a violation of any requirement of this section.

"ADMINISTRATION

"SEC. 376. (a) The Secretary shall designate a Director of Clinical Laboratories who shall serve at the pleasure of the Secretary.

"(b) The Secretary, acting through the designated Director of Clinical Laboratories, shall have responsibility—

"(1) to establish a uniform regulatory policy for the administration of the functions authorized under this part and the laboratory certification and regulatory functions presently administered under this Act, the Federal Food, Drug, and Cosmetic Act, and titles XVIII and XIX of the Social Security Act,

"(2) to provide guidance with respect to the laboratory component of other health programs administered and enforced by the Secretary,

"(3) to improve laboratory methodology and utilization promotion and funding of grant and contract projects and studies, both solicited and unsolicited.

"TECHNICAL ASSISTANCE

"SEC. 377. (a) The Secretary shall provide technical assistance to States to assist in carrying out the requirements of this part. Such assistance shall include—

"(1) training of State laboratory personnel (including the provision of instructional materials and equipment) where necessary to qualify such persons for the enforcement of this part;

"(2) monitoring of the adequacy of State enforcement of this part through a program of follow-up Federal inspections and testing of laboratories inspected and tested by State personnel or by organizations designated by the Secretary to inspect and test laboratories under this part.

"(b) The Secretary shall provide for technical assistance to laboratories. Such assistance shall include a program of technical consultations and technical training for employees of laboratories which have deficiencies documented through evaluation programs such as proficiency tests.

"(c) The Secretary is authorized to make grants to and enter into contracts with public and nonprofit private entities for projects and studies respecting clinical laboratory methodology and utilization. No grant may be made or contract entered into under this subsection unless an application therefor has been submitted to and approved by the Secretary. Such application shall be submitted in such form and contain such information as the Secretary may reasonably require.

"(d) There are authorized to be appropriated for the purposes of this section $10,000,000 for the fiscal year ending September 30, 1981, $10,000,000 for the fiscal year ending September 30, 1982, and $10,000,000 for the fiscal year ending September 30, 1983.

"ANNUAL REPORT

"SEC. 378. Not later than January 1, 1981, and January 1 of each succeeding year the Secretary shall make a report to the Congress (1) respecting the accuracy and reliability of tests and procedures performed by clinical laboratories during the preceding fiscal year, and (2) evaluating the effect of the costs and pricing of clinical laboratory tests and procedures on the overall cost of health care services and the relation of the costs of such tests and procedures to the costs of the health care services for which the tests and procedures are conducted.

"STUDIES RESPECTING REQUIREMENNTS FOR LABORATORIES AND LABORATORY PERSONNEL

"SEC. 379. (a) The Secretary, in cooperation with appropriate public and private entities, shall conduct studies of (1) existing voluntary certification standards and State licensure laws for clinical laboratory supervisors, technologists, and technicians, (2) qualifications of entities that certify such personnel as qualified to perform laboratory procedures in clinical laboratories licensed under section 353 of the Public Health Service Act, (3) existing and proposed public and private mechanisms to determine the continued competence of such personnel, (4) existing laboratory proficiency testing methods used to evaluate the performance of clinical laboratories, and (5) the relationship of requirements for such personnel and of clinical laboratory proficiency testing requirements with clinical laboratory performance.

"(b) The studies required by subsection (a) shall include—

"(1) an assessment of the need for certification of such personnel pursuant to national standards and for assurance of their continued competence;

"(2) development of national standards which the Secretary determines should be used as guidelines for entities which certify such laboratory personnel with consideration of the need for increased geographic and career mobility of such personnel;

"(3) a determination of the numbers of technical laboratory personnel who would meet standards developed by the Secretary under paragraph (2) and a projection of the numbers of such personnel in the calendar years 1982, 1986, and 1990;

"(4) an analysis and evaluation of the effect on the costs of laboratory tests and procedures and quality of such tests and procedures of a requirement that a laboratory may not be licensed under this part unless its personnel meet standards developed by the Secretary under paragraph (2);

"(5) an analysis and evaluation of the problems encountered by rural clinical laboratories in recruiting qualified personnel; and

"(6) an analysis and evaluation of the performance of the laboratories located in the office of a practitioner and the advisability of continuing in effect the exemption procedure authorized under section 372(d)(3)(A).

"(c) Within three years of the date of the enactment of this Act the Secretary shall submit to the Congress the results of the studies conducted pursuant to subsection (a) and recommendations for legislation which the Secretary considers necessary.

"REIMBURSEMENT BY SECRETARY

"SEC. 379A. (a) The Secretary shall reimburse to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund any amount expended from such funds under the provisions of section 371 or under an agreement entered into under section 1864 of the Social Security Act, which has expended with respect to a clinical laboratory which does not participate in the program of health insurance for the aged and disabled under title XVIII of the Social Security Act.".

(b) Subpart 2 of part F of title III of the Public Health Service Act is repealed.

REPORT ON EXEMPTIONS

SEC. 4. The Secretary of Health, Education, and Welfare shall report to the Congress with respect to such laboratories as may be exempt from the requirements of standards established pursuant to section 372 during the three-year period beginning on the date national standards take effect under section 372 and, on the basis of such report, make recommendations (1) as to whether clinical laboratories granted exemptions under section 372 should be required, as a condition to their exemption, to have laboratory procedure manuals, participate in laboratory proficiency testing programs, and maintain quality control programs prescribed under such standards, and (2) as to whether such section 372 should otherwise be revised. Such report shall be submitted within 3 months of the expiration of such period.

AMENDMENTS RELATING TO CERTIFICATION OF CLINICAL LABORATORIES

SEC. 5. (a) (1) The second sentence of section 1861(s) of the Social Security Act is amended to read as follows: "No diagnostic test performed in any laboratory shall be included in paragraph (3) unless such laboratory is licensed under section 371 of the Public Health Service Act, or if the licensing requirements under that section are not applicable, meets such conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.".

(2) Paragraphs (12) and (13) of section 1861(s) of such Act are redesignated as paragraphs (10) and (11), respectively.

(3) The first sentence of section 1864(a) of such Act is amended by striking out "the requirements of paragraphs (10) and (11) of section 1861(s)" and inserting in lieu thereof "the requirements of section 1861(e)(9), section 1861(j)(15), or the second sentence of section 1861(s)".

(b)(1) Section 1861(e) of such Act is amended—

(A) by striking out "and" after the semicolon at the end of paragraph (8);

(B) by redesignating paragraph (9) as paragraph (10); and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) is licensed under section 371 of the Public Health Service Act with respect to any laboratory (as defined in section 370 of such Act) which is a part of the institution; and".

(2) Section 1861(j)(15) of such Act is amended by inserting after "physical facilities thereof" the following: "(including a license under section 371 of the Public Health Service Act with respect to any laboratory (as defined in section 370 of such Act) which is a part of the institution)".

(3)(A) Subparagraphs (C) and (D) of section 1814(a)(2) of such Act are each amended by striking out "and (9)" and inserting in lieu thereof "and (10)".

(B) Section 1861(f)(2) of such Act is amended by striking out "(3) through (9)" and inserting in lieu thereof "(3) through (10)".

(C) Section 1861(g)(2) of such Act is amended by striking out "(3) through (9)" and inserting in lieu thereof "(3) through (10)".

(4)(A) Section 1865(a)(3) of the Social Security Act is amended by striking out "paragraph (6) thereof" and inserting in lieu thereof "paragraphs (6) and (9) thereof".

(B) Section 1865(a)(4) of such Act is amended by striking out "paragraph (9) thereof" and inserting in lieu thereof "paragraph (10) thereof".

(C) The third sentence of section 1865(a) of such Act is amended by inserting "(other than those in subsections (e)(9) or (j)(15) thereof)" after "section 1861 (e), (j), or (o),".

(c) Section 1866(e) of such Act is amended by inserting ", independent clinical laboratory," after "rehabilitation agency".

(d) The amendments made by this section shall become effective three years after the date of the enactment of this Act.

PAYMENT TO PHYSICIANS WITH RESPECT TO LABORATORY TESTS

SEC. 6. (a) Section 1842 of the Social Security Act is amended by inserting at the end the following new subsection:

"(h) If a physician's bill or request for payment for a physician's services includes a charge to a patient for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

"(1) If the bill or request for payment indicates that the physician who submitted the bill or for whose services the request for payment was made personally performed or supervised the performance of the test or that another physician with whom that physician shares his practice personally performed or supervised the test, the payment shall be based on the reasonable charge for the test (less the applicable deductible and coinsurance amounts).

"(2) If the bill or request for payment indicates that the test was performed by a laboratory, identifies the laboratory, and indicates the amount the laboratory charged the physician who submitted the bill or for whose services the request for payment was made, payment for the test shall be based on the lower of—

"(A) the laboratory's reasonable charge to individuals enrolled under this part for the test, or

"(B) the amount the laboratory charged the physician for the test,

plus a nominal fee (where the physician bills for such a service) to cover the physician's costs in collecting and handling the sample on which the test was performed (less the applicable deductible and coinsurance amounts).

"(3) If the bill or request for payment indicates the test was performed by a laboratory and identifies the performing laboratory but does not include the amount charged by that laboratory, payment shall be the lowest charge at which the carrier determines the test could have been secured by a physician from a laboratory serving the locality based on available data including charge schedules of laboratory prices to physicians (less the applicable deductible and coinsurance amounts).

"(4) If the bill or request for payment (A) does not indicate who performed the test, or (B) indicates that the test was performed by a laboratory but does not identify the laboratory, payment may not be made under this part.".

(b) Section 1124(a)(1) of the Social Security Act is amended by inserting before the period at the end the following: ", and in the case of a disclosing entity which is an independent clinical laboratory, furnish such information and access to its records as the Secretary may require to determine whether and in what amounts the laboratory has charged a physician for laboratory services performed by the laboratory".

(c) The amendments made by this section shall apply to bills submitted and requests for payment made on or after such date (not later than July 1, 1979) as the Secretary of Health, Education, and Welfare prescribes by a notice published in the Federal Register.

HOSPITAL-ASSOCIATED PHYSICIANS

SEC. 7. (a)(1) Section 1861(q) of the Social Security Act is amended by adding "(1)" after "(q)" and by adding before the period at the end thereof the following: "; except that the term does not include any service that a physician may perform as an educator, an executive, or a researcher; or any professional patient care service unless the service (A) is personally performed by or personally directed by a physician for the benefit of the patient, and (B) is of such nature that its performance by a physician is appropriate.".

(2) Section 1861(q) is amended by adding the following paragraph at the end thereof:

"(2) Pathology services shall be considered 'physicians' services' to patients only where the physician personally performs acts or makes decisions with respect to a patient's diagnosis or treatment which require the exercise of medical judgment. These include operating room and clinical consultations, the required interpretation of the significance of any material or data derived from a human being, the aspiration or removal of marrow or other materials, and the administration of test materials or isotopes. Such professional services shall not include professional services such as the performance of autopsies, and services performed in carrying out responsibilities for supervision, quality control, and for various other aspects of a clinical laboratory's operations that may appropriately be performed by nonphysician personnel.".

(3) Section 1861(b) of such Act is amended—

(A) by striking out "or" at the end of paragraph (6),

(B) by striking out the period at the end of paragraph (7) and inserting "; or", and

(C) by adding at the end thereof the following paragraph:

"(8) a physician, if the services provided are not physicians' services (within the meaning of subsection (q))"."

(b)(1) Section 1861(s) of the Social Security Act is amended by adding at the end thereof: "The term 'medical and other health services' shall not include services described in paragraphs (2)(A) and (3) if furnished to inpatients of a provider of services unless the Secretary finds that, because of the size of the hospital and the part-time nature of the services or for some other reason acceptable to him, it would be less efficient to have the services furnished by the hospital (or by others under arrangement with them made by the hospital) than to have them furnished by another party.".

(2) Section 1842(b)(3) of such act is amended by adding at the end thereof the following: "The charge for a physician's or other person's services and items which are related to the income or receipts of a hospital or hospital subdivision shall not be considered in determining his customary charge to the extent that the charge exceeds an amount equal to the salary which would reasonably have been paid for the service (together with any additional costs that would have been incurred by the hospital) to the physician performing it if it had been performed in an employment relationship with the hospital plus the cost of other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of services) incurred by the physician, as the Secretary may determine to be appropriate.".

(c) Section 1861(v) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(8)(A) Where services are furnished by a physician under an arrangement (including an arrangement under which the physician performing the services is compensated on a basis related to the amount of the income or receipts of the hospital or any department or other subdivision) with a hospital or medical school, the amount included in any payment to the hospital under this title as the reasonable cost of the services (as furnished under the arrangement) shall not exceed an amount equal to the salary which would reasonably have been paid for the services (together with any additional costs that would have been incurred by the hospital) to the physician performing them if they had been performed in an employment relationship with the hospital (rather than under such arrangement) plus the cost of other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of the services) incurred by the physician, as the Secretary may determine to be appropriate.".

(d)(1) Section 1833(a)(1)(B) of the Social Security Act is amended by inserting "(except as provided in subsection (i))" immediately after "amounts paid shall".

(2) Section 1833(b)(2) of such act is amended by inserting "(except as otherwise provided in subsection (i))" immediately after "amount paid shall".

(3) Section 1833 of such act is amended by redesignating the second subsection (g) as subsection (h) and by adding at the end thereof the following:

"(i) The provisions of subsection (a)(1)(B) and clause (2) of the first sentence of subsection (b) shall not apply to any physician unless he has entered into an agreement with the Secretary under which he agrees to be compensated for all such services on the basis of an assignment the terms of which are described in section 1842(b)(3)(B)(ii).".

(e) The amendments made by this section shall, except those made by subsection (d), apply to services furnished in accounting periods of the hospital which begin after

the month following the month of enactment of this act. The amendment made by subsection (d) shall become effective on July 1, 1979.

SUMMARY OF S. 590

THE "CLINICAL LABORATORY IMPROVEMENT ACT OF 1979"

The Clinical Laboratory Improvement Act of 1979 would amend Part H of Title III of the Public Health Service Act to revise and improve the authorities under the Act for the regulation of clinical laboratories. Briefly, it would do the following:

1. Proposed new section 371 of the Public Health Service Act. It would require the Secretary to establish a system of licensure of all clinical laboratories engaged in commerce and sets forth the circumstances under which such a license could be suspended or revoked.

2. Proposed new section 372 of the Public Health Service Act. It would require the Secretary of Health Education, and Welfare to establish national standards for clinical laboratories designed to assure accurate procedures and Services. These standards would

(a) require laboratories to maintain quality control standards;

(b) require laboratories to maintain records, equipment, and facilities as necessary for effective operation;

(c) include requirements for periodic proficiency testing of laboratories;

(d) prescribe qualifications for directors and supervisors of, and technical personnel employed in, laboratories.

(e) vary for specialty laboratories on the basis of the type of laboratory services performed or the purposes for which such services are performed.

Section 372 would require all clinical laboratories to comply with the national standards with the following exceptions:

(a) The application of requirements for qualifications of supervisory and technical personnel would be delayed for two years from their effective date with respect to a clinical laboratory located within a rural area in which supervisory and technical personnel with the prescribed qualifications are not available, and which performs services only for hospitals and health professionals located within the rural areas, and which provides assurances that it will take action to train or employ individuals who will meet the qualifications.

(b) National Standards would not apply to clinical laboratories located in the offices of, and operated by, physicians, dentists, or podiatrists, or a group of five or fewer practitioners, in which the only tests or procedures which are performed are routine tests or procedures performed by such practitioners in connection with the treatment of their patients.

(c) National standards would not apply to clinical laboratories performing more than routine tests or procedures which are located in the offices of, and operated by, physicians, dentists, podiatrists, or a group of five or fewer practitioners, if the laboratory successfully participates in an approved proficiency testing program.

(d) The Secretary would be required to exempt from national standards laboratories in which the only tests or procedures which are performed are primarily tests or procedures for biomedical or behavioral research.

(e) National standards would not apply to a clinical laboratory in which the only tests or procedures are services for persons engaged in the business of insurance to assist in determining whether to write an insurance contract or determine eligibility for payment under an insurance contract.

3. Proposed new section 373 of the Public-Health Service Act. It would require the Secretary to enter into agreement with qualified private nonprofit organizations to administer tests and make inspections, and directs the Secretary to enter into agreements with states to administer the clinical laboratory program under the Medicare program.

4. Proposed new section 374 of the Public Health Service Act. Federal clinical standards would be subject to national standards unless (i) they are under the jurisdiction of the Armed Forces or the Veterans Administration or (ii) the agency with jurisdiction over the laboratory has in effect standards no less stringent than national standards.

5. Proposed new section 375 of the Public Health Service Act. Subsection (a) would provide that individuals who solicit or accept a specimen for a laboratory which does not have a license shall be fined not more than $25,000 or imprisoned for not more than five years, or both. It would impose similar penalties for fraud, kickbacks, or bribes in connection with the provision of laboratory services.

Subsection (b) would permit the Secretary to sue for a temporary injunction to halt laboratory activities which are found to constitute a substantial risk to the public health.

Subsection (c) would prohibit an employer from discharging or otherwise discriminating against an employee because the employee commenced, or testified in, a federal or state proceeding relating to violations of the legislation, and would require the Secretary of Labor to investigate the charges of discrimination and authorize him to order reinstatement and damages in appropriate instances.

6. Proposed new section 376 of the Public Health Service Act. It would direct the Secretary to designate a Director of Clinical Laboratories, through whom the Secretary would be responsible for establishing uniform regulatory policy with respect to clinical laboratories, and for guiding the Department's efforts to improve laboratory performance.

7. Proposed new section 377 of the Public Health Service Act. It would direct the Secretary to provide technical assistance (a) to the states' Medicare programs to assist their laboratory enforcement capability; and (b) to laboratory personnel where deficiencies have been found. The Secretary is authorized to make grants for projects and studies on laboratory methodology and utilization. $10,000,000 is authorized for the purposes of technical assistance.

8. Proposed new section 378 of the Public Health Service Act. It would require the Secretary to report to the Congress annually with respect to the accuracy and costs of laboratory tests and procedures during the previous fiscal year.

9. Proposed new section 379 of the Public Service Act. It would require the Secretary to conduct studies of certification standards and state licensure laws for laboratory personnel; qualifications of certifying bodies; mechanisms to determine continued competency of laboratory personnel; proficiency testing methods used to evaluate the performance of clinical laboratories; and the relationship of personnel requirements and of clinical laboratory testing requirements with clinical laboratory performance. Results of the studies and recommendations for legislation are to be submitted to Congress within three years from the date of enactment.

10. Section 379 A. Reimbursement by Secretary.

Subsection (a) would provide for reimbursement to the Medicare trust funds any amounts expended from such funds with respect to the licensing of non-Medicare laboratories.

Subsection (b) would repeal the Clinical Laboratory Improvement Act of 1967.

11. The bill would also require the Secretary to report and make recommendations to the Congress within three years as to whether any laboratories exempt under section 372 from national standards should be subject to further requirements or whether section 372 should be otherwise revised.

AMENDMENTS TO TITLE XVIII (MEDICARE) OF THE SOCIAL SECURITY ACT

1. Section 5 of the bill requires all clinical laboratories to be licensed under the Clinical Laboratory Improvement Act as a condition for Medicare certification. This section also makes conforming changes to ensure that payment for laboratory services under Medicare will not be made unless the laboratory meets applicable state and federal requirements.

2. Section 6 of the bill, in an effort to discourage unwarranted markups of bills for laboratory services and to encourage direct billing by physicians, would provide that payments to physicians under the Medicare program be determined as follows:

(a) If the physician's bill indicates that the physician or another physician with whom the physician shares his practice personally performed or supervised such services, the payment shall be the reasonable charge of a physician for such services.

(b) If the bill indicates that the services were performed by a laboratory and specifies the amount the laboratory billed the physician who submitted the bill, payment shall be the lower of (a) the reasonable charge of the laboratory for such services, or (b) the amount billed by the laboratory plus a nominal fee to cover the physician's costs in collecting and handling the sample.

(c) If the bill does not indicate who performed the services or indicates the services were performed by a laboratory which is not identified, payment shall be at the charge estimated to be the lowest charge at which services could have been secured by a physician from a laboratory in the applicable locality.

3. Section 7 of the bill would limit Medicare reimbursement to hospital-associated pathologists to payments for only those services that are personally performed or personally directed by the pathologist. Charges for reimbursements which are based upon percentages of the hospital's income or receipts would be disallowed to the extent that they exceed a reasonable salary or fee paid for the service actually performed plus costs.●

By Mr. DOLE (for himself, Mr. MOYNIHAN, Mr. BENTSEN, Mr. RIBICOFF, Mr. CRANSTON, Mr. DANFORTH, Mr. SCHWEIKER, and Mr. JAVITS):

S. 591. A bill to amend title XVI of the Social Security Act with respect to presumptive disability, earned income in sheltered workshops, benefits for individuals who work despite a severe medical impairment, and the exclusion of certain work expenses in determining substantial gainful activity; to the Committee on Finance.

● Mr. DOLE. Mr. President, the Senator from Kansas is pleased to introduce a bill which amends title XVI of the Social Security Act to make various improvements in the supplemental security income program for handicapped persons. I am pleased to have as cosponsors the Senator from New York (Mr. MOYNIHAN), the Senator from Texas (Mr. BENTSEN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from California

(Mr. CRANSTON), the Senator from Missouri (Mr. DANFORTH), the Senator from Pennsylvania(Mr. SCHWEIKER), and the Senator from New York (Mr. JAVITS).

HISTORY

Last year, the Finance Committee studied the supplemental security income (SSI) program and its impact on severely handicapped persons. Weekly, I receive letters from disabled individuals who complain that the provisions of the SSI program impose strict work disincentives on those who wish to move off the unemployment rolls and into jobs. However, because SSI benefits are now cut off when a person's earnings reach $280 per month, many handicapped persons find it impossible to live independently on a small, starting income.

After studying various SSI provisions, it is obvious that the program is built on the misconception that handicapped persons do not and can not work. Mr. President, while at one time this might have been believed, we know now that it is simply not true.

Handicapped persons are making strides in their efforts to be recognized as individuals rather than as disability statistics. Society is beginning to realize that there are options to a life of confinement for handicapped individuals, and that with a little imagination and creative thought handicapped persons can lead active lives. Given forethought and effort, it is reasonable to expect that many—if not most—handicapped persons can find employment suitable to their skills.

CURRENT SITUATION

Presently, a handicapped person is considered disabled under SSI if he meets the definition of disability and if his earnings do not exceed the level of substantial gainful activity (SGA). By regulation, SGA is determined to be $240 currently, although I understand from the Social Security Administration that regulations will soon set the level at $280 per month. This means that severely disabled persons are allowed to earn up to $280 per month before losing SSI and medicaid. If persons hold jobs which pay less than this amount, their SSI benefits are decreased, but continue. Once earnings surpass the SGA level, the recipient is given a 9-month trial work period during which he continues to be eligible for benefits. After the 9 months, he loses all SSI and medicaid benefits.

I think at this point it would be helpful to point out that not all handicapped persons are subjected to this stringent requirements. The SGA test does not apply to blind workers, and instead, their benefits are phased out gradually up until the break-even point, the point where assistance payments fade out to zero. This occurs when the recipient earns $43 per month.

I appreciate the fact that Congress has recognized that it is difficult for the blind to hold low paying jobs and at the same time finance complete medical expenses. But, I suggest that it is equally difficult for many disabled persons to do this, and think that legislation should be enacted to make the program more fair for all handicapped persons.

THE DIFFICULTIES

It becomes apparent that it is quite difficult for most severely handicapped persons to locate a job and start a life on their own with earnings of $300 a month. Their situation is made particularly difficult because of the medical expenses they incur, in addition to other disability related expenses. In some situations, it becomes a losing proposition to hold a job. Needless to say, when expenses outweigh earnings, it is impossible for a person to retain his job.

I think it is time for us to recognize through legislation that handicapped persons should be encouraged to hold employment, even if they may need a little assistance to do so. Also, we need to recognize that some handicapped persons may not be able to work full time, but they could work part time and reduce their assistance payments somewhat. The legislation which I am introducing today addresses these and other problems, and if enacted, would make it easier for handicapped persons to move into full- or part-time work.

PRESUMPTIVE DISABILITY

The first provision in my bill allows for a person who was once disabled and receiving SSI to be considered presumptively disabled if he leaves the SSI rolls to seek employment and later finds it necessary to quit his job and go back on SSI. In that situation, a person would be considered presumptively disabled, and allowed to begin receiving benefits without first having to reestablish disability. This is a provision which was passed last year by the House of Representatives, and which was approved by the Senate Finance Committee. Unfortunately, because of the press of legislation at the end of the 95th Congress, we were not able to consider this bill.

Currently, there is an average waiting period of 67 days between application for SSI and its receipt by disabled individuals. For 10 percent of blind and disabled applicants, the waiting time is over 90 days. Many persons feel that the difficulty and delay in regaining SSI benefits deters individuals from attempting to become employed. Under this presumptive disability clause, applicants would still have to meet other requirements, which includes income and assets restrictions.

This bill contains a repayment provision whereby benefits could be repaid if received by persons later determined not to be disabled.

INCOME FROM SHELTERED WORKSHOPS

A second provision in this bill provides that earnings received in sheltered workshops and work activities centers shall be deemed as earned income rather than unearned. This, too, is a provision which the Finance Committee approved as an amendment to H.R. 7200, but which never came before the Senate for a vote.

Currently, income received by handicapped persons working in sheltered workshops is treated as unearned income. The law allows the first $20 of unearned income to be disregarded in determining eligibility and benefit levels. Unearned income above the $20 disregard reduces SSI benefits $1 for each $1 earned. Earned income, however, is disregarded up to $65. In other words, a person can earn $65 of earned income before his SSI benefits are reduced on a dollar for dollar basis.

The rationale for treating income from sheltered workshops as unearned is rather vague. Apparently in the past, it was felt that an employer/employee relationship did not exist in a sheltered workshop, particularly if it was also providing rehabilitation services. To my way of thinking, however, this is not a valid distinction. My association with sheltered workshops leads me to believe that an employer/employee relationship does indeed exist, and that earnings from them like earnings retreated as earned income. With this provision, the handicapped person would be able to earn $65 from work in sheltered workshops before his benefits are reduced. I think it is important that we recognize sheltered workshops as a legitimate work experience, and treat earnings from them like earnings received from any other job.

BENEFITS UP TO THE BREAK-EVEN POINT

A third provision of this bill would allow persons who are disabled on the basis of a medical disability to continue receiving cash benefits even after their earnings reach the level of substantial gainful activity. In other words, when a medically disabled person has earnings in excess of $280 a month, he shall continue to receive a cash supplement equal to the SSI payment which the blind now receive. The cash supplement will continue until earnings reach the break-even point ($443 per month).

Payments received under this provision would be treated as supplemental security income benefits for purposes of titles XIX and XX, so long as the recipient continues to meet the disability requirements and nondisability related requirements, except for earned income. As the individual's earnings increase, his cash benefit will decrease until the point his earnings reach $443 monthly, at which time cash benefits cease completely.

This provision is important for it allows handicapped persons to accept a job without running the risk that all public assistance will be cut off when his monthly earnings are still quite low. As I said before, it is unreasonable to expect that handicapped persons can jump from public assistance into a job which pays sufficiently to cover all medical and disability-related expenses, and make up for lost SSI. This provision would make that transition smoother.

From my conversations with handicapped persons, I have found that this is one of the most traumatic problems which they encounter. Because many find it insurmountable, they are never able to accept work and gradually move off the SSI rolls. In addition, this is a step which helps equalize benefits between disability groups, and gives more equal treatment to both the blind and the disabled.

CONTINUED MEDICAID ELIGIBILITY

Another aspect of this bill would allow the continuation of medicaid benefits to certain handicapped persons who meet or equal the medical listings, and whose earnings surpass the break-even point, resulting in the termination of their SSI benefits. Again, this provision is similar to one which the Finance Committee approved last year, but which never reached the full Senate for a vote.

The Secretary of HEW is given authority to continue medicaid to a medically disabled person who continues to meet the nondisability related requirements (except for his earnings) if termination of benefits under titles XIX and XX would make it extremely difficult, if not impossible, for that person to continue working.

In other words, this provision is geared toward the handicapped person who is able to work, but who continues to have high medical expenses which he cannot cover out of his income. I do not feel it is fair to keep a person from working simply because he has high medical expenses over which he has no control. In addition, if we can remove disincentives by continuing medicaid so that the person can enter the work force, we are helping this person to make a gradual transition from complete dependence on the Federal Government to a great deal of independence.

While the Secretary can continue medicaid as long as it could be shown the individual required that assistance to continue working, SSI payments would be discontinued. I think it is reasonable to believe that those persons with extremely high medical expenses would rarely, if ever, be able to work without some financial aid.

With this provision, we are helping to move persons into jobs in spite of high medical expenses. I think it is safe to say that without such a provision, these persons would never be able financially to seek employment, and would be forced to remain on welfare the entirety of their lives. This is not simple speculation, but a conclusion which I have drawn after talking with numerous handicapped individuals and after reading many letters from handicapped individuals who find themselves with no choice but to remain on welfare.

EXCLUSION OF ATTENDANT CARE

The final measure in this bill allows an individual who, because of his disability requires assistance in order to work, to disregard costs of attendant care, and certain medical devices and equipment in the determination of SGA. Again, this is a provision which the Finance Committee approved last year and which was also contained in a House-passed bill. When the disabled individual has to pay for attendant care services in order to work, it seems unreasonable for those payments to count as earnings under the definition of SGA. In many instances the cost of attendant care would consume more, if not all, of a person's starting salary. If he is then left with no other resources, it is financially impossible once again for him to hold employment.

COST

Because benefits of this bill are clearly targeted just to those individuals with severe handicaps, the Congressional Budget Office has estimated the bill to cost $5 million in fiscal year 1980, and $11 million in fiscal year 1981. I believe that this is a minor price to pay for the significant revisions made in the SSI program under this act, which would eliminate some of the biggest employment problems the handicapped now face.

CONCLUSION

Gradually, the public is beginning to realize that despite handicaps, disabled individuals have skills and services to offer in the work force. Unfortunately, our public assistance programs have not kept pace with the expanded opportunities offered to this population, and we continue to have strong work disincentives built in the law. The purpose of this bill is to remove the biggest of those work disincentives and to make it easier for handicapped persons to find and hold jobs.

The changes proposed were made after careful study of the issues and of action taken by the Finance Committee and the House of Representatives in the last Congress. As a result of my study, I believe this bill manages to relieve work disincentives for the severely disabled without having the resulting effect of increasing dependency on public assistance by those with less severe disabilities.

I am pleased with this bill, and with the support which it has received from my respected colleagues who are knowledgeable about these problems and sensitive to the needs of severely disabled individuals. I am encouraged by the support which the bill has received from advocacy groups for the handicapped, and hope that it will be enacted this year.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 591

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PRESUMPTIVE DISABILITY

SECTION 1. (a) Section 1614(a)(3) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(F) An individual applying for benefits under this title as a disabled individual (or as an eligible spouse on the basis of disability) shall be considered presumptively disabled if, within the five years preceding the date of the application, he was treated for purposes of this title or title II as a disabled individual but ceased to be so treated because of his performance of substantial gainful activity; but nothing in this subparagraph shall prevent his performance of such gainful activity from being taken into account in determining whether he is currently disabled in fact.".

(b) Section 1631(a)(4)(B) of such Act is amended by striking out "shall in no event be considered overpayments" and inserting in lieu thereof "shall not (except where such individual applied for such benefits on the basis of disability and was presumptively disabled solely by reason of section 1614(a)(3)(F)) be considered overpayments".

(c) The amendment made by this section shall apply with respect to applications filed on or after the first day of the month following the month in which this Act is enacted.

EARNED INCOME IN SHELTERED WORKSHOPS

SEC. 2. (a) Section 1612(a)(1) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of subparagraph (A); and

(2) by adding after subparagraph (B) the following new subparagraph:

"(C) remuneration received for services performed in a sheltered workshop or work activities center; and".

(b) The amendments made by this section shall apply only with respect to remuneration received in months after the month in which this Act is enacted.

BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 3. (a) Title XVI of the Social Security Act is amended by adding after section 1618 the following new section:

"BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

"SEC. 1619. (a) Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability on the basis of medical severity of disability, and who ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1611(b)(1) (or, in the case of an individual who has an eligible spouse, under section 1611(b)(2)), and for purposes of titles XIX and XX of this Act shall be considered a disabled individual receiving supplemental security income benefits under this title, for so long as the Secretary determines that—

"(1) such individual continues to be under a disability on the basis of medical severity of disability and continues to meet all nondisability-related requirements for eligibility for benefits under this title; and

"(2) the income of such individual, other than income excluded pursuant to section 1612(b), is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments).

"(b) Any individual who would qualify for a monthly benefit under subsection (a) except that his income exceeds the limit set forth in subsection (a)(2), for purposes of titles XIX and XX of this Act, shall be considered a disabled individual receiving supplemental security income benefits under this title for so long as the Secretary determines under regulations that—

"(1) such individual continues to be under a disability on the basis of medical severity of disability and, except for his earnings, continues to meet all nondisability-related requirements for eligibility for benefits under this title;

"(2) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments);

"(3) the termination of eligibility for benefits under titles XIX or XX would seriously inhibit his ability to continue his employment; and

"(4) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits which would be available to him in the absence of such earnings under this title and title XIX and XX.

"(C) For purposes of this section, an individual shall be considered to be under a disability on the basis of medical severity of disability if his impairment is one described in the regulations of the Secretary as being of such severity (or is an impairment medically equivalent in severity to an impairment so described) as to permit a finding that he is under a disability, as defined in section 1614 (a) (3), without an evaluation of his vocational capacity in the light of his age, education, and work experience.".

(b) (1) Section 1616 (c) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) Any State (or political subdivision) making supplementary payments described in subsection (a) shall have the option of making such payments to individuals who receive benefits under this title under the provisions of section 1619.".

(2) Section 212 (a) of Public Law 93-66 is amended by adding at the end thereof the following new paragraph:

"(4) Any State having an agreement with the Secretary under paragraph (1) may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2) (A).".

(c) The amendments made by this section shall become effective 60 days after the date of the enactment of this Act.

EXCLUSION OF CERTAIN WORK EXPENSES IN DETERMINING SUBSTANTIAL GAINFUL ACTIVITY

SEC. 4. (a) Section 1614 (a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(5) In applying the criteria prescribed pursuant to subparagraph (D) of paragraph (3), in the case of an individual whose disability results in a functional limitation requiring assistance in order for him to work, for purposes of determining whether such individual continues to be under a disability there shall be excluded from his earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, or prostheses, and similar items and services (not including routine drugs or other routine medical care and services) which are necessary in order for him to work, whether or not such assistance is also needed to enable him to carry out his normal daily functions. The Secretary shall, by regulation, determine those items and services to be excluded under this paragraph.".

(b) The amendment made by this section shall become effective 60 days after the date of the enactment of this Act.●

● Mr. MOYNIHAN. Mr. President, I am happy to join Senator DOLE in sponsoring a bill to modify title XVI of the Social Security Act to lower the legal and financial barriers now faced by severely disabled SSI recipients who wish to return to work.

It is clear that present law contains strong disincentives to employment. This is an unintended consequence of a program intended to assist those who are unable to work. Certainly it is wrong to penalize a disabled person who wants to work and is able to do so, despite his or her handicaps, so long as working does not bring a sudden end to such important benefits and necessary forms of assistance as medicaid.

Last fall the Subcommittee on Public Assistance held a hearing on these issues, and the Finance Committee reported out a bill that, in our judgment, would have solved the most urgent of these problems without increasing the SSI rolls by relaxing the legislative definition of disability. The press of business in the final days of the 95th Congress prevented the Senate from taking up this bill.

The version we are offering today is similar in concept to the approach agreed to by the Finance Committee, although it differs in some particulars. I believe it is both responsive and responsible. It is important to bear in mind, however, that this year the administration has proposed a number of changes in Federal disability programs. These primarily pertain to the basic title II program, but have implications as well for the SSI program, not least because of the importance of maintaining consistent definitions and requirements for persons who obtain benefits from both programs. The House of Representatives is presently considering these proposals. When the time comes for the Senate to do so, we must bear in mind that the solutions we ultimately adopt for the problems addressed in this bill must be harmonized with other solutions we may wish to adopt for related problems in the two large Federal disability programs.●

Mr. BENTSEN. Mr. President, I am happy to be here today cosponsoring a bill which I hope my colleagues will support. This bill addresses one very serious problem faced by seriously handicapped people—the problem of work disincentives under our program of supplemental security income (SSI). Simply stated, our law is such that some disabled people cannot afford to work—they cannot afford to help themselves. Under the SSI program, which is designed to guarantee a minimum income to aged, blind, and disabled Americans, seriously disabled people are no longer considered to be disabled if they earn over a certain amount which the Social Security Administration designates as substantial gainful activity, or "SGA."

This SGA level is about to be set at $280 per month. This means that disabled people are cut off of SSI as soon as they earn $280. The loss of SSI cash assistance is serious enough, but it causes an even more serious result since medicaid eligibility is usually tied to the receipt of SSI. Besides losing cash assistance and medical assistance, the disabled person who earns over $280 in many cases loses eligibility for social services.

Just picture the choice facing disabled people—they can live entirely on various public assistance programs without working and increasing their personal and financial independence, or they can make a heroic effort to work, and face the loss of every scrap of assistance at the point their income exceeds $280 per month.

It is obvious that a salary of $281 a month will not meet the subsistence and medical needs of many severely disabled people. Some of you may recall the plight of a young woman in California which was recently the subject of a segment of the "60 Minutes" television show.

This woman, a paraplegic confined to a wheelchair, received SSI and also did telephone work out of her home to supplement her benefits. When these extra earnings were discovered, the Social Security Administration informed her that she was no longer eligible for SSI and that she owed money back to the Government for benefits she had already received. After considering her plight and realizing that she had to give up her job, pay money back that she didn't have, and try to live on a monthly amount only a few dollars more than her rent bill, this young woman went home, tape-recorded her thoughts, and then took her own life. Unfortunately, some people who saw her story on television drew the conclusion that the heartless social security bureaucrats had forced her to this terrible end.

But let me clear up any mistake. The fact is that the law leaves no flexibility and that the bureaucrats were only carrying out the law.

And that is exactly why we are here now. The problem is in the law; so we must change the law. The problem is tragic, but as legislators we must look at the problem with a clear eye and find an equitable solution. I do not want to make changes to loosen up our program of disability benefits to let able-bodied people retire compliments of the taxpayer; but I intend to do my best to change the law to assist seriously disabled people who can come back into the work force to have the chance to work their way off assistance and back to productivity and independence.

The bill before us makes some important changes toward removing work disincentives in our current law. It would allow a person to come back onto SSI with less redtape if he has left SSI to work and cannot make it at the time. This provision will encourage people to try to work, without fearing a long application process if public assistance again becomes necessary.

This bill would also make a technical change in the law so that workers in sheltered workshops will have their incomes counted the same way other workers do for calculating their SSI benefits. Current law treats sheltered workshop workers less favorably, thereby discouraging them from working.

This bill would allow other severely disabled people to be treated like blind people are already treated, with a special cash payment that phases out as their earnings reach a level to substitute for their disability benefit. This will improve greatly on the current law situation in which a person's SSI disappears entirely when earnings exceed $280 per month.

Another improvement that this bill would make is to allow certain disabled people to retain medicaid coverage after their cash benefits have stopped if such coverage is necessary for them to be able to work. Under current law, the threat of large medical expenses is so great for disabled people that they cannot afford to give up medicaid, even if they could find some job. Since private health insurance is unavailable or prohibitively expensive, the fear of medical expenses prevents many disabled people from trying to work.

Finally, the bill would allow certain expenses that handicapped people incur because of their handicaps to be excluded in determining their monthly income. For example, if a person must pay $200 a month for attendant care and special medical equipment related to his disability, the first $200 of his earnings would be disregarded as necessary work expenses. Under current law, public assistance payments are financing these services with no end in sight.

When this bill becomes law, people will be encouraged to earn what they can. It only makes sense that a disabled person, like any other person, starts with low wages before he moves up the earnings ladder. By encouraging disabled people to start where they can, and assisting them while they need help, we speed the day when these people can be independent.

That independence is good for them and good for all of us, and it strikes at the heart of what all public assistance is about—a temporary helping hand only for the time a person needs his neighbors help. Let us help disabled people help themselves by working toward the swift passage of this bill.

I am delighted to join my distinguished colleague Senator DOLE and other Senators in this very important effort.

● Mr. CRANSTON. Mr. President, I join with Senator DOLE, the ranking minority member of the Finance Committee, Senator MOYNIHAN, chairman of the Public Assistance Subcommittee of the Finance Committee, and my colleagues Senators BENTSEN, RIBICOFF and DANFORTH, also members of the Finance Committee and Senators JAVITS and SCHWEICKER, in sponsoring this legislation to amend the Social Security Act to remove disincentives to the employment of handicapped individuals receiving SSI benefits under title XVI of the Social Security Act.

Mr. President, currently, in order for an individual to be eligible for SSI—and thus generally, automatically eligible for medicaid under title XIX—that individual must not be involved in substantial gainful activity (SGA); SGA is defined by the Department of Health, Education, and Welfare as earnings in excess of $240 a month. Greg Sanders of the Center for Independent Living pointed out in testimony last fall before Senator MOYNIHAN'S Subcommittee on Public Assistance that defining such earnings—approximately equal to one-half the minimum wage—as "substantial" serves as a disincentive to employment for individuals with severe disabilities. Most of these individuals have many expenses for special equipment, personal assistance, attendance care, transportation, health, and social services. And these expenses cannot be met on such a small amount of income.

Mr. President, the goal of this legislation—removing disincentives to employment for handicapped individuals—is of great importance.

The amendments include in S. 591 would remove barriers that stand in the way of handicapped Americans' voluntary efforts to seek their full share of the rights to which all are entitled in our land.

Mr. President, one aspect of the bill—found at section 4— that I believe should be reviewed carefully by the Finance Committee during its consideration of S. 591 relates to the exclusion of certain expenses in making the determination of that portion of the SSI eligibility criteria that relates to substantial gainful activity. I believe that careful attention should be given to the extension of that exclusion to the determination of eligibility for title XVI on the basis of income.

Mr. President, I strongly support the aims of this legislation and look forward to working with my colleagues to secure Senate approval.●

By Mr. WILLIAMS (for himself, Mr. CHILES, Mr. SARBANES, Mr. CHURCH, Mr. HEINZ, Mr. METZENBAUM, Mr. CRANSTON, Mr. STEWART, Mr. TSONGAS, and Mr. GLENN):

S. 593. A bill to amend section 202 of the Housing Act of 1959 to extend the program to provide housing for the elderly or handicapped, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

ELDERLY AND HANDICAPPED HOUSING ACT OF 1979

● Mr. WILLIAMS. Mr. President, at the end of fiscal year 1979, the authority will expire for the section 202 program of housing for the elderly and handicapped. I am pleased to introduce legislation today to reauthorize the program for another 3 years, and I am delighted to be joined by a number of my distinguished colleagues.

The section 202 program provides low-cost Federal loans to nonprofit organizations, such as labor unions and churches, for the purpose of building specially designed rental housing for elderly and handicapped individuals with modest incomes. First enacted in 1959, the program has proven to be one of the most popular and most successful of all Federal housing programs. Between 1959 and 1968, when the program was folded into other programs, section 202 produced more than 45,000 units, enjoying a record virtually free of project default.

In 1974, the program was revived and revamped. Its 3 percent interest rate was increased to the Federal Government's cost of borrowing, and section 8 rental assistance was made available to all tenants obtaining units under the revised program. This change has allowed section 202 to focus more attention on those persons with the most serious financial need.

HUD began making loan reservations under the revised program during 1976. Since then, 74,621 units have been reserved, and construction has started on about 28,000 of them. Even though the revised program established an annual production significantly higher than the previous program, demand for section 202 loans has continued to outstrip available funds. Last year was typical. Nonprofit sponsors submitted over 900 applications, involving some 74,000 units, but only 288 applications for 19,700 units were reserved. When Congress revived the program, its annual production was expected to be 27,000–30,000 units. In the fiscal year 1980 budget, the administration has called for a single year's extension of that program, with an authorization of $800 million, which does not take inflation into account. The result of the administration's recommendation is a loss in reservations of about 1,500 units from fiscal year 1979, and a 33-percent reduction from the level achieved in fiscal year 1976.

The continued erosion of the program's production potential is unacceptable. It is not how Congress intended for the program to perform, and it denies the increasing pressures for senior citizen housing that the aging of our population is now creating. Consider this fact. By the turn of the century, the population over 65 will have increased by about a third, and 20 years thereafter it will have grown by another 50 percent. Americans are living longer than ever, and the birth rate is declining. We must prepare to answer the housing demands of this growing segment of our population, and we must prepare now.

Not only must we fulfill our responsibility to accommodate future housing needs, but we ought to recognize that many elderly presently lack adequate incomes to obtain decent shelter. Although we have made significant gains during this decade in providing income security for senior citizens, in 1976, the latest year for which data is available, upwards of 3.3 million older Americans received less than poverty-level incomes. This means that one out of seven elderly individuals were in serious financial trouble. In addition, in 1976, it was estimated that 1.5 million elderly households were living in substandard housing.

The legislation I introduce today will extend the program for another 3 years at approximately the same reservation level as for fiscal year 1979—about 21,200 units. In fiscal year 1980, the full amount of borrowing authority needed for the program would be $877 million. Since the Department of Housing and Urban Development already has $342 million to carryover from previous authorizations and from repayments of earlier loans to the program's revolving fund, the total amount of new borrowing authority would be $535 million. In fiscal year 1981, the amount of borrowing authority would be $950 million, and in fiscal year 1982, $975 million.

The 3-year authorization is necessary to demonstrate a continuing Federal commitment to adequate housing for the elderly and handicapped. By encouraging program stability and continuity, as we have done through multiyear authorizations since the program was revived in 1974, we facilitate planning among potential section 202 sponsors, which can only have a beneficial effect on costs. I should emphasize that the borrowing authority requested will not expand the program, but will only keep it from declining still further. This is particularly important in light of HUD's efforts to increase use of section 202 loans among sponsors of housing for the handicapped.

It is also important to realize that while the borrowing authority contained

in this bill exceeds the administration's fiscal year 1980 request by $75 million, this additional amount will have no impact on the projected deficit or upon the current inflationary pressures in our society. For one thing, no outlays will occur under the fiscal year 1980 authorization for several years, due to the time needed to process applications to construction, and HUD's use of the program's revolving fund to provide construction loans. Thus, any borrowing authority approved for fiscal year 1980 will not result in the injection of new money into the current overheated economy.

Other sections of the legislation would:

First, require the Secretary of HUD to provide technical assistance to inexperienced or minority applicants, who have not enjoyed full access to the program;

Second, require the Secretary to readjust the section 8 rent subsidy accompanying the section 202 loan if there should be an increase in the loan's long-term financing rate between the date of reservation and the date of closing;

Third, require the Secretary to give special consideration to applicants whose projects would help stabilize and upgrade neighborhoods, would provide relocation housing in areas where the elderly are experiencing displacement, and would utilize cost-effective rehabilitation;

Fourth, require the Secretary, within 6 months of enactment, to recommend ways to reduce program costs, without unduly burdening sponsors or reducing program quality.

There are a number of issues that have not been addressed in this legislation, but which should be explored. Eligibility criteria for sponsors, the adequacy of present mortgage ceilings, especially in high cost areas, the status and use of the program's revolving fund, and the need to assure adequate participation in the program by handicapped sponsors, are just a few of these issues. Hearings which I have scheduled next month for the Senate Housing and Urban Affairs Subcommittee should give us ample opportunity to conduct the necessary examination of these and other questions.

Mr. President, decent, affordable housing for the elderly and handicapped, indeed for all our citizens, is one of the basic promises of our country, and it is one of the ways we measure the worth of our society. I believe that the legislation I have introduced today would continue our progress toward fulfillment of this promise.

Mr. President, I ask unanimous consent that the bill be printed at this point in the RECORD.

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

S. 593

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Elderly and Handicapped Housing Act of 1979".

REAUTHORIZATION OF LOAN AUTHORITY

SEC. 2. Section 202(a)(4)(B)(i) of the Housing Act of 1959 is amended by striking out "and to $3,300,000,000 on October 1, 1978" and inserting in lieu thereof the following: "to $3,300,000,000 on October 1, 1978, to $3,835,000,000 on October 1, 1979, to $4,785,000,000 on October 1, 1980, and to $5,760,000,000 on October 1, 1981".

APPLICATION REVIEW AND SPONSOR ASSISTANCE

SEC. 3. Section 202(a) of the Housing Act of 1959 is amended by adding at the end thereof the following:

"(6) In reviewing applications for loans under this section, the Secretary may consider the extent to which such loans—

"(A) will assist in stabilizing, conserving, and revitalizing neighborhoods and communities;

"(B) can serve as a relocation housing resource for elderly and handicapped families in neighborhoods and communities in which they are experiencing significant displacement due to public and private reinvestment; or

"(C) will substantially rehabilitate in an economical manner, structures having architectural, historical, or cultural significance.

"(7) The Secretary shall make available appropriate technical and training assistance to assure that applicants having limited resources and lacking prior housing management experience, particularly minority applicants, are able to more fully participate in the program carried out under this section.".

ADJUSTMENT OF RENTAL ASSISTANCE

SEC. 4. Section 202(c) of the Housing Act of 1959 is amended by adding at the end thereof the following:

"(4) At the time of settlement on permanent financing with respect to a project under this section, the Secretary shall make an appropriate adjustment in the amount of any assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 in order to reflect fully any difference between the interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.".

COST REDUCTION STUDY

SEC. 5. Section 202 of the Housing Act of 1959 is amended by adding at the end thereof the following:

"(h) Not later than 6 months after the date of enactment of the Elderly and Handicapped Housing Act of 1979, the Secretary shall transmit a report to the Congress containing recommendations on means to reduce the costs of the program carried out under this section without—

"(1) unduly burdening sponsors of programs and projects under this section; or

"(2) adversely affecting the ability of the program under this section to meet the housing needs of elderly and handicapped families.".●

● Mr. CHILES. Mr. President, it is my pleasure to join today with the distinguished chairman of the Subcommittee on Housing and Urban Affairs, Senator WILLIAMS, in introducing the "Elderly and Handicapped Housing Act of 1979." This legislation will reauthorize, for 3 years, the Department of Housing and Urban Development's section 202 program of loans to nonprofit sponsors for the construction of housing meeting the special needs of older and handicapped Americans.

Under section 202, in its present form, loans are made for 40-year terms to nonprofit organizations. The interest rate is set at the average in effect for all Federal obligations at the time of final closing for the housing project. Currently, that rate is 7⅝ percent. Further all units in projects built under this program are eligible for section 8 rent subsidies, to assure that low-income tenants, having less than 80 percent of area median income, pay no more than one-quarter of that income for rent.

The nonprofit sponsors assisted to provide housing under this program include religious organization, unions, community organizations and cooperatives, and fraternal groups. The quality of shelter built with this loan assistance has been high, and the financial record has been excellent, with a foreclosure rate of less than 1 percent after 20 years of operation.

Between 1959 and 1968, when it was suspended in favor of other housing programs, more than 45,000 units were constructed with section 202 loan assistance. In 1974 the Congress—comparing this program's record of performance and assessing the need for greater efforts to house an aging population—reactivated the 202 program, with some operating modifications and with higher annual goals. From fiscal years 1976 through 1979, authorizations were provided sufficient for the reservation of approximately 89,000 new units. Some of those units are now occupied in newly opened projects and others are in varying stages of construction. The 21,200 units which can be funded from the fiscal 1979 authorization of $800 million are now awaiting the evaluation of applications, with HUD's final selections for funding scheduled for June.

Section 202 housing is most popular and successful, both with sponsors and tenants. Currently, only 1 out of 6 applications submitted to HUD can be funded. Meanwhile, tenant turnover in existing projects is extremely low, and waiting lists for the few vacancies are long. All evidence points to the conclusion that this is one Federal program which is completely meeting a very real need in a cost-effective manner.

Further, with the recent enactment of the Congregate Housing Act of 1978, which I cosponsored, funds will soon be going from HUD to section 202 sponsors for the provision of meals, housekeeping aid, and personal assistance to frail elderly residents. This new service component of Federal housing programs for the elderly will maintain the independence and dignity of tenants who might otherwise be needlessly placed in nursing homes and other institutions, at great psychological cost to them and at significantly higher financial expense to the taxpayers.

Mr. President, I believe that in a year when all of us must give increased emphasis to fiscal responsibility, this bill maintains the national commitment to providing shelter to older Americans in a sound way. The 3-year term of reauthorization provides an assurance of program continuity which is particularly important to encouraging the develop-

ment of high quality applications by nonprofit sponsors. The modest increase in the fiscal 1980 authorization over this year's level is sufficient to maintain total unit reservations at about 21,000 units. The authorizations for fiscal 1981 and 1982—which decrease in percentage terms in anticipation of a reduction of inflation—continue this commitment to a steady level of unit reservations.

Other portions of this legislation include:

Permitting the HUD Secretary, in reviewing applications, to consider the extent to which proposed projects may assist in stabilizing or revitalizing neighborhoods, provide relocation housing in areas where elderly households are experiencing significant displacement, and rehabilitate existing structures in a cost-effective manner. This provision will in no way alter the allocation of funds for this program or shift its primary goal away from providing top-grade housing for elderly and handicapped Americans. It will, however, encourage the use of the 202 program as a tool, where feasible, for the building of neighborhood confidence and the adaptive reuse of existing buildings.

New assistance for sponsors lacking prior housing management experience, particularly minority group applicants. The exclusion of minorities from the program is one of its few deficiencies, and it is my hope that this provision will correct that problem for the future.

A guaranteed adjustment of rental assistance under the section 8 program to take into account any changes in the permanent financing rate. This will help to continue the excellent financial track record of the 202 program.

Mandating that the HUD Secretary report to Congress, within 6 months after the bill's enactment, recommendations for reducing the costs of section 202 housing without threatening the program's quality or soundness. It is my belief that significant gains can be made in reducing processing time of applications, and cutting construction costs, which will assist both project sponsors and the taxpayer.

Mr. President, as chairman of the Special Committee on Aging, I am acutely aware of the serious housing cost and availability problems which confront older Americans. New construction programs alone can never meet the total need, and we must give increasing attention to assisting the 70 percent of the elderly who own their own homes to adequately maintain them within an environment of healthy, revitalized neighborhoods and communities. Nonetheless, new multiunit construction must be part of our overall housing strategy, and I have seen time and again the enormous enthusiasm and pride which tenants of section 202 projects have for the very fine accommodations they reside in. I ask that my colleagues review the legislation which is being introduced today and join with me in supporting this continuing commitment to meeting the shelter requirements of thousands of older Americans.●

Mr. SARBANES. Mr. President, I am pleased to join with my distinguished colleague from New Jersey, Senator WILLIAMS, as an original cosponsor of legislation to strengthen a program of vital importance to our Nation's elderly and handicapped citizens.

This legislation will amend section 202 of the Housing Act of 1959 (Public Law 86–372). Section 202 loans have enabled us to provide decent housing for thousands of Americans and have contributed to the revitalization of urban neighborhoods. Through these loans many elderly citizens have been able to remain in their home neighborhoods and not suffer the cruel effects of displacement and relocation. The section 202 program has also made possible the construction of congregate living facilities for citizens who otherwise would often find themselves isolated and alone.

The section 202 program, first established in 1959 and revised and revitalized by the Housing and Community Development Act of 1974, provides direct loans to eligible private nonprofit sponsors to finance the construction or rehabilitation of housing units for elderly or handicapped persons. These funds are often used in conjunction with section 8 rental subsidies to provide housing for low and moderate income elderly and handicapped persons. Since the revitalization of this program in the 1974 Housing and Community Development Act, approximately 67,619 housing units have been approved.

Over the past 4 years about 30 major section 202 projects have been approved in my home State, providing more than a thousand housing units for the elderly and handicapped citizens of Maryland all over the State. From our largest 202 project, the Essex Cooperative in Baltimore County with 208 units, to the small rural projects of 6–10 units on the upper eastern shore, these facilities have provided homes for 1,603 Maryland families.

This bill makes two important changes in the current section 202 program. First, the program would be authorized for 3 years instead of the current annual authorization, thereby facilitating long-range planning and more effective utilization of section 202 funds. Second, this bill adjusts section 202 funding levels to take into account the inflationary impact on program costs. The number of section 202 housing units funded is expected to remain around the fiscal year 1979 level under these increases. S. 593 retains the current allocation formula for this program.

Housing is undoubtedly one of the most critical challenges facing the Nation. The section 202 direct loan program has made an important contribution toward meeting the housing needs of our elderly and handicapped citizens. The present period of inflation places a special burden on those living on fixed incomes. Section 202 has proved to be an effective program for providing decent housing at affordable rents to thousands of elderly and handicapped Americans.

For these reasons I am pleased to join in introducing this legislation to strengthen section 202 and urge my colleagues to join with me in working for its prompt enactment.

● Mr. HEINZ. Mr. President, I am pleased to join with Senator WILLIAMS in introducing legislation to reauthorize the section 202 direct loan program for the housing of the elderly and the handicapped. The budget authority for this vital program expires this year, and our action today will serve to provide a 3-year extension of the existing section 202 loan authority.

In 1971, the White House Conference on Aging concluded that there was a clear need for the development of specially designed housing for the elderly. Shortly thereafter, the section 202 loan program was revived and funded by the Congress to provide direct, long-term 40-year loans to nonprofit sponsors for the construction and rehabilitation of rental housing for the elderly and handicapped. The section 202 loan has since received an excellent operating record and has now become the primary Federal financing program for the development of housing for older Americans.

During the first operational year of the program, the Department of Housing and Urban Development was flooded with over 1,500 applications for section 202 loans to construct more than 200,000 housing units. The following year, 1,200 applications to build 180,000 units were received by the Department of Housing and Urban Development. Unfortunately, only approximately 200 applications per year can be funded. The program response clearly indicates its necessity and illustrates the fact that our efforts to ease the problem of adequate housing have been positive and in the right direction. Nevertheless, the needs of the elderly and handicapped for appropriate housing continue.

We must assure the elderly community of congressional concern by addressing the issue through a long-term approach. The 3-year reauthorization term expresses congressional commitment to the serious problems faced by the elderly. The loan reauthorization figures of the proposed legislation reflect careful long-term consideration. Each year, a slight increase in funding is provided for the accommodation of inflation, in order to maintain approximately the same number of elderly housing units as the 1979 fiscal year levels.

The proposed legislation does not overlook the more specific problems of our elderly and handicapped citizens. A provision in the section 202 reauthorization bill requires the Secretary of the Department of Housing and Urban Development to give special consideration to 202 projects which provide relocation housing in areas where the elderly are experiencing displacement. The Secretary is also required to assist inexperienced applicants, particularly minority group sponsors. This represents substantial improvements over the present loan program, since in the past, minorities have lacked access to 202 loans. Authorization to fund this assistance exists in other housing legislation.

A final provision of the 202 reauthorization requires the Secretary, within 6 months after enactment, to report to the Congress means of reducing section 202 costs without unduly burdening sponsors or reducing program quality. This sec-

tion's language not only demonstrates congressional concern that continued cost boosts threaten the program, but it is also expected to result in recommendations for speeding processing time and reducing construction costs.

As the number of senior citizens increases, it is even more important to provide for them, a stable base and a constant production of housing units. The reauthorization of section 202 direct loan program represents almost the total Federal housing effort for the elderly for the forthcoming year. The section 202 loan program has proved effective. I believe the benefits of this program and the clear need for its continuation, justify the reauthorization of section 202. I urge my colleagues in the Senate to give favorable consideration to this legislation.●

By Mr. McGOVERN (for himself, Mr. LAXALT, Mr. BUMPERS, Mr. GRAVEL, Mr. RIEGLE, Mr. BAUCUS, Mr. LEAHY, Mr. HATFIELD, Mr. MATSUNAGA, Mr. CANNON, and Mr. METZENBAUM):

S. 594. A bill to provide for a formal process of State participation and concurrence regarding the management and storage of radioactive materials; to the Committee on Energy and Natural Resources.

RADIOACTIVE WASTE MANAGEMENT ACT OF 1979

● Mr. McGOVERN. Mr. President, today I am pleased to introduce the Radioactive Materials Waste Management Act of 1979. I am introducing this legislation on my behalf and that of Senators LAXALT, BUMPERS, GRAVEL, RIEGLE, BAUCUS, HATFIELD, LEAHY, CANNON, MATSUNAGA, and METZENBAUM.

Since its inception, the location of and planning for our radioactive waste disposal facilities have been the prerogative of the Federal Government, with little thought or responsibility given to a strong State role in those States in which a disposal facility may be sited.

LEGISLATIVE HISTORY

In 1975, ERDA inherited the responsibility of recommending and carrying out the Nation's waste management policy. This responsibility was overwhelming, because without success the potential nuclear energy development could come to a halt as the long list of disposal failures continues. It is apparent that this effort must be a united effort by the Federal and State governments.

ERDA, in its 1976 announcement of expanded data gathering for potential sites for geologic nuclear waste disposal, was careful to include in each phase consultation with State and local officials. This announcement flatly stated:

> ERDA will terminate a particular repository site selection project if the State raises the issue of the project connected with selection criteria, and their application, that are not resolved through mutually acceptable procedures.

ERDA then attempted to carefully outline State local inclusion in the decisionmaking process for site selection stating:

> The expanded ERDA geologic study program is designed to proceed on a phased basis, enlisting review and cooperation by local and state officials, as well as by other federal agencies. Public forums to discuss the program and to obtain local advice will be conducted in the areas of geologic surveys.
>
> Public hearings on the generic as well as the specific impact statements will be conducted as appropriate.
>
> There will be a period for substantial public discussion of relevant concerns.
>
> ERDA recognizes the need and will provide the opportunity for the public to participate in each phase of the National Terminal Storage program.
>
> Based on environmental analyses and other technical data developed in the interim, ERDA, in consultation with State officials will re-evaluate the candidate site.

But the final statement directed to the third phase of the procedure simply states:

> ERDA will make a decision regarding the location of a repository.

It would seem that by providing ERDA with the final authority, instead of allowing a cooperative decisionmaking process, the agency had violated the spirit if not the letter of its previous rulemakings, while perhaps more importantly, antagonizing many States who wished to become an integral party to the siting procedure. At that time, ERDA faced considerable opposition from a number of States on this particular ruling. By 1977, 26 States had passed or initiated legislation directed at allowing themselves some form of direct control over nuclear waste facilities.

If the Agency had at least confirmed the States rights to act jointly in the final decision, they might have avoided the tremendous amount of resistance to placement of the six planned commercial repositories.

Since that time additional States have passed or have pending legislation in an attempt to establish control over the siting of nuclear waste repositories in their States. Numerous congressional hearings have been held on the issue across the country without any resolution of the problem.

CONSULTATION AND CONCURRENCE

In 1978, the Department of Energy released a preliminary inter-agency task force report on nuclear waste management forming the basis for their present waste facility selection policy. This report promoted a policy of concurrence between the Federal Government and affected States in which the State would be a formal participant in each step of the siting process and, further stating, that if substantial concurrence could not be achieved that the Federal Government would respect the State's objections and would not proceed with plans for that particular site.

I have predicated this legislation on the concept of concurrence and consultation because it will, for the first time, allow affected States a strong and formal role in the waste facility siting process.

We must begin to respect the States abilities to come to grips with this issue and conduct rational decisionmaking. When I offered an amendment 2 years ago providing States the authority to veto nuclear waste disposal projects, the proposal narrowly failed the Senate indicating the level of support for a strong State role.

However, many States have advised me that although they may have passed legislation in reaction to earlier ERDA proposals, that their primary concern was to establish a formal mechanism for their control over the siting process. For the most part, States do not wish to undermine Federal efforts to effect a rational radioactive materials storage program. They are only asking that which is rightfully theirs.

The policy of concurrence and consultation as developed in the Department of Energy is a solid step in this direction. However, internal policies are too easily subject to change with changes in the Department and in the administration. I contend we must go a step beyond this internal policy and show State governments that we are serious about providing them a formal partnership with the Department, through legislatively authorizing this policy and establishing the appropriate guidelines.

Unfortunately, Secretary Schlesinger and I are in disagreement on this matter. Although the Department has not opposed this proposal, the Secretary recently testified before the Joint Economic Committee that he felt the proposal was unnecessary as he was already pursuing this policy.

On the other hand, the U.S. General Accounting Office contends that the Department may not have the necessary statutory authority to pursue concurrence and consultation. In a letter to Congressman DINGELL, the distinguished chairman of the House Subcommittee on Energy Power, the GAO advised that any departmental policy which would allow a State to reject a possible waste disposal site could constitute a "veto." They further stated that the Department lacked the authority to pursue its present policy in that it was possible a veto could occur.

Many of my colleagues and I agree with the conclusions of the General Accounting Office on this matter.

More importantly, regardless of our varying views on the viability of nuclear power and the needs for a comprehensive waste management program, we contend that any State should have the authority to exercise some control over such projects. Those who have stated that if this legislation were passed we would see all 50 States reject all possible projects, give their States little credit.

This legislation would guarantee States a voice in the councils of Federal nuclear energy decisionmaking. It does nothing more, and nothing less, than allow the people most directly affected to exert some control over decisions made affecting their lives.

I firmly believe that once we establish a true partnership with the States on this or any issue, they will make a good faith effort to come to grips with the issues pertinent to waste facility siting.

SECTION-BY-SECTION ANALYSIS

The purpose of the bill is to provide for a formal process of State participation and concurrence regarding the management and storage of radioactive materials.

Section (a) requires the Chairman of

the Nuclear Regulatory Commission (NRC) to publish in the Federal Register, and to notify the Governor, the presiding officers of a State legislature, and the tribal council of any affected Indian tribe, of any intent to explore a site within such State or within such Indian reservation for the purposes of establishing a storage of disposal facility for radioactive materials.

Section (b) authorizes the Governor, or the tribal council, upon notification by the NRC, to request the creation of a Federal/State Radioactive Materials Management Commission for the purposes of examining issues related to achieving substantial concurrence between the affected State, the affected Indian tribe, and the Department of Energy and the Nuclear Regulatory Commission on any Federal proposal regarding radioactive material management. Such radioactive material shall include high-level defense waste, spent fuel reactor assemblies, transuranic materials, and other mid- and high-level radioactive materials.

Section (c) sets forth the guidelines for composition of the Commission. Members will include one official from each of the following Federal agencies: the Nuclear Regulatory Commission, the Department of Energy, and the U.S. Geological Survey. The Commission shall also include the Governor of the affected State—or a representative designated by the Governor—a representative of any affected tribal council, and other State and local officials to be designated by the Governor jointly with the leadership of the State legislature.

Section (d) requires the Commission to examine all issues related to achieving substantial concurrence, including socioeconomic, institutional, technical, environmental and health and safety issues.

Section (e) provides that if the Commission cannot achieve substantial concurrence with the proposed action within the affected State, the Governor, in consultation with the other Commission members, shall file a report stating the Commission's objections and identifying acceptable alternatives.

Section (f) provides that State legislatures of any affected State, pursuant to the State's laws and constitution, may concur or disagree with the Commission's decision as reported by the Governor.

Section (g) prohibits the Department of Energy from proceeding with any proposal regarding site selection or site development for radioactive waste management for the specified site, unless the objections of the State issued pursuant to sections (e) and (f) are satisfied.

Mr. President, I request unanimous consent that this bill be printed in the RECORD.

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

S. 594

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That (a) Chapter 19 of the Atomic Energy Act of 1954, is amended by inserting the following new section after section 241:

"SEC. 242. Notice to States with regard to Disposal of Nuclear Waste.—

"a. Except as may otherwise be provided, the Chairman shall notify (and publish such notice in the Federal Register) the Governor, the presiding officers of the various chambers, where applicable, of a State legislature, and where applicable, the Tribal Council of any affected Indian tribe, of its intent to explore a site in such State, or within an Indian reservation, for the purpose of establishing, evaluating, or contracting for construction of facilities intended for the storage or disposal of radioactive materials.

"b. Except as may otherwise be provided, the Chairman shall, after making the notification required by subsection a., and upon the request of the Governor of an affected State or an affected Tribal Council, establish a Federal and State Radioactive Materials Management Commission (hereinafter in this section referred to as the Commission) for the purpose of achieving, in an expeditious manner, substantial concurrence between the State, the affected Indian tribe, and the Department of Energy for each proposal made by the Department of Energy regarding site selection, evaluation, contracting, or construction of facilities intended for the management and storage of radioactive materials including high-level defense waste, spent fuel reactor assemblies, transuranic materials and other mid- and high-level radioactive materials.

"c. The Commission shall consist of—

"1. the appropriate officials from the Nuclear Regulatory Commission designated by the Chairman.

"2. a representative from the Department of Energy designated by the Secretary.

"3. a representative from the United States Geological Survey,

"4. the Governor of each affected State, or his designated representative,

"5. a representatives of any affected Tribal Council,

"6. not to exceed 6 State or local officials, or interested citizens from the affected State designated by the Governor, in consultation with the leadership of the State legislature,

"7. such other individuals to be selected at the discretion of the Chairman or the Governor of the affected State.

"d. The Commission shall meet to examine all proposed actions to be taken under subsection a., with the objective of achieving substantial concurrence on each and any socioeconomic, institutional, technical, environmental, health and safety issues associated with such action.

"e. In the event that the Commission representatives of the affected State determine that concurrence cannot be achieved with regard to any proposed action, the Governor, in consultation with the other Commission members from the affected State, shall file a report stating his objections and identify acceptable alternatives.

"f. The State legislature of any affected State may by point or concurrent resolution or by law, or in those States with a unicameral legislature by single resolution, or by other powers subject to each State's constitution concur or issue nonconcurrence with the decision of the Commission."

"g. No Federal agency or its representative shall proceed with any project for storage or disposal of radioactive materials unless the State has determined that its objections have been resolved."●

By Mr. TOWER:

S. 595. A bill to amend the Urban Mass Transportation Act of 1964 with respect to labor standards; to the Committee on Banking, Housing, and Urban Affairs.

Mr. TOWER. Mr. President, I am today introducing legislation which would help to assure that the dollars of Federal taxpayers are spent effectively. The bill would repeal the Davis-Bacon Act, as that act applies to federally assisted public transportation programs. As a member of the Committee on Banking, Housing, and Urban Affairs, I have great concern about the wasteful effect which the Davis-Bacon Act has upon Federal spending in public transportation programs, and I believe that its repeal is essential if we are to control Federal spending in this area.

Efforts to assure that each Federal dollar spent yields the maximum possible return should be made under any circumstances. But particularly at a time when the Nation's economy is beset by inflation, a major cause of which is excessive Federal spending, it is essential that unnecessary costs be eliminated.

The Davis-Bacon Act, which was enacted during the 1930's, is an act whose time has gone. Even if the act were administered in accordance with the original congressional intent, it would have no place in our present economy. But the problems engendered by the act as it is actually applied by the Department of Labor lead to an outrageous misuse of Federal resources.

The Davis-Bacon Act requires construction contractors engaged in federally assisted projects costing over $2,000 to pay their workers at wage rates determined by the Secretary of Labor. The Secretary's determination is supposed to reflect the wage rates prevailing for similar types of workers in the community where the project is located. The purpose of this act was to prevent contractors from using so-called itinerant workers from outside the local community to work on federally assisted projects at lower wage rates than prevail in the community. The concern was that this would undercut the wage rates of local construction workers. The problem is that this inflated the wage rates which contractors must pay their workers on federally assisted projects. As a result, the American taxpayer has had to foot the bill for the higher costs of federally assisted construction. Moreover, the Davis-Bacon Act is disruptive to the private wage scales of many contractors, and has discouraged many of those contractors from bidding on Federal projects.

The Davis-Bacon Act applies to federally assisted public transportation projects by virtue of section 13 (a) and (b) of the Urban Mass Transportation Act, as amended. Because of the substantial costs necessarily involved in any significant construction project involving public transportation, it is obvious that the effect of the Davis-Bacon Act provision is substantial.

The costs involved with the Davis-Bacon Act generally are enormous. They have been estimated at $2.7 billion annually. Of this, $1.8 billion is estimated to result from the effect which the act has on inflating construction wage rates in the case of private construction contracts.

Repealing the Davis-Bacon Act would not only reduce the direct costs which the taxpayer is asked to bear as a result

of inflated wage rates on federally sponsored construction projects, but it would eliminate the added spillover cost into private construction projects as a result of the higher wage rates which the Davis-Bacon Act encourages workers to seek.

As everyone knows, inflation is our No. 1 economic problem. And, as the President said in his economic report to the Nation:

> It is now more essential than ever that our government, in both its budgetary and regulatory programs, make the best use of the resources at its disposal and seek better, less costly means to achieve our national objectives.

I continue to be an advocate of meaningful Federal support for public transportation, and I believe that public transportation programs can play a vital role in addressing a number of urban problems, including congestion, energy consumption, and the environment. However, it is critical that Federal expenditures in this area not be wasted, and elimination of the artificial barriers of the Davis-Bacon Act is essential if we are to serve the interests of the taxpaying public.

At the time when the Davis-Bacon Act was passed, there were no minimum wage laws, no unemployment compensation programs, and no other laws to protect the wages of workers. Because of massive unemployment and the severe competition for Government contracts and for jobs, the act was believed necessary to prevent hiring of itinerant workers at lower wages than those prevailing in the community and thus depressing local wage structures. The changes in our economy since the 1930's make it abundantly clear that Davis-Bacon is outmoded and counterproductive.

The problems created by the Davis-Bacon Act are exacerbated by the Department of Labor's implementation of the act. In addition to the added costs of every project in which the Labor Department's determination is higher than the actual prevailing wage rate, the act requires unnecessary and unproductive costs to comply with the payroll reporting requirements and costs to Federal agencies to administer and enforce the act.

If we are really serious about dealing with inflation, there is no better place to begin than by repealing the Davis-Bacon Act. The bill I am introducing today would repeal the application of that act on all federally assisted public transportation programs. These programs are under the jurisdiction of the Committee on Banking, Housing, and Urban Affairs, and as a member of that committee I intend to pursue this matter vigorously during the 96th Congress.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 595

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13 of the Urban Mass Transportation Act of 1964 is amended by striking out subsections (a) and (b).

By Mr. DANFORTH (for himself and Mr. HART):

S. 596. A bill to provide a fair procedure for establishing congressional districts; to the Committee on Governmental Affairs.

CONGRESSIONAL ANTI-GERRYMANDERING ACT OF 1979

Mr. DANFORTH. Mr. President, today, together with Senator HART, I am introducing legislation to reform the process by which congressional districts are created.

Simply stated, we propose the establishment of bipartisan redistricting commissions in each State entitled to more than one representative following reapportionment pursuant to the 1980 census and all subsequent censuses.

Redistricting would be accomplished in accordance with standards which would militate against gerrymandering; namely, that districts, when created, be as equal in population as practicable, that the boundaries of districts coincide with the boundaries of local political subdivisions, that districts be composed of contiguous territory, and finally, that districts be compact. Redistricting commissions would be prohibited from creating districts to advantage or disadvantage political parties or specific persons—usually incumbent officeholders—and they would be further prohibited from creating districts for the purpose of diluting voting strength of racial or language minority groups. All redistricting plans would be subject to possible court review.

Each redistricting commission would consist of five members. Four members would be appointed by the leaders of the State legislature. The precise appointment procedure varies, depending on the organization of the State legislature, but in the most common example—the partisan bicameral legislature—the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House would each appoint one member of the commission. The fifth member would be appointed as chair by the commission members themselves.

It should be clear why we are taking this action. The practice of gerrymandering congressional districts has debilitated political parties and discouraged the Amercan people from participating in the political process. It has robbed the people of effective and fair representation in Congress, and we want to see it stopped.

Although some States have already established redistricting commissions for State legislative districts, by and large congressional redistricting remains the province of the State legislatures, where, it has been said, there are two ways of redistricting—the Republican way and the Democrat way, depending on the leanings of the legislature. We have chosen to vest redistricting in bipartisan commissions, because we are thereby assured that the political forces will be evenly balanced. We do not have that assurance if redistricting is left to State legislatures.

However, it is not sufficient to simply create bipartisan commissions. Students of government will quickly point out that there is a phenomenon known as "bipartisan gerrymandering," wherein Republicans and Democrats put their heads together and decide who gets what—with incumbent officeholders the usual winners. So, something more is needed. To that end, we have provided a set of judiciable standards to guide the commissions—and the courts. At the heart of these standards is subsection (d)(5) which provides that "the boundaries of districts may not be drawn for the purpose of advantaging or disadvantaging any political party, incumbent legislator, or other person or group."

Under current law, although some States provide standards to guide the process of redistricting, the only standard essentially applicable to all States is "one person, one vote," the standard established by the Supreme Court. Unless substantial population disparities are present, most redistricting plans will survive challenge. Even racial gerrymandering has been tolerated absent strong evidence of intent and harm. A fair system of congressional districting requires more.

The mere fact that a congressional district has no more people than any other should not permit district boundaries to run hither and yon in an effort to protect an incumbent legislator, neither should it excuse racial or ethnic gerrymandering. Districting done for the purpose of advantaging or disadvantaging any person or group of persons is wrong, and should be illegal. That does not mean that a redistricting scheme should fall simply because it favors some person or group. It is inevitable that someone or some party will benefit from any redistricting scheme. The primary consideration should be the purpose for which the district is created. Thus, a redistricting scheme would not fall simply because it inured to the benefit of the Democratic or Republican Parties. But a plan could not survive legal challenge if it could be shown that it was designed to create Republican districts or preserve Democratic districts.

It is not the purpose of this legislation, however, to hand over the job of redistricting to the courts. Far from it. If the redistricting commissions follow the mandate of this legislation, there is a significant likelihood that no redistricting plan will face serious court challenge. Should a case go to litigation, the court will have justifiable standards to guide its judgment, a marked contrast with the situation which currently prevails. And if the commission's plan is found wanting, the court is mandated to return it to the commission for further consideration. Only if the commission fails a second time can the court set itself to the task of drawing district lines.

I am aware there are some who would dismiss this legislation as idealistic. Let them. I am firmly convinced that this bill—or something like it—is very much needed. I cannot conceive of a single argument for tolerating a system which perpetuates gerrymandering. In my opinion, a great deal of the current disaffection with American Government

stems from the belief—on the part of a great many people—that they have lost control over the political forces that control their lives. They have come to believe that they count for nothing, that their votes count for nothing, that political parties count for nothing, that their elected representatives do not care about them. And, if we tolerate a system which treats people as political pawns, which debilitates political parties, which allows incumbent officeholders to ignore their constituents (secure in the knowledge that they will be returned to office in any event), then we invite and encourage the apathy and disillusionment which now characterize American politics.

In this legislation, with reapportionment only a few years away, we have an opportunity to open up the political process by providing a fair procedure for establishing congressional districts. It is a job worth doing.

Mr. President, I ask unanimous consent that the Congressional Anti-Gerrymandering Act of 1979 be printed at this point in the RECORD.

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

S. 596

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Congressional Anti-Gerrymandering Act of 1979".

SEC. 2. Section 22 of the Act entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress", approved June 18, 1929 (2 U.S.C. 2a), is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c)(1) In each State entitled in the Ninety-eighth Congress or in any subsequent Congress to more than one Representative under an apportionment made pursuant to subsection (b) of this section, a redistricting commission shall be established. Such commission shall be established within sixty days after the executive of such State receives a certificate pursuant to subsection (b) of this section. The commission shall consist of five members, none of whom may be officers of Federal, State, or local government, or officers of any political party. Members shall be appointed as follows:

"(A) In the case of a partisan bicameral legislature, the following officers in such legislature, or equivalent officers therein, shall each appoint one member of the commission:

"(i) The majority leader of the senate.

"(ii) The speaker of the house.

"(iii) The minority leader of the senate.

"(iv) The minority leader of the house.

"(B) In the case of a nonpartisan bicameral legislature, the leader of each house of such legislature shall each appoint two members of the commission.

"(C) In the case of a partisan unicameral legislature, the majority leader and the minority leader of such legislature shall each appoint two members.

"(D) In the case of a nonpartisan unicameral legislature, the leader of such legislature shall appoint four members of the commission, no more than two of whom may be members of the same political party, after consultation with leaders of political parties in such State.

"(E) The four members appointed pursuant to subparagraph (A), (B), (C), or (D) as the case may be, shall, by an affirmative vote of at least three members, select a fifth member, who shall chair the commission.

For the purposes of this paragraph, the determination as to which official constitutes the minority or majority leader of a house of a State legislature shall be made by the members of such house.

"(2) A vacancy in a commission shall, within fifteen days after it occurs, be filled in the same manner in which the original appointment was made.

"(d) The redistricting commission for each State shall establish a number of districts equal to the number of Representatives to which such State is entitled under the apportionment made pursuant to subsection (b) of this section, and Representatives shall be elected only from districts so established, no district to elect more than one Representative. In order to provide an equitable system to all electors of Representatives and to insure fair representation in the House of Representatives, districts shall be established in accordance with the following standards:

"(1) The number of persons in districts within each State shall be as equal as practicable, as determined under the then-most-recent decennial census. A State may make reasonable deviations from numerical equality in order to take into consideration the requirements set forth in paragraphs (2) through (4), except that in no case may a district in a State contain a number of persons which differs by more than two percent from the quotient obtained by dividing the population of such State (under the decennial census) by the number of Representatives to which the State is entitled under the apportionment made pursuant to subsection (b) of this section.

"(2) The boundaries of each district shall, to the extent consistent with the requirements of paragraph (1), coincide with the boundaries of local political subdivisions. The number of counties and municipalities divided among more than one district shall be as small as possible. No county or municipality shall be divided among more than two districts that include other counties or municipalities.

"(3) Each district shall be composed of convenient contiguous territory, including adjoining insular territory.

"(4) Districts shall be compact in form. The boundaries of each district shall be as short as practicable, consistent with the requirements set forth in paragraphs (1), (2), and (3).

"(5) The boundaries of districts may not be drawn for the purpose of advantaging or disadvantaging any political party, incumbent legislator, or other person or group. In preparing a plan, the commission shall not take into account the addresses of incumbent legislators. The commission shall not use the political affiliations of registered voters, previous election results, or demographic information other than population head counts for the purpose of advantaging or disadvantaging any political party, incumbent legislator, or other person or group.

"(6) The boundaries of districts may not be drawn for the purpose of diluting the voting strength of any language minority group (as defined in section 14 (c) (3) of the Voting Rights Act of 1965) or of any racial minority group.

"(e) Nothing in this section shall be construed to supersede any provision of the Voting Rights Act of 1965.

"(f) The redistricting commission, in preparing a plan setting forth the boundaries of districts, shall conduct public hearings, at which the commission may take such testimony and receive such evidence as it considers necessary to carry out its duties. Not later than one hundred and eighty days after its appointment, the commission shall propound a redistricting plan, which shall be transmitted forthwith to the Federal Election Commission. The Federal Election Commission, upon receipt of the plan, shall publish it in the Federal Register. On the sixtieth day after the date of publication in the Federal Register, the plan shall take effect.

"(g)(1) Not later than sixty days after the date of publication of a redistricting plan in the Federal Register, pursuant to subsection (f) of this section, a person in any State meeting the qualifications for voting in an election of a Member of the House of Representatives may bring an action in the district court of the United States for the district of which such person is a resident, without regard to the amount in controversy, to enforce the provisions of this section with regard to the State in which such person resides. The court may consolidate such actions.

"(2) The court shall have authority to enter all judgments, orders, and decrees necessary to bring a State into compliance with this section, except that if the court finds that the plan is not consistent with the requirements of this section, or violates any other Federal law, the court shall declare the plan invalid in whole or in part and remand it to the redistricting commission with instructions to prepare a new plan consistent with such order. Not later than sixty days after receipt of such order, the redistricting commission shall submit a new plan to the court. If the new plan still fails to comply with this section, or other Federal law, the court shall issue an order establishing single member districts according to law.

"(h)(1) The district courts of the United States shall have exclusive jurisdiction to hear and determine any action brought under subsection (g) which shall be heard by a district court of three judges. The case shall be heard at the earliest practicable date, and

"(2) An appeal from a final decision under subsection (g) shall be filed within thirty days after the entry of such decision. Appeals brought to the Supreme Court under this section shall be heard as soon as practicable.

"(3) In any action or proceeding brought to enforce the provisions of this section, the court may in its discretion allow the prevailing party, other than a State or the United States, a reasonable attorney's fee.

"(i) A commission appointed pursuant to subsection (d) shall cease to exist sixty days after the publication pursuant to subsection (f) of the redistricting plan prepared by such commission, except that such commission shall continue to exist during the period in which any action under subsection (g) with respect to such plan is pending.

"(j) Until a State is redistricted in the manner provided by law after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner:

"(1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by law, and if any of them are elected from the State at large they shall continue to be so elected.

"(2) If there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by law.

"(3) If there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by law.

"(4) If there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the

State at large and the other Representatives from the districts then prescribed by law.

"(5) If there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.".

SEC. 3. (a) The Federal Election Commission shall pay to each State redistricting commission, an amount equal to the reasonable costs actually incurred by such State commission, including reasonable salaries for members of the State commission.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 4. The second paragraph (relating to congressional redistricting) of the Act entitled "An Act for the relief of Doctor Richardo Vallejo Samala and to provide for congressional redistricting", approved December 14, 1967 (2 U.S.C. 2c) is repealed effective January 1, 1981.

● Mr. HART. Mr. President, I join with Senator DANFORTH today in introducing legislation designed to promote the principles of meaningful representation and electoral fairness upon which our democratic system is based.

The Supreme Court's decisions of the 1960's, which required periodic reapportionment on the basis of "one man, one vote," eliminated gross population inequities among legislative districts. The Court's decisions marked an important step in the direction of assuring fair and effective representations for all citizens. The Court, however, did not deal with the equally important problems of racial and political gerrymandering. Congress must complete the reapportionment revolution begun by the Supreme Court.

Presently, all State constitutions contain some provision regarding congressional redistricting and reapportionment. Most State constitutions require the State legislature to reapportion on the basis of population following each Federal decennial census. Standards, where they exist, are often vague and unenforceable. As a result, many state legislatures are free to draw districts of bizarre configurations designed to serve partisan or personal ends.

Discriminatory districting, better known as gerrymandering, operates to inflate unfairly the political strength of one group and deflate that of another. It disrupts entire cities, towns, and communities for the sole purpose of creating and maintaining political power bases. Racial and ethnic minorities are often the victims of such discriminatory districting.

The Constitution establishes Congress' role in regulating the manner in which its Members are chosen. The legislation which Senator DANFORTH and I are introducing today will constructively reform the congressional redistricting process. This bill is based on the underlying theory that congressional redistricting should be an administrative act rather than a political one. In brief, the bill would reform congressional redistricting by creating standards to be followed by independent bipartisan redistricting commissions in each State.

My own State of Colorado is one of three States in the Nation to adopt procedures for reapportionment of the State legislature which meet the antigerrymandering standards advocated by Common Cause and incorporated into this legislation. This legislation, which applies to congressional redistricting, would not, of course, affect the reapportionment of State legislative seats.

Rigorous antigerrymandering standards are essential if we wish to avoid undermining the system of competitive elections upon which our representative system of government is based. Political gerrymandering dilutes the value of political participation and makes legislators less responsive to their entire constituency.

Political gerrymandering works to shut people out of the political process. The legislation we are introducing today will benefit the public by broadening political participation and increasing electoral competition.

Reapportionment will not take place until 1981 when congressional district lines will be redrawn based on the 1980 Federal census. Therefore, Congress should move this year to develop standards for the reapportionment procedures of State legislatures so that the legal framework for the development of fair reapportionment plans is in place and ready to be used. I hope Congress will act expeditiously on this important measure.●

By Mr. BAYH (for himself, Mr. HATFIELD, Mr. RANDOLPH, and Mr. COHEN):

S. 597. A bill to provide that polling and registration places for elections for Federal office be accessible to physically handicapped and elderly individuals, and for other purposes; to the Committee on Rules and Administration.

VOTING RIGHTS FOR THE ELDERLY AND THE HANDICAPPED ACT

● Mr. BAYH. Mr. President, today I am introducing legislation on behalf of myself, Mr. HATFIELD, Mr. RANDOLPH, and Mr. COHEN which is designed to help the elderly and handicapped citizens of our great Nation exercise one of the most sacred privileges—the right to vote. This legislation is substantially identical to legislation I introduced along with my distinguished colleague from Oregon (Mr. HATFIELD) in the 95th Congress.

The right to vote is regarded by most Americans as one of the vital ingredients in the functioning of our democratic society. Despite our allegiance to this sacred principle, every election day every year, we disenfranchise millions of our Nation's voters. This disenfranchisement takes place, because many of our registration sites and voting places prove to be inaccessible for our Nation's elderly or handicapped. Architectural barriers in effect prevent these citizens from being able to participate in the electoral process that is the very bulwark of our Nation.

While it is difficult to obtain accurate statistics on the number of voters that are affected by such impediments as architectural barriers, it has been estimated that the number of persons in the United States that must rely on mobility aids is placed conservatively at 20 million. The National Center for Health Statistics reports that there are approximately 1.87 million Americans of voting age whose mobility is severely restricted as a result of physical handicap. When you add to this the large percentage of the 23.5 million elderly persons who might have similar mobility problems, the 1.87 million figure grows substantially. The Department of Transportation has estimated that at any one time, more than 2.6 million potential voters are disabled by short-term illnesses. I am deeply concerned over the impact of this problem for the 705,000 disabled and 783,000 elderly in my own State of Indiana.

The legislation we are introducing today seeks to correct this unfortunate situation by requiring the Attorney General, in consultation with the Secretary of Health, Education, and Welfare, to set standards for all polling places used in Federal elections which would assure access to such facilities for elderly and physically handicapped voters. At a minimum these standards would require that all polling and registration places be located in a building or other facility which provides access, by ramp or otherwise, to individuals in a wheelchair. States and local jurisdictions which have established standards as stringent as those proscribed by the Attorney General shall not be affected by our legislation.

If there is no accessible polling or registration site available, the State or local jurisdiction would be required to provide alternative methods of voting. Whenever alternative methods are deemed necessary, public notice shall be given at least 60 days in advance.

Additionally, this legislation would require that paper ballots be available at all voting sites used for Federal elections for those persons unable to use a conventional voting machine. Blind and other voters who have difficulty both in operating a voting machine and in marking a paper ballot would be allowed to designate an individual to assist them.

One of the most compelling reasons for legislation such as we are introducing today is the confusion of State laws and practices regarding assisting the elderly or handicapped in voting. For example, 12 States currently require a doctor's certificate to be filed before a handicapped or elderly person is eligible for an absentee ballot. Twenty-six States require that an absentee ballot be either notarized or certified in some way. Eighteen States have mail registration for all voters; and an additional nine States allow mail registration specifically for the handicapped. Twelve States permit curbside voting if a person is disabled. Only 15 States currently specify that polling places must be accessible and only five States now permit a handicapped voter to go to the nearest accessible polling place if his assigned place is not accessible.

Mr. President, we have come a long way toward extending the franchise to those various groups in our society who have been denied the vote over the years. It is no longer permissible to discriminate against a voter, because of his race or his language. With the passage

of the legislation we are introducing today, it will no longer be permissible to discriminate against the older or handicapped voter.

Mr. President, I ask unanimous consent that the text of our bill be printed in the RECORD.

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

S. 597

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Voting Rights for the Elderly and the Handicapped Act".

PURPOSES

SEC. 2. It is the intention of Congress in enacting this Act to promote the fundamental right of all citizens to vote by requiring polling and registration places for elections for Federal office to be readily accessible to physically handicapped and elderly individuals.

SELECTION OF POLLING AND REGISTRATION PLACES

SEC. 3. (a) The Attorney General, in consultation with the Secretary of Health, Education, and Welfare shall prescribe, in accordance with section 553 of title 5, United States Code, such standards for polling and registration place facilities used for elections for Federal office as may be necessary to insure that physically handicapped and elderly individuals have ready access to such facilities. Except as provided in subsection (b), such standards shall require at a minimum that all polling and registration places be located in a building or other facility which provides access, by ramp or otherwise, to individuals in wheelchairs, and be located on the ground level of a building or other facility, or at a location within such building or facility as is accessible by elevator. Any building or other facility which is temporarily made to comply with the standards prescribed by the Attorney General under this subsection may be used as a polling or registration place.

(b)(1) No site which does not comply with the standards of accessibility prescribed under subsection (a) may be used as a polling or registration place in elections for Federal office unless it is determined by the appropriate election official of a State or political subdivision, after all reasonable efforts have been made to locate an appropriate site, that there is no such site available in the applicable voting precinct.

(2) Whenever a site which does not comply with the standards prescribed under subsection (a) is designated as a polling or registration place for an election for Federal office under subsection (b)(1), the appropriate election official shall file a report with the Attorney General not later than sixty days before the election in the case of a polling place and not later than sixty days before the close of registration in the case of a registration place, in such form and containing such information as the Attorney General may require, including assurances that all reasonable efforts have been made to locate an appropriate site.

(c) The requirements under subsections (a) and (b)(2) shall not apply to any State which, in the determination of the Attorney General, (1) has established by law standards for polling and registration places at least as stringent as those prescribed by the Attorney General under subsection (a), and (2) has adopted and is implementing adequate procedures for the enforcement of such State's standards. The Attorney General may require such State to keep records and make reports as he deems necessary to implement this Act.

ALTERNATIVE METHODS OF VOTING AND REGISTRATION FOR THE PHYSICALLY HANDICAPPED AND THE ELDERLY

SEC. 4. (a) Each State shall provide by law, within one year of the date of enactment of this Act, for one or more alternative methods of voting by physically handicapped and elderly individuals in elections for Federal office in cases in which such individuals are assigned under section 3(b)(1) to polling places which do not meet the standards prescribed under section 3(a). Such alternatives may include—

(1) the selection of one or more alternative polling places outside of the voting precinct (but within the same congressional district) to which such an individual may be assigned to vote;

(2) the selection of an alternative method of voting within the voting precinct, such as by the use of an absentee ballot on or before election day, or by curbside balloting outside of a polling place; or

(3) any other method, or combination of methods, which guarantee that such individuals will be able to fully exercise their right to vote.

(b) Whenever an alternative method of voting is selected under subsection (a) for a voting precinct, the appropriate election official of the State or political subdivision in which such precinct is located shall issue public notice of such method as early as practicable, but in any case not later than sixty days before the election in which the alternative method is to be used. Any physically handicapped or elderly individual who notifies the appropriate election official of his or her intention to vote by the alternative method at least thirty days before such election, and who is otherwise eligible to vote in such election, shall be allowed to vote by such method.

(c) Each State shall provide by law, within two years of the date of enactment of this Act, for one or more alternative methods of registering to vote for elections for Federal office by physically handicapped and elderly individuals who do not have ready access to registration places meeting the standards prescribed under section 3(a).

(d) Whenever an alternative method of registration is selected under subsection (c) the appropriate election official of the State or political subdivision in which such precinct is located shall issue public notice of such method of registration as early as practicable but in any case not later than sixty days before the deadline for registration for the election for which the alternative method is to be used.

ALTERNATIVE PAPER BALLOTS AND SELECTED ASSISTANTS

SEC. 5. (a) Paper ballots shall be made available at each polling place for an election for Federal office, whether or not such polling place is in compliance with the standards prescribed under section 2(a), for the use of voters who would otherwise be prevented from voting because of their inability to operate a voting machine.

(b) Within two years after the date of the enactment of this Act, each State shall permit any physically handicapped individual who is unable to operate a voting machine or use a paper ballot to use such alternative methods of voting in elections for Federal office as the State may designate under this subsection. The State shall provide such physically handicapped individual with braille ballots, permit such individual to select another individual to accompany him into the polling place for purposes of providing assistance in completing the ballot, or employ such other alternative methods of voting as the State considers appropriate to provide such individual with an opportunity to vote in the election for Federal office.

ENFORCEMENT

SEC. 6. Whenever the Attorney General has reason to believe that a State or political subdivision (1) has selected a site for a polling or registration place within a voting precinct which does not comply with the standards prescribed under section 3(a), and that there exists within such precinct an available site which does comply with such standards, (2) has failed to provide an alternative method of voting or registering to vote as required by section 4, or (3) has failed to make paper ballots available or to permit alternative selected assistants as required by section 5, he may institute, in the name of the United States, any actions in a district court of the United States against the State or political subdivision, including actions for injunctive relief, as he may determine to be necessary to implement this Act.

DEFINITIONS

SEC. 7. As used in this Act, the term—

(1) "elderly individuals" means individuals sixty-five years of age or older;

(2) "election for Federal office" means a general, special, primary, or runoff election for the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to the Congress of the United States;

(3) "physically handicapped individuals" means individuals who need mechanical or personal assistance to provide for their safety and mobility; and

(4) "voting precinct" means the area inhabited by all citizens assigned to one polling place for an election for Federal office.●

By Mr. BAYH (for himself, Mr. COCHRAN, Mr. ARMSTRONG, Mr. BAKER, Mr. BAUCUS, Mr. BELLMON, Mr. BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. BURDICK, Mr. CANNON, Mr. CHILES, Mr. CRANSTON, Mr. DANFORTH, Mr. DECONCINI, Mr. DOMENICI, Mr. EAGLETON, Mr. FORD, Mr. GARN, Mr. GOLDWATER, Mr. GRAVEL, Mr. HART, Mr. HATCH, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JEPSEN, Mrs. KASSEBAUM, Mr. LEAHY, Mr. LUGAR, Mr. MAGNUSON, Mr. LAXALT, Mr. MATHIAS, Mr. MATSUNAGA, Mr. MCCLURE, Mr. MCGOVERN, Mr. MELCHER, Mr. MORGAN, Mr. MOYNIHAN, Mr. NUNN, Mr. PERCY, Mr. PRESSLER, Mr. PRYOR, Mr. RANDOLPH, Mr. RIEGLE, Mr. ROTH, Mr. SCHMITT, Mr. SIMPSON, Mr. STENNIS, Mr. STEVENS, Mr. STEWART, Mr. STONE, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. WARNER, Mr. WILLIAMS, and Mr. YOUNG):

S. 598. A bill to clarify the circumstances under which territorial provisions in licenses to manufacture, distribute and sell trademarked soft drink products are lawful under the antitrust laws; to the Committee on the Judiciary.

SOFT DRINK INTERBRAND COMPETITION ACT

● Mr. BAYH. Mr. President, today I, along with 62 of my colleagues are introducing legislation designed to preserve a unique industry practice—the manufacture, bottling, and distribution of trademarked soft drinks by local companies operating under territorial licenses. Sometime ago Senator COCHRAN and I

drafted and circulated the Soft Drink Interbrand Competition Act and it is significant to note that almost two-thirds of our colleagues have seen fit to express support for this measure prior to its introduction.

For over 75 years the soft drink industry has used territorial franchise agreements with smaller bottlers to provide services to a wide variety of its customers. These restrictions limit the geographical territory in which a bottler may manufacture and distribute soft drink products and have been the basis of the industry's structure.

In 1971, the Federal Trade Commission (FTC) instituted a proceeding to bar as unlawful these restrictions in trademark licensing. The Soft Drink Interbrand Competition Act will simply clarify the circumstances under which territorial license provisions are lawful. The bill specifically sets out that there must be the presence of "substantial and effective competition with other products of the same general class" as a prerequisite for the continuation of territorial franchises.

We believe that the antitrust laws should not be used to restructure an industry, especially where there is an acknowledged high level of interbrand competition. Such a restructuring might change the nature of an industry in which the franchises are, by and large, small family-owned businesses. We are concerned that, should territorial licenses be prohibited, we would find these small businesses swallowed up by large bottlers. In the long run, the FTC ruling would, therefore, be anticompetitive. The industry will be transformed from one with many components to an oligarchical industry. In 1979, over 2,000 bottling plants were operating throughout the United States. Over 1,500 of these plants employ fewer than 50 employees. Although the distribution of bottling plants tends to parallel the distribution of population, they are generally located in small cities. The end result of the FTC ruling, in our opinion, will be not only detrimental to the industry but, therefore, costly to the consumer.

We must continue to be aware of the needs of the small businessman in America and to protect the invaluable contribution he or she makes to our economy and our way of life. I believe this legislation is vital to the survival of the small bottler and to the maintenance of a high level of service we have come to expect from the soft drink industry.

Mr. President, I ask unanimous consent that the text of the bill, together with a section-by-section analysis, be printed in the RECORD.

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

S. 598

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

SECTION 1. This Act may be cited as the "Soft Drink Interbrand Competition Act".

SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: *Provided,* That such product is in substantial and effective competition with other products of the same general class.

SEC. 3. The existence or enforcement of territorial provisions in a trademark licensing agreement for the manufacture, distribution and sale of a trademarked soft drink product prior to any final determination that such provisions are unlawful shall not be the basis for recovery under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914.

SEC. 4. As used in this Act, the term "antitrust law" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (the Sherman Act), approved July 2, 1890, the Federal Trade Commission Act, approved September 26, 1914, and the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), approved October 15, 1914, and all amendments to such Acts and any other Acts in pari materia.

SECTION-BY-SECTION ANALYSIS

Section 2 of the bill provides that the exclusive territorial arrangements used in the soft drink industry shall not be held unlawful under the antitrust laws if the soft drink products subject to such arrangements are in substantial and effective competition with other products of the same general class. The arrangements covered by Section 2 are those contained in soft drink trademark licensing agreements which limit the territory within which the licensee may manufacture, distribute and sell the trademarked soft drink product, and which prohibit sales outside the territory, whether such sales are made directly or indirectly.

The provisions of the bill are applicable to such arrangements only where there is "substantial and effective competition" with other products of the same general class. The words "substantial and effective competition" are intended to be flexible, but it is the intent of the legislation that if vigorous interbrand competition is found to exist, the fact that intrabrand competition has been foreclosed will not preclude the application of the bill. Some of the factors to be taken into account in determining whether or not substantial and effective interbrand competition exists are: the number of brands, types and flavors of competing products available in a licensee's territory; the number and strength of sellers of competing products; the degree of service competition among vendors; ease of entry into the market; the persistence of inefficiency and waste; the failure of output levels to respond to consumer demands; and failure to introduce more efficient methods and processes.

The "substantial and effective" test is intended to express a more specific standard for evaluating these practices. Since the territorial provisions have been in effect for more than 75 years, they should not be cast aside without careful scrutiny of their merits. This is exactly what the Federal Trade Commission did in the Coca-Cola and Pepsico cases when it ignored the findings of the Administrative Law Judge that there was vigorous interband competition among soft drinks and that these arrangements promote, rather than lessen, competition. Section 2 would compel the Commission to make a careful examination of the effects on interband competition rather than relying simply upon the intraband effects of the territorial provisions.

Section 3 of the bill is intended to eliminate the possibility of treble damage exposure as a result of the inclusion of territorial provisions in a soft drink licensing agreement prior to any final determination in a particular case that such provisions are unlawful. Territorial provisions have been utilized in the soft drink industry for more than 75 years on the clear understanding that they were legally permissible. Such arrangements were held lawful by a Federal court as early as 1920, and on several recent occasions. Moreover, the legality of such territorial arrangements was not challenged by the Federal government until 1971, after the industry practice had been openly engaged in for decades. Of course, if particular territorial arrangements are found to be unlawful because of the absence of substantial and effective competition, treble damage suits would not be barred in the event such arrangements are continued after a final determination of their illegality.

Section 4 of the bill defines the term "antitrust law" as used in the bill. In includes the Sherman Act, the Federal Trade Commission Act, the Clayton Act, and all amendments to such acts, together with any other acts which have historically been considered to be antitrust laws.●

● Mr. COCHRAN. Mr. President, I am pleased to join with my colleague from Indiana (Mr. BAYH) in introducing legislation designed to preserve a unique industry practice—the manufacture, bottling, and distribution of soft drinks by local, independent companies. It is most gratifying that over 60 Senators have agreed to join in sponsoring this legislation.

The Soft Drink Interbrand Competition Act will permit local bottlers to operate under exclusive territorial licenses for their trademarked soft drink products as long as there is "substantial and effective competition" between different trademarked brands. For the last 75 years these territorial licenses have served to create an industry organization of 2,000-plus small units which effectively compete with each other.

According to all the key indicators of competition, there is today intense competition in the soft drink industry. This competition has been a major factor in keeping consumer cost down. The cost per ounce of Coca-Cola in the 6½-ounce bottle in 1939 was seventy-seven one hundredths of 1 cent per ounce. The cost today in the 16-ounce returnable bottle is seventy-nine one hundredths of 1 cent per ounce. This is only a 2.6-percent increase in over 28 years.

Vigorous competition is also demonstrated by advertising. Heavy advertising demonstrates heavy competition. In the last few years, advertising in the industry has increased 132 percent, rising much faster than the 84-percent increase in sales during the same period. The only explanation for this growth in advertising is competition with the industry for a share of existing markets.

Notwithstanding this strong evidence of competition, the FTC instituted a proceeding against the bottlers in which it alleged the territorial licenses violated the antitrust laws. After 7 years, the Commission ruled 2 to 1 to overturn an

administrative law judge's decision and conclude the licensing agreements were unlawful.

If this legislation is not adopted, and the FTC decision against the territorial licenses is allowed to stand, there will be a short spurt of intrabrand competition, after which many of the small independent bottlers will be swallowed up by large regional bottlers. In the long run, the FTC ruling will be anticompetitive. Another serious consequence of the FTC ruling is that returnable bottles which cannot, as a practical matter, be distributed by large regional operations, will be discontinued. The alternative nonreturnable containers are more expensive for the consumer, use more energy in production, and simply create an additional waste problem.

If this legislation is adopted, we will protect the livelihood of the small independent companies which can best serve their local customers. In addition, these local bottlers would be able to continue to use returnable bottles, thereby keeping down costs and saving energy.

Mr. President, this legislation will preserve the high level of competition which exists in the soft drink industry, it will help fight inflation by keeping prices down and will help encourage the continued use of energy-saving and environmentally sound returnable bottles. I urge all my colleagues who have not yet given full consideration to this bill to join us in this effort.●

By Mr. BAYH (for himself and Mr. LUGAR):

S. 599. A bill relating to the Indiana Dunes National Lakeshore, and for other purposes; to the Committee on Energy and Natural Resources.

INDIANA DUNES NATIONAL LAKESHORE

● Mr. BAYH. Mr. President, it is my pleasure to join with Senator LUGAR in introducing legislation again this year which would expand the Indiana Dunes National Lakeshore. This bill contains substantially the same provisions as an amendment we offered which was passed by the Senate last October. Unfortunately, due to the crush of last minute business that amendment was not acted upon by the House of Representatives.

Mr. President, more than a decade ago Congress enacted legislation to protect the Indiana dunes, located at the south tip of Lake Michigan on a fascinating complex of dune ridges, moving dunes, beautiful beaches, marshes, woodlands, and bogs. It was my privilege to sponsor with the late Senator Paul Douglas of Illinois the initial legislation establishing the Indiana Dunes National Lakeshore and subsequent legislation authorizing its expansion.

In this regard, Mr. President, I would like to take a moment to note the great contributions of Senator Douglas to the lakeshore. The establishment of the Indiana Dunes National Lakeshore was originally his dream, and for years he persevered in fighting for this objective. There is absolutely no question that without his vision and untiring efforts we would not have a national park to protect this beautiful and unique natural setting, and for this reason it is especially appropriate that provisions in the bill we now introduce will dedicate the lakeshore to his memory. Our bill further designates the West Beach unit of the lakeshore as the "Paul H. Douglas Ecological and Recreation Area" and provides for the designation of a suitable structure within the lakeshore to be known as the "Paul H. Douglas Center for Environmental Education." These provisions of our bill will provide an enduring memorial to this great and brilliant man from Illinois and provide a reminder to the thousands who visit the Dunes each year of his accomplishments. I hope the Senate will agree that they are an important feature of this legislation.

The bulk of our bill, Mr. President, relates to questions which were left unanswered in the Dunes legislation of 1976. The legislation which authorized expansion of the lakeshore in October of that year added several units to the national lakeshore, but Congress deferred making a decision about three specific areas until additional information concerning these areas could be reported in a special study conducted by the National Park Service.

Unfortunately the 1976 act also modified the 1966 legislation establishing the lakeshore by changing the homeowners' provisions regarding the length of the leaseback term from 25 years to 20 years and eliminating the exemption from condemnation. This has resulted in landowners in different parts of the lakeshore being treated differently, leading to substantial misunderstanding and dissatisfaction.

The study required by the 1976 legislation was completed in June 1977 and it is now crucial for the Congress to consider the further expansion of the lakeshore. Our bill would annex the study areas into the park with the exception of area II-A, the "NIPSCO Greenbelt." It would also restore the homeowners' provisions of the 1966 act, so that all homeowners within the park boundaries would receive equal treatment from the Park Service.

Looking first at the study areas, there are two portions of the town of Beverly Shores which were not included in the national lakeshore in 1966. Area III-A is the Beverly Shores "island," a 652-acre, low-density residential area, with minimal commercial development, now completely surrounded by Federal lands. Over 500 of the 652 acres are unimproved and immediately available for park purposes. Area III-C is a 56-acre strip of land lying along both sides of U.S. Highway 12 which supports low-density residential and commercial development.

National Park Service ownership and control of both of these areas would eliminate noncompatible uses and insure preservation of an interesting and unique ecosystem for enjoyment and use by the visiting public. Federal acquisition of the Beverly Shores area would make the Federal beach much more accessible than it is now and would ultimately end conflicts between park visitors and residents. Acquisition of the U.S. Highway 12 strip would add approximately 1.5 miles of continuous highway frontage to the existing 5.2 miles of National Park Service "parkway" frontage and will greatly enhance the scenic quality of the road.

I would point out, Mr. President, that while this land is relatively expensive, when compared to the vast unoccupied lands of the western part of our country, its timely inclusion in the park is fiscally prudent. There is wide agreement among those who have seriously studied the lakeshore that the park will never reach its full potential until the remaining parts of Beverly Shores are included. I have no doubt in my mind that Congress at some point will agree. If we delay, however, the cost of land acquisition will be astronomical. Most of Beverly Shores is currently unimproved, Mr. President, but the forces for development are growing. If Congress fails to include this area again this year, I am certain that developers will interpret our inaction as a green light to build and build and build. We literally cannot afford to let this happen.

The remaining area discussed in the National Park Service study presents some difficult problems. The Greenbelt (Area II-A) is a 92-acre parcel of land owned by the Northern Indiana Public Service Co. This land forms the interface between the heavily developed Northern Indiana Public Service Co. powerplant site and the national lakeshore. With the conversion of much of the lakeshore region to heavy industrial use, the land of this area has taken on importance as a buffer between the steel mills and powerplants on one side and the more quiet natural scene on the other.

Provisions in S. 2560, which Senator LUGAR and I introduced last February, would have included portions of Area II-A within the lakeshore. It was our belief that these provisions would protect the natural resources of the Greenbelt and the park while not interfering with existing or planned operations of the Northern Indiana Public Service Co. Unfortunately, these provisions met with broad opposition, and I am informed that as a result of our experience last year, Senator LUGAR has concluded that no acceptable formula for inclusion of the Greenbelt is available. For this reason, we have not included provisions to acquire the Greenbelt in this bill.

Nonetheless, I firmly believe that acquisition of the Greenbelt is essential to the maintenance of the environmental integrity of the lakeshore. I further believe that acquisition of the Greenbelt should and would have no impact upon NIPSCO operations. In the days to come I will be working to devise a formula which will allay the fears of all interested parties, and I will introduce an amendment for consideration of the Energy Committee prior to its hearings on the bill.

The second major feature of this legislation is the revision of the homeowners provisions. The bill would provide homeowners with an exemption from condemnation when appropriate zoning laws are

in effect, reinstate the 25-year leaseback provisions contained in the initial legislation, and add an option of a life tenancy. These modifications will not thwart development of the park but will give fair and equitable treatment to all landowners within the park and thereby correct the present situation where residents of different areas of the park are subject to different provisions. I am pleased to report that these changes have a broad base of support among all interest groups. The cutoff date for the study areas would be July 1, 1977.

A third provision of this legislation calls for a transportation study. The national lakeshore is designed to preserve the outstanding natural features of the area and to provide to all people the opportunity for recreation and enjoyment. Unfortunately, the attainment of these worthy objectives is often frustrated by the failure to plan and provide access to these outstanding areas.

The vast majority of our national parks, lakeshores, and recreation areas are accessible only by private automobile. This reliance on the automobile for park access can have deleterious effects on fragile ecosystems such as the dunes. Extensive use of cars causes environmental damage and requires that more and more previous parkland be devoted to roads and parking lots. Consequently it is essential that all modes of transportation be carefully analyzed to develop those which are the most energy efficient, environmentally compatible, and provide the best public service. The study called for in this legislation is aimed at meeting this important need.

In closing, Mr. President, I would like to note that we have been working with Congressman BENJAMIN regarding the acquisition of other small parcels of land bordering the park. We would hope that this work will be completed in the near future and that we can make definite suggestions for this relatively minor expansion to the Energy Committee.

The bill we are offering today provides the inclusion of two highly significant areas which will assure protection of the lakeshore environment. We have also included provisions to expand the options offered residential property owners within the lakeshore boundaries in order to insure preservation of the area and an orderly and acceptable property acquisition policy.

Mr. President, I would like to urge my colleagues to favorably consider the Indiana Dunes National Lakeshore expansion bill which we are introducing today. The Indiana Dunes is an area which deserves the expanded protection to be afforded by this bill.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD at this point.

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

S. 599

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) the Act entitled "An Act to provide for the establishment of the Indiana Dunes National Lakeshore, and for other purposes", approved November 5, 1966, as amended (16 U.S.C. 460u), is amended by adding the following new section:

"SEC. 21 (a) That the Indiana Dunes National Lakeshore is hereby dedicated to the memory of Paul H. Douglas in grateful recognition of his leadership in the effort to protect, preserve, and enhance the natural, scientific, historic, and recreational value of the lakeshore for the use, enjoyment and edification of present and future generations.

"(b) To further accomplish the purposes of subsection (a) of this section, the Secretary of the Interior shall designate the West Beach unit as the 'Paul H. Douglas Ecological and Recreational Area' and shall, subject to appropriations being granted, design, develop and construct a suitable structure or designate an existing structure within the lakeshore to be known as the 'Paul H. Douglas Center for Environmental Education' which shall provide facilities designed primarily to familiarize students and other visitors with, among other things: (1) the natural history of all units of the lakeshore and their association with the natural history of the Great Lakes Region; (2) the evolution of human activities in the area; and (3) the historical features which led to the establishment of the lakeshore by the Congress of the United States.

"(c) To inform the public of the contributions of Paul H. Douglas to the creation of the lakeshore, the Secretary of the Interior shall provide such signs, markers, maps, and interpretive materials, literature and programs as he deems appropriate.

"(d) In addition to such sums as have been heretofore authorized, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section, but not more than $500,000 shall be appropriated for the construction of the Paul H. Douglas Environmental Education Center authorized pursuant to subsection (b) of this section."

(b) Such Act is amended by inserting immediately before "which map", in the last sentence of the first section, the following: "including the areas identified on such map as 'Study Areas', except the area designated as 'II-A'."

(c) Section 4 of such Act, as amended (16 U.S.C. 460u-3), is amended to read as follows:

"SEC. 4. (a) The Secretary's authority to acquire property by condemnation shall be suspended with respect to all improved property located within the boundaries of the lakeshore during all times when an appropriate zoning agency shall have in force and applicable to such property a duly adopted, valid zoning ordinance approved by the Secretary in accordance with the provisions of section 4A of this Act.

"(b) The term 'improved property', whenever used in this Act, shall mean, in the case of improved property located within the areas identified as 'Study Areas', a detached, one family dwelling, construction of which was begun before July 1, 1977, in the case of improved property located within the boundaries delineated on a map identified as 'A Proposed Indiana Dunes National Lakeshore', dated September 1966, and bearing the number 'LNPNE-1008-ID', such a dwelling construction of which was begun before January 4, 1965, and in the case of any other improved property, located within the lakeshore, such a dwelling construction of which was begun before February 1, 1973; together with so much of the land on which the dwelling is situated, such land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on lands so designated. The amount of land so designated shall in every case be not more than three acres in area, and in making such designation the Secretary shall take into account the manner of noncommercial residential use in which the dwelling and land have customarily been enjoyed: *Provided,* That the Secretary may exclude from the land so designated any beach or waters, together with so much of the land adjoining such beach or waters, as he may deem necessary for public access thereto or public use thereof. All rights of use and occupancy shall be subject to such terms and conditions as the Secretary deems appropriate to assure the use of such property in accordance with the purposes of this Act."

(d) Such Act is further amended by inserting immediately after section 4 thereof the following new section:

"SEC. 4A. (a) As soon as practicable after the enactment of this section, the Secretary shall issue regulations specifying standards for approval by him of zoning ordinances for the purposes of this Act. The Secretary may issue amended regulations specifying standards for approval by him of zoning ordinances whenever he shall consider such amended regulations to be desirable due to changed or unforeseen conditions. The Secretary shall approve any zoning ordinance and any amendment to any approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in effect at the time of adoption of such ordinance or amendment by the zoning agency. Such approval shall not be withdrawn or revoked, by issuance of any amended regulations after the date of such approval, for so long as such ordinance or amendment remains in effect as approved.

"(b) The standards specified in such regulations and amended regulations for approval of any zoning ordinance or zoning ordinance amendment shall contribute to the effect of (1) prohibiting the commercial and industrial use, other than any commercial or industrial use which is permitted by the Secretary, of all property covered by the ordinance within the boundaries of the lakeshore; and (2) promoting the preservation and development, in accordance with the purposes of this Act, of the area covered by the ordinance within the lakeshore by means of acreage, frontage, and setback requirements and other provisions which may be required by such regulations to be included in a zoning ordinance consistent with the laws of the State of Indiana.

"(c) No zoning ordinance or amendment thereof shall be approved by the Secretary which (1) contains any provision which he may consider adverse to the preservation and development, in accordance with the purposes of this Act, of the area comprising the lakeshore; or (2) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under and any exception made to the application of such ordinance or amendment.

"(d) If any improved property, with respect to which the Secretary's authority to acquire by condemnation has been suspended according to the provisions of this Act, is made the subject of a variance under or exception to such zoning ordinance, or is subjected to any use, which variance, exception, or use fails to conform to or is inconsistent with any applicable standard contained in regulations issued pursuant to this section and in effect at the time of passage of such ordinance, the Secretary may, in his discretion, terminate the suspension of his authority to acquire such improved property by condemnation.

"(e) The Secretary shall furnish to any party in interest requesting the same a certificate indicating, with respect to any property located within the lakeshore as to which the Secretary's authority to acquire such property by condemnation has been suspended in accordance with provisions of this Act, that such authority has been so suspended and the reasons therefor.".

(e) The first Sentence of section 5(a) of such Act, as amended (16 U.S.C. 460u-5), is amended to read as follows: "Except for owners of property within the area on the map referred to in the first section of this Act as area II-B, any owner or owners, having attained the age of majority, of improved property on the date of its acquisition by the Secretary, may retain the rights of use and occupancy of the improved property for noncommercial residential purposes for a term ending on his or her death or the death of his or her spouse, whichever occurs last, or for a term of twenty-five years, or such lesser term as the owner or owners may elect at the time of acquisition by the Secretary. All rights of use and occupancy shall be subject to such terms and conditions as the Secretary deems appropriate to assure the use of such property in accordance with the purposes of this Act.".

(f) Section 9 of such Act is amended by striking out "$60,812,000" and inserting in lieu thereof "$95,312,000" and by striking out "$9,444,000" and inserting in lieu thereof "$10,440,000".

(g) Section 15 of such Act (16 U.S.C. 460u-14) is amended to read as follows:

"SEC. 15. (a) Within one year after the date of the enactment of this section, the Secretary shall submit, in writing, to the Committee on Interior and Insular Affairs and to the Committee on Appropriations of the United States Congress a detailed plan which shall indicate—

"(1) the lands which he has previously acquired by purchase, donation, exchange or transfer for administration for purpose of the lakeshore, and

"(2) the annual acquisition program (including the level of funding) which he recommends for the ensuing five fiscal years.

"(b) It is the express intent of the Congress that the Secretary should substantially complete the land acquisition program contemplated by this Act, within six years after the date of enactment of this section.".

(h) Such Act is further amended by adding the following new section:

"SEC. 22. The Secretary, in consultation with the Secretary of Transportation, shall conduct a study of various modes of public access into and within the lakeshore, including roads, public transportation facilities, and nonmotorized access.

"(a) In carrying out the study, the Secretary shall utilize to the greatest extent practicable the resources and facilities of the organizations designated as clearinghouses under title IV of the Intergovernmental Cooperation Act of 1968 as implemented by Office of Management and Budget Circular A-95, and which have comprehensive planning responsibilities in the regions where the lakeshore is located. The Secretary shall make provision for timely and substantive consultation with the Highway Department of the State of Indiana, local elected officials, and the general public in the formulation and the implementation of the study.

"(b) This study shall be completed and presented to the Congress no later than October 1, 1980.

"(c) The study shall address the adequacy of access facilities for members of the public who desire to visit and enjoy the lakeshore. Consideration shall be given to alternatives for alleviating the dependence solely on automobile transportation and resulting congestion, environmental impacts, and management difficulties. The study shall inventory the condition of roads in and out of the lakeshore, and the condition of the public transportation rolling stock. The study of public transportation facilities shall cover the distance from cities of thirty-five thousand population or more within fifty miles of the lakeshore. It shall further include the identification of routes, available facilities, and assets of transit operators within this area, and shall discuss their increase or decrease of passengers and their financial condition over the previous five-year period.

"(d) The study shall include proposals deemed necessary to assure equitable visitor access and public enjoyment by all segments of the population, including those who are physically or economically disadvantaged. It shall provide for retention of the natural, scenic, and historic values for which the lakeshore was established, and shall propose plans and alternatives for the protection and maintenance of these values as they relate to transportation improvements.

"(e) The study shall present alternative plans to improve, construct, and/or extend access roads, public transportation, and bicycle and pedestrian trails. It shall include accurate estimates of the costs of such alternatives, to be based upon statistical data available for similar expenditures, and shall discuss existing and/or proposed sources of funding for the implementation of the recommended plan alternatives.

"(f) There is hereby authorized to be appropriated not to exceed $250,000 for this study."

(i) Such Act is further amended by adding the following new section:

"SEC. 23. (a) There is hereby established the Indiana Dunes National Lakeshore Communities Council (hereafter referred to as the 'Council') which shall be composed of twenty-one members selected by the following processes:

"(1) One member selected from the elected or appointed officials by each of the following municipalities: Porter, Chesterton, Portage, Beverly Shores, Ogden Dunes, Dune Acres, Gary, Michigan City, The Pines, Burns Harbor, Pines Township, Westchester Township, and Portage Township.

"(2) The sheriffs of Lake, Porter, and La Porte Counties or their appointed representatives.

"(3) One member selected from or appointed by each Board of County Commissioners in Lake, Porter and La Porte Counties.

"(4) One member appointed by the Governor of the State of Indiana.

"(5) One member appointed by the Director of the National Park Service.

"(b) The purpose of the Council is to create an intergovernmental forum for the discussion of mutual programs and problems, including, but not limited to, police and fire protection, garbage collection, litter control, traffic coordination, zoning regulations, and other services.

"(c) The Council shall elect by majority vote the chairman; all members of the Council would be eligible for the Chairmanship except the representative of the National Park Service.

"(d) The Council shall elect by majority vote an Executive Board composed of the chairman and four other Council members.

"(e) Any vacancy shall be filled in the same manner in which the original appointment was made.

"(f) Members of the Council shall serve a term of four years, and may be appointed for succeeding terms. Members shall serve without compensation.

"(g) The Council shall meet at least quarterly." ●

● Mr. LUGAR. Mr. President, it is a privilege to join my colleague from Indiana, Senator BAYH, to reintroduce legislation to expand the historic Indiana Dunes National Lakeshore Park in northwest Indiana.

The Indiana Dunes National Lakeshore was authorized in 1966 as the first urban national park. It is one of the few recreational areas in our part of the country where people in northwest Indiana and nearby areas can retreat to quiet open spaces surrounded by beaches, wetlands, marshes, and woodlands. In 1976, a bill to add additional units to the park was deferred pending a National Park Service study of certain areas proposed for inclusion.

Senator BAYH and I introduced similar legislation last year. Regrettably, our bill, which passed the Senate, was defeated in the House. Although we tried to resurrect the bill again in the final hours of the last session, our efforts were unsuccessful. I am hopeful that the Congress will approve the acquisition of land to a park which is very important to our State and, we believe, to the country.

Legislation to expand the Indiana Dunes has been debated by the Congress for years and it is time to resolve the final boundaries of the park once and for all. The bill which we are introducing today has resulted from the Park Service's study of three areas proposed for inclusion: Beverly Shores, U.S. Highway Strip 12 and the Greenbelt. I wholeheartedly favor the inclusion of the first two areas. I strongly oppose inclusion of the third study area—the Greenbelt.

The bill which we are introducing today addresses the study areas of Beverly Shores "island," a 652-acre residential area surrounded by parkland, and U.S. Highway Strip 12—two strips of land on either side of U.S. Highway 12, 56 acres in size. This area contains residences and some commercial buildings. This bill also addresses the homeowner leaseback and exemption from condemnation provisions affecting homeowners, and lastly, dedicates this park to the memory of the late Senator Paul H. Douglas.

I would first like to stress the importance of the homeowner provisions. The 1966 legislation contained a 25-year leaseback and exemption from condemnation for all affected homeowners. However, the 1976 legislation rescinded the exemption from condemnation provision and lowered the term of the leaseback from 25 years to 20. This unexpected change by the Park Service in its original promises to homeowners already in the park has caused skepticism and distrust among these people as to what their rights really are. We are attempting through this bill to establish uniform homeowner provisions, identical to the provisions in the 1966 legislation which would apply to all landowners in the park. Anyone who became a landowner in the park prior to July 1, 1977, would be eligible for these provisions. I would like to add that the Park Service has been most generous in adhering to our request to discontinue condemnation practices until we establish uniform homeowner provisions for affected citizens in the area. The sooner we can accomplish this, the better.

This issue of inclusion of the Beverly Shores "island" and Strip 12 is one of simple justice and equity for the citizens who live there. The problems which the citizens of Beverly Shores face, in particular, by not being in the park in terms of administering their local government and meeting day-to-day needs are immense—1,548 acres of the town are already incorporated in the park—and not of their own making. The remaining 652

acres, the "island," are the only taxable acres left. Revenue for town funds has diminished because of an eroding tax base. The result is inadequate police, fire protection, and maintenance services. The solution is either to develop the remaining acres, which would deface the park, or include them in the park. The majority of citizens in the area desperately wish to be in the park. The longer we defer the acquisition, the more expensive it becomes. I therefore hope that my colleagues will act on this legislation as soon as possible.

After lengthy review and research, I have concluded that the inclusion of the third study area, the so-called Greenbelt, is not warranted now or in the future. The Greenbelt is a 92-acre parcel of land owned by the Northern Indiana Public Service Co. This area serves as a buffer between this highly industrialized area, which is the site for the company's nuclear powerplant, and the lakeshore boundary, which is only 800 feet away.

Last year we tried to devise a complicated compromise which would have delayed acquisition of the area until 1986 and would have further protected NIPSCO from indemnification if the so-called dike, which serves as a retaining wall between the industrialized area and the wetland area, was torn down or breeched by the Park Service. At that time the Park Service and some members of the committee stated their opposition to inclusion of the Greenbelt because of its cost and management problems. I have since been convinced by the Park Service and the weight of public opinion that because of the delicate problems associated with managing an industrial area which abuts a park this area is best left as a permanent buffer. The Park Service stated last year that cooperative agreements reached between NIPSCO and the Park Service are evidence that the Park Service can manage this property without acquiring it.

The Greenbelt is 92 acres in size. The estimated cost, according to the Park Service, of its acquisition is $25,000 per acre. This cost does not even reflect the additional $900 per acre for relocation of NIPSCO facilities and purchase preparation costs. This is an incredible cost for a parcel of land whose acquisition merits are highly questionable and, which according to Park Service scientists and the U.S. Geological Survey, is not suffering any adverse impact under present management conditions. In the future these costs will only continue to escalate. At this time of high inflation, and with other more pressing matters concerning the dunes, I cannot rationalize this expenditure.

Since the proposal of last year's bill, I have heard from many citizens and community leaders in northwest Indiana who oppose acquisition of the Greenbelt. The Governor of Indiana, mayors of both political parties, Chambers of Commerce, leaders of labor unions, county commissioners, interest groups concerned about employment and economic development, the local county Farm Bureau, and many members of the Indiana Dunes National Lakeshore Advisory Commission, all oppose inclusion. These citizens assert, as does the Park Service, that the Greenbelt would contribute little or nothing to park development. On the other hand, these citizens deem it essential to the development of the vitally needed NIPSCO nuclear power plant.

Mr. President, with all respect for the park and its environment, I believe this is one case where the energy and employment needs of the citizens of northwest Indiana must take precedence. Indiana needs electrical power, and specifically needs the Bailly nuclear facility, which has experienced more delay and more judicial scrutiny that virtually any other project in the United States. NIPSCO estimates that the plant, which has been stalled because of regulatory delays, will cost ratepayers $850 million, if it is completed by 1984. It would have cost $187 million had it met the first scheduled completion date of 1976. That is a difference of over $650 million because of repeated delays and reviews. This means an additional $1,850 in rates for each of NIPSCO's 358,000 customers. Although these costs are obviously borne by the ratepayer over a long consumption period, this is nevertheless an enormous burden.

The other major aspect of this bill is of extreme importance to Senator BAYH and myself, and to the citizens of northwest Indiana—the dedication of the park to the late Senator Paul H. Douglas of Illinois. There have been repeated efforts by Members of Congress outside our State to rename the entire park after the late Senator. Certainly, his valued contributions to the establishment of the Dunes as a national park must be suitably honored. However, we, and most members of the Indiana delegation, have stated our strong opposition to such a move. We are joined by thousands of citizens in northwest Indiana, the Governor, the Save the Dunes Advisory Commission, leading citizens groups in our State, and newspapers in both Indiana and Illinois. They believe that the historical identity of the park with our State ought to be maintained. We are also joined by the Park Service, who has long had a policy against the renaming of national parks and monuments for specific individuals.

I hope that the provisions which we have added to the bill this year to honor Senator Douglas will satisfy the concerns of all of those people who rightfully wish to remember his efforts on behalf of the Dunes. Our bill would dedicate the entire park to Senator Douglas; designate the West Beach unit as the Paul H. Douglas Ecological and Recreational Area, authorize funds for the development of the "Paul H. Douglas Center for Environmental Education," and direct the Secretary of the Interior to suitably inform the public of his contributions. I believe that these provisions offer a strong compromise which will provide lasting remembrances to Senator Douglas and his contributions without renaming the park against the heated objections of Indiana citizens.

It is a privilege to join with Senator BAYH in introducing this bill.●

By Mr. KENNEDY (for himself, Mr. METZENBAUM, Mr. PRESSLER, Mr. MELCHER, and Mr. MCGOVERN):

S. 600. A bill to preserve the diversity and independence of American business; to the Committee on the Judiciary.

SMALL AND INDEPENDENT BUSINESS PROTECTION ACT OF 1979

Mr. KENNEDY. Mr. President, I am introducing today the Small and Independent Business Protection Act of 1979, which is designed to help preserve the integrity of a political and economic system committed to diversity. This legislation reflects far more than a narrow or technical concern with the interaction of forces within a given market structure. It represents a far broader perspective—a social concern with the impact of corporate power not only upon the character and responsiveness of individual economic markets, but upon the very social and political fabric of a nation committed to diversity and individual freedom of choice.

As Judge Learned Hand wrote in his famous Alcoa opinion:

> Our antitrust laws are rooted in the belief that great industrial consolidations are inherently undesirable regardless of their economic results. In the debates in Congress Senator Sherman himself . . . showed that among the purposes of Congress in 1890 was a desire to put an end to great aggregations of capital because of the helplessness of the individual before them.

The Supreme Court echoed that language in discussing the legislative history of the Celler-Kefauver amendments to section 7 of the Clayton Act:

> Throughout the recorded discussion may be found examples of Congress fear not only of accelerated concentration of economic power on economic grounds, but also of the threat to other values a trend toward concentration was thought to pose.

That threat persists today, Mr. President, by virtue of a gap in the scope and reach of current legislation as interpreted by our courts. In passage of section 7 of the Clayton Act in 1914, Congress was reacting to the dramatic effects of the first great merger wave in our history, which witnessed the absorption of 5,300 companies by 319 industrial trusts, and of 2,400 other firms by only 127 utilities. Between 1898 and 1902, there were 2,653 important industrial mergers, a yearly average of 531, as compared with a total of 46 mergers over the previous 3 years. Born were DuPont, General Motors, Swift, United Shoe, International Paper, and American Can, and in the end, 319 trusts controlled 40 percent of the manufacturing capital in the United States.

That wave was matched by a second between 1925 and 1929, a total of 4,583 mergers, 1,245 in the year before the crash. Twelve thousands firms disappeared through mergers between 1919 and 1930, including 43 percent of all existing public utilities.

For the most part, both merger waves involved the consolidation of market power within specific industries, the absorption of hundreds of smaller enterprises into the dominant market giants which today are household words. That

trend was far less apparent, however, in the third great wave of mergers which followed World War II and has yet to be abated. Between 1945 and 1968, almost 17,000 mergers were recorded just in the manufacturing and mining sector. Some 1,276 manufacturing and mining corporations with assets of at least $10 million—or 38 percent of all such firms of that size—surrendered their independence during that period, and with it control over $52 billion in assets. Of the top 500 industrial corporations, 110 disappeared between 1962 and 1968; eight companies alone acquired $13 billion in assets during the 1960's.

The third trend, however, has been different in character from the first two. Only in part has it witnessed the continuing absorption of smaller firms by giants in the same industry. Two factors have served to stem the tide of such vertical and horizontal activity: More vigorous antitrust enforcement by the Department of Justice, and operation of the 1950 Cellar-Kefauver amendments strengthening the merger provisions of section 7 of the Clayton Act.

Despite a legislative record broadly concerned with the social, political, and economic effects of corporate power, the courts have interpreted section 7 to apply only to those mergers which have a demonstrable effect upon competition within the confines of a given industry. That interpretation has effectively closed the door to significant horizontal or vertical mergers within a specific line of commerce. But for a number of reasons, it has signaled a clear invitation to increasing conglomerate merger activity—the merger of two ostensibly unrelated economic enterprises. While such mergers can produce demonstrable effects upon competition within the industry of an acquired firm, the problems and complexity of proof are enormous once the focus shifts from an insular perspective upon a single industry to a transfer of power across industry lines. Moreover, the courts have flatly rejected application of section 7 to mergers which increase the concentration of economic power less within the boundaries of a given market than throughout the economy as a whole.

Thus the Government has failed to win a litigated conglomerate case since 1974. Between that year and 1977, there were 12 unsuccessful challenges to mergers predominantly conglomerate in nature. Moreover, the current pattern of economic activity has reflected recognition of that gap in enforcement of our antitrust laws. In 1950 only 38 percent of mergers were conglomerate in nature. In recent years the figure has reached 80 to 90 percent. A major tire company now owns radio and television stations, an airline, and a soft drink company. A car manufacturer makes coffee in Brazil. A bus company now owns meatpacking and computer companies, and a major oil company is now concerned with publishing, food processing, and the record industry.

The character of merger activity has changed. However, its intensity, its size and breadth, and its significance to our economy and our society have only increased. There were 1,299 separate mergers in 1975, 1,441 in 1976, and 1,676 in 1977. The dollar value of all corporate mergers and acquisitions rose from almost $12 billion in 1975, to $20 billion in 1976, to almost $22 billion in 1977, to $34 billion in 1978. Between 1968 and 1977, firms with more than $1 billion in assets acquired 160 independent industrial enterprises averaging $130 million in assets. In 1948, the 200 largest manufacturing firms acquired assets in manufacturing and mining of $63,200,000. In 1966, the figure was $789,400,000, and in 1977, $5,236,900,000. Even adjusting for inflation, the increase is dramatic. In 1977 dollars, the figures for 1948 are $159,100,000; for 1960, $1,615,300,000; and for 1977, $5,236,900,000.

By any measure, the number of large mergers is increasing. In 1971, there were 59 mergers or acquisitions involving acquisition of assets of over $10 million. There were 96 such transactions in 1977. In 1976, manufacturing and mining firms with assets of at least $1 billion acquired 18 firms with assets of over $10 million, for a total acquisition of $2.5 billion in assets. In the following year, there were 28 acquisitions of that nature, of assets totalling $4.6 billion. In 1975, there were only 14 mergers involving a purchase price of $100 million or more. That number rose to 39 in 1976, to 41 a year later, and almost doubled to 80 in 1978.

Mr. President, the implications of these figures are significant. They describe a pattern by which independent enterprises are increasingly absorbed within the corporate umbrella of conglomerate giants to which they may bear no logical economic relationship. Unless the growth of new companies can be said to match the disappearance of existing companies, the inevitable result is that more and more economic power is now concentrated in fewer and fewer hands. In far too many sectors of our economy, that is precisely the case. As Professor Galbraith said recently:

> In the United States a couple of hundred large industrial corporations now provide around 60 percent, not much less than two-thirds, of all manufacturing employment. Similarly the handful of big airlines, the two telephone companies, the three broadcasting networks, the separate power companies that are dominant in their respective industries and markets. Around fifty of the largest banks provide about half of all the banking services in the United States. The insurance business is yet more concentrated. Even retailing is dominated by a relatively small number of large chains. The overall result is that a couple of thousand big corporations now provide more than half of all production of goods and services.

The merger trend has only entrenched that level of concentration. In the postwar period, one study found, almost two-thirds of the increase in the concentration ratio for the top 500 manufacturing and mining firms was accounted for by mergers. Three other studies placed the figure anywhere from 75 percent to 84 percent for the top 200 such firms, and two studies found mergers responsible for up to 75 percent of the increase in concentration among the top 100.

Across our economy as a whole, the level of economic concentration is too high already, and in too many sectors of our economy it is getting higher. The Fortune top 100 firms now control about the same share of manufacturing assets as did the top 200 30 years ago. In 1977 the figure was 58 percent, up from 54 percent in 1975, 49 percent in 1965, and 44 percent in 1955. The top 200 firms now have the same percentage share of manufacturing assets as did the top 1,000 in 1941. In 1955, the top 500 industrials controlled 65 percent of all manufacturing and mining assets. In 1965 the figure was 73 percent, and in 1977 it was 83 percent. That means that 500 companies now control over eight-tenths of the manufacturing assets in this country. Their share is 10 times greater than that of the second 500 industrials. They control almost 60 percent of our gross national product, 30 percent of total business receipts, and about 70 percent of manufacturing revenues.

Moreover, the power of such firms does not stop at national boundaries. The U.S. Chamber of Commerce estimates that by the year 2000, a few hundred multinational corporations will own $4 trillion in assets, or 54 percent of projected world wealth. Thirteen of the largest 20 multinationals are American companies. Nor can it be said that the ownership of such companies is in any sense diffuse. According to recent studies, 1 percent of all stockholders own 72 percent of all American corporate stock. Interlocking directorates and joint ventures only further collapse the number of individual decisionmakers.

By any measure over the long term, fewer and fewer economic decisionmakers are controlling more and more economic power in this country. Within the confines of a specific market, there may be structural or physical limitations to the maximum growth by acquisition of any individual firm. But across the entire economy, the only limit to expansion by acquisition is the wealth of the acquiring corporation. Using only accumulated cash or liquid assets, Exxon or IBM could buy up more than a dozen of the fortune 500 companies, including J. C. Penney Co., DuPont, Goodyear and Anheuser-Busch. As Fortune Magazine warned recently, "the U.S. economy might end up completely dominated by conglomerates happily trading with each other in a new kind of cartel system."

It almost goes without saying, Mr. President, that the trend toward conglomeration and increased concentration carries significant implications for our country's commitment to political and economic diversity. Even before pausing to specify the range and significance of the social, political, and economic implications, each of us must find disquieting at the least the notion of a comparative handful of corporate decisionmakers imposing their own views upon a growing and disparate range of economic questions. Fewer and fewer decisionmakers now determine matters tangibly affecting all Americans—the kind and quality of clothes we wear, food we buy, or books we read. More and more, corporate managers exercise dominion over a widening scope of product and service decisions, not merely those about which they may have some expertise. More and more, they exercise that

dominion at a growing distance from consumers, a distance which may measure not only the pyramid of individual corporate power, but just as much, a concomitant decline of corporate accountability, responsiveness and responsibility.

In the publishing industry alone, there have been over 300 mergers and takeovers during the last 20 years. Ten paperback publishers now control 90 percent of paperback sales—not just traditional publishers like Doubleday, Hearst, and Bertelsman, but huge conglomerates like RCA, Gulf & Western, CBS and MCA. In 1976, 89 percent of book club net sales were controlled by 10 publishers. The implications for the first amendment are significant, and similar social costs—of which the full impact may be immeasurable—can be seen in relation to any marketable product or service.

There are also social costs to the community of the firm acquired by a conglomerate. Distant economic managers may lack the necessary commitment to the growth and prosperity of a community or of workers over which they find themselves exercising power. In many cases, of course, large companies are among the best corporate citizens, maintaining strong commitments to the fair treatment of their workers and their communities. Nevertheless, absentee ownership, however benign, tends to place distance between a company and those who work for it or depend upon it; and sometimes distance alone attenuates that commitment.

In 1969, Youngstown Sheet and Tube Co. was acquired by the Lykes Corp., a New Orleans-based steamship firm. At that time Youngstown's Campbell works, though in need of modernization, was a successful company, accounting for 77 percent of Campbell's total revenues. In 1977, however, after abandoning reinvestment for modernization and looting Youngstown's assets to pay off preexisting debts—including those incurred to purchase Youngstown—and to further diversify by acquisition, Lykes closed 75 percent of the Campbell works. Five thousand workers immediately lost jobs. From 6,000 to 10,000 additional jobs were lost through ripple effects. Unemployment rose above 10 percent in the Mahoney Valley of Ohio. Property tax valuation dropped 27 percent, overall tax collections 40 percent. Sales in the Campbell area dropped by $15 million annually. A city bond effort was nullified. One witness estimated the cost to government alone—in welfare, food stamps, and lost taxes—at $72 million. No one can measure the cost in human suffering: unemployment, depression, alcoholism, alienation, divorce, and suicide. Even to secure an economic benefit, can any society afford such costs?

There are political costs as well as social, when fewer and fewer corporate entities become more and more powerful. We have seen a correlation between the size and wealth of individual corporations, and their ability to influence political processes. These include the election of candidates, the distribution of government benefits, the passage of legislation, and the process of its implementation. By virtue of size organization, wealth, access, prestige, and media influence. Large conglomerates gain disproportionate power over electoral processes, the distribution of government benefits, the zealousness of dissident employees, and the vocalness of buyers and sellers.

Corporate political instruments are already powerful. Last year the political action committees of corporations spent $4.7 million on congressional campaigns. There were 700 separate corporate lobbies registered in Washington. But only 34 groups operate there for social welfare programs, only 53 for minority groups, only 15 for older Americans. And with individual corporate growth comes individual corporate power. And every increase in corporate political power creates concomitant pressure for countervailing governmental power, even at a time of inflation, budget deficits, and pressure for less government. As Franklin Roosevelt said once: "Big Business collectivism in industry compels an ultimate collectivism in government." Without this legislation to control the power, we will witness inevitably a concomitant growth in governmental power.

Finally, Mr. President, there are serious economic costs of conglomerate merger activity, of a kind traditionally recognized by courts in enforcing the antitrust laws. Conglomerate mergers may significantly undermine competition in the industry of the acquired firm, by virtue of the size and power of the acquiring firm. That power can be exercised in a variety of ways—by intimidation of potential entrants into an industry; by foreclosure of toe-hold or de novo entry by the acquiring firm itself; by bringing corporate power to bear against current competitors; by disproportionate influence over governmental processes, by reciprocity among subsidiaries of a conglomerate; or by mutual forebearance among conglomerates whose subsidiaries compete. There are also harms to economic growth and efficiency: The opportunity cost of effectively nonproductive fund transfers, which might have financed shareholder reinvestment or internal expansion; the reduction in diversity which may undermine the opportunities for innovation or aggressive management; the disruption of traditional collective-bargaining relationships and balances, causing work stoppages or plant shutdown; the inefficiency and waste of overextending distant or inexpert managers; and the waste of time and money in exploring acquisitions or resisting them.

Nor are such harms offset by competing economic advantages. At least four theories have been advanced by which conglomerate mergers are said to help the economy. That they help achieve economies of scale or other synergies; that they facilitate the raising and movement of capital; that they help set stock prices at a level more reflective of the value of an enterprise; and that they help promote efficiency in management through takeovers or the threat of takeovers. Even if all of those benefits were demonstrable, Mr. President, they would not justify the often devastating social, political, and economic harms produced by conglomerate merger activity. Moreover, such benefits are greatly exaggerated, especially with respect to the large mergers covered by this legislation. At some point, prospective parties to a merger become large enough to achieve its benefits independently. Finally, this legislation permits a showing by proponents of a merger that it would substantially enhance competition, or yield economies of scale or other substantial efficiencies. It may be possible to prevent the costs of conglomerate mergers while preserving those which produce benefits. Surely that outcome is more desirable than continuing to suffer the political, social, and economic costs of such activity.

It is the purpose of this legislation to address and to prevent those costs—costs to the diversity and integrity of our economy and our political values. In the weeks to come, the Senate Judiciary Committee, and the Subcommittee on Antitrust and Monopoly, will be considering the complex questions raised by this issue. They are by no means easy questions, susceptible of simple answers. We recognize, for example, that growth of firms by internal expansion offers positive benefits to our society. We recognize that larger firms have offered positive contributions to our economy and our society. This legislation is not an attack on bigness. Rather it addresses those problems inherent in one method by which corporations seek to grow larger. Our purpose is to find the best means of dealing with a difficult and complex issue, with broad implications for our society and our economy. Some action is necessary, to secure the integrity of a nation's commitment to economic and political diversity. I am confident that in this Congress, we will take another important step toward achieving that objective.

By Mr. PROXMIRE (by request):

S. 601. A bill to increase the number of class C directors of Federal Reserve banks and to make certain changes in the terms and positions of the Chairman and Vice Chairman of the Federal Reserve Board; to the Committee on Banking, Housing, and Urban Affairs.

FEDERAL RESERVE REFORM ACT AMENDMENTS OF 1979

Mr. PROXMIRE. Mr. President, I am today introducing legislation at the request of Chairman Miller of the Federal Reserve Board titled the "Federal Reserve Reform Act Amendments of 1979."

The Federal Reserve Reform Act of 1977 (Public Law 95-188) prohibited the discriminatory selection of Federal Reserve bank directors on the basis of race, creed, color, sex, or national origin and expanded the criteria for selection of non-bank directors so that due consideration would be given to the interests of agriculture, commerce, industry, services, labor, and consumers.

In a letter dated February 22, 1979, transmitting this legislation, Chairman Miller points out that the Federal Reserve is having difficulty complying with the terms of the Federal Reserve Reform Act of 1977 because it selects only three

of the nine directors itself, two of whom must also have the qualifications to serve as Chairman and Deputy Chairman of the Board of Directors. Chairman Miller proposes to meet the broader selection requirements of Public Law 95–188 by expanding the number of directors of each Federal Reserve bank from 9 to 12, 6 of whom would be chosen by the Federal Reserve. Since the Chairman and Deputy Chairman would be chosen from this group, Chairman Miller's recommendations will, as a practical matter, result in four directors (or one-third of the Board) to be chosen by the Federal Reserve on the basis of the expanded criteria. Title I of the proposed legislation contains the amendments in these respects recommended by Chairman Miller.

Public Law 95–188 also provided for the Chairman and Vice-Chairman of the Federal Reserve to be designated by the President by and with the consent of the Senate for a term of 4 years. Chairman Miller recommends in the legislation that the 4-year term of the Chairman expire on January 31 of the year after the inauguration of the President. The effect of this provision will be to insure that each President will have the power to name his own man as Chairman of the Federal Reserve 1 year after assuming office. Chairman Miller also recommends housekeeping provisions which make clear that in the event of death or disability of the Chairman, that the Vice-Chairman has power to act as Chairman. These recommendations are contained in title II of the legislation.

Mr. President, I am sure the members of the Banking Committee will give careful consideration at an early time to the recommendations of Chairman Miller, including the effects of adoption, if any, on the independence of the Federal Reserve of Chairman Miller's amendments. I ask unanimous consent that the text of Chairman Miller's letter of February 22 be printed in the RECORD, together with the text of the Federal Reserve Reform Amendments Act of 1979.

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

S. 601

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Reserve Reform Act Amendments of 1979".

TITLE I—FEDERAL RESERVE BANK PUBLIC DIRECTORS

SEC. 101. (a) The ninth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 302) is amended by striking out "nine" and inserting in lieu thereof "twelve".

(b) The twelfth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 302) is amended—

(1) by striking out "three" in the first sentence and inserting in lieu thereof "six"; and

(2) by adding at the end thereof the following: "Of the three new class C members first appointed by the Board of Governors of the Federal Reserve System pursuant to and after the enactment of the Federal Reserve Act Amendments of 1979, one shall be designated to serve for a term ending December 31, 1980, one for a term ending December 31, 1981, and one for a term ending December 31, 1982, and thereafter each member so appointed shall serve for a term of three years as provided in paragraph 9 of this section."

(c) The last sentence of the twentieth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 305) is amended by striking out "third class C director" and inserting in lieu thereof "class C director designated by the chairman".

TITLE II—TERMS OF FEDERAL RESERVE BOARD CHAIRMAN AND VICE CHAIRMAN

Sec. 201. The second paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 242) is amended by striking the third sentence and inserting in lieu thereof the following: "The President shall appoint, by and with the advice and consent of the Senate, one member of the Board to serve as chairman for a term of four years. The chairman's term shall expire on January 31 of the first calendar year commencing after the calendar year during which the term of the President appointing the chairman is scheduled to expire. In the event a chairman does not complete the entire term, the successor shall be appointed to complete the unexpired portion of that term. The President also shall appoint, by and with the advice and consent of the Senate, one member of the Board to serve as vice chairman for a term of four years.".

Sec. 202. The second paragraph of section 10 of the Federal Reserve Act is amended by inserting immediately after the fifth sentence thereof the following: "In the temporary absence and unavailability or disability of the chairman, or, in the event of the death, resignation, or permanent incapacity of the chairman, the vice chairman shall have the power to act as chairman during such temporary absence or unavailability or permanent incapacity pending appointment of a successor to the chairman. Upon the expiration of the term of office of the chairman or vice chairman, the chairman or vice chairman, as the case may be, shall continue to serve in that capacity until a successor is appointed and has qualified."

Sec. 203. The provisions of this Act and the amendments made by it shall take effect upon the date of its enactment, except that any person who is the chairman of the Board of Governors of the Federal Reserve System immediately prior to the date of enactment of this Act may continue in the office of chairman until the expiration of the full four-year term to which he or she was appointed, and the amendments made by section 201 shall not be applicable to him or her prior to the expiration of the full four-year term.

FEDERAL RESERVE SYSTEM,
Washington, D.C., February 22, 1978.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR BILL: Enclosed for your consideration is a proposal from the Board's 1979 legislative program, entitled the "Federal Reserve Act Amendments of 1979," which would increase the number of class C directors of Federal Reserve Banks from three to six; provide for appointment of the Chairman of the Federal Reserve Board at regular four-year intervals, beginning one year following the inauguration of the President; and make other changes in the terms and positions of the Chairman and Vice Chairman of the Federal Reserve Board. Title I of the draft bill dealing with the class C directors is a resubmission from the 95th Congress, which the Board transmitted on June 9, 1978; Title II ("Terms of Federal Reserve Board Chairman and Vice Chairman") is a revised version of H.R. 12510 of the 95th Congress, which Congressman Mitchell introduced on May 2, 1978.

Title I——Federal Reserve Bank Public Directors.

For several years, the Board has been endeavoring to broaden the representative aspect of the directors of Federal Reserve Banks. These efforts have been accelerated with the passage of the Federal Reserve Reform Act of 1977, which urges the System to increase the representation of consumers, labor and service interests on the boards of directors. The law also calls upon directors to be appointed "without discrimination on the basis of race, creed, color, sex or national origin."

The Board, however, has encountered difficulties in fulfilling the Congressional mandate since under present law it is only able to appoint directly the three class C directors of Reserve Banks, two of whom must also meet the qualifications to serve as Chairman and Deputy Chairman of the Board. The member of class C vacancies that occur in any year is further limited since directors are appointed for three-year terms.

The Board in considering this problem has concluded that, in order to implement the Federal Reserve Reform Act of 1977 as expeditiously as possible, additional legislation is desirable to increase the number of class C directors at each Reserve Bank from three to six. Enactment of this legislative recommendation would permit the Board to appoint immediately three new class C directors at each Reserve Bank. The terms of office for these new directors would be three years, but initially would be staggered with one director being appointed to a one-year term, one director to a two-year term, and the third director to a three-year term.

Title II——Terms of Federal Reserve Board Chairman and Vice Chairman.

The Federal Reserve Act states that whenever a vacancy occurs among the seven members of the Board, a successor is to be appointed by the President, by and with the advice and consent of the Senate, to hold office for the unexpired portion of his predecessor's term. Of the persons serving on the Board, one is designated to serve as Chairman for a term of four years. Each newly appointed Chairman is appointed for a full four-year term whether or not his predecessor completed a term as Chairman.

Proposals to align the term of the Chairman of the Federal Reserve in some way with the term of the President have been under consideration by Congress in various forms for a number of years. The Board believes there is a sound basis for making the four-year term of the Chairman begin one year following the inauguration of the President —i.e., on February 1 of the year after the President's term of office commences. Title II of the enclosed draft bill would accomplish this change and correspondingly would permit a Chairman or Vice Chairman who is filling the vacancy created by an unexpired term to serve only until January 31 of the post-inaugural year, after which he or she would be eligible for appointment to a full term (Section 201).

Title II would also (a) authorize the Vice Chairman to act as Chairman in the event of the temporary absence and unavailability or incapacity of the Chairman, or the death, resignation or permanent incapacity of the Chairman pending appointment and confirmation of a successor; and (b) clarify that the Chairman or Vice Chairman shall continue to serve in that capacity after expiration of his or her term until a successor is designated and confirmed (Section 202). The Federal Reserve Act makes no clear provision for the former situation; and it contains an ambiguity for the latter by allowing Board members to continue serving, upon the expiration of their terms, until their successor is confirmed, without specifying their continuity on the Board as Chairman or Vice Chairman *per se*.

The Board's proposal is drafted to exempt the current Chairman from the co-terminous term provisions of Section 201; otherwise, the incumbent's term as Chairman would expire

on January 31, 1982, rather than March 8, 1982—five weeks less than the four years to which he was appointed (Section 203). This would mean, however, that the current Chairman's successor would serve for a corresponding five weeks less than the full four-year term of office.

The Board would be grateful for the prompt consideration of the enclosed proposal.

Sincerely,

BILL.

By Mr. MATHIAS (for himself and Mr. STAFFORD):

S. 602. A bill to amend the Internal Revenue Code of 1945 to modify the credit allowed for expenses for household and dependent care services necessary for gainful employment to include credit to individuals for expenses for the care of a mentally or physically handicapped child of such individual and to provide for the exemption from taxation of trusts established to provide care for such children except to the extent of distributions and to provide a deduction for contributions to such trusts; to the Committee on Finance.

CHILD CARE AND FAMILY CARE TRUST ACT OF 1979

● Mr. MATHIAS. Mr. President, parents with mentally or physically handicapped children often face uncommon expenses relating to the care and supervision of their offspring. Unless the expenses are for medical care, or are in connection with a parent seeking gainful employment, the parents now may not reduce their Federal tax liability even though the costs of specialized child care and supervision may be extraordinary. My bill gives a tax break to families in this situation by increasing the amounts that can be claimed for child care expenses in the case of handicapped children, and by not requiring a parent to seek gainful employment in order to claim the credit. The maximum tax credit per severely handicapped child is $1,600 per year.

Helping parents of severely handicapped children deal with high child care expenses is not a complete answer to the problem of caring for such persons. Parents face an additional financial burden when they learn that their children are so handicapped that it is unlikely that they will be able to become self-supporting and independent at the age of majority or later. Many parents feel obligated to continue providing care and supervision to such children. Families become particularly concerned about how severely handicapped children will be cared for after the parents' own working years have ended, and after they are deceased.

In view of the long term care problem, my bill would amend the tax code so that parents, grandparents, brothers, and sisters of severely handicapped children may establish qualified family care trusts. Parents and other close relatives would be encouraged to deposit some of their income, singly or in combination, in such trusts in order to accumulate money during their working years to fund some of the costs of continuing child care and supervision after the parents retire or are deceased. Money deposited by contributors in such trusts would be treated as a deduction from adjusted gross income in the same way as is money placed in an individual retirement account up to a maximum of $1,500 per handicapped child per year.

The problem of providing long-term care to a family member is not confined to children. Each year some adults are diagnosed as having multiple sclerosis, Hodgins, or another progressively disabling disease. My bill permits families to use the qualified family care trust in such circumstances to provide for the long-term care of an adult family member who will be completely incapacitated as the disease takes its toll. In such cases children and spouses, in addition to other close relatives, can participate in funding qualified family care trusts.

Trustees could invest money from such trusts and accumulate earnings. Taxes on the earnings would be levied against the qualified family care trusts when distributions are made to pay for care and supervision of severely handicapped children or progressively disabled adult family members. Distributions may begin anytime after the children reach age 21 or the grantor dies, whichever occurs first. In the case of progressively disabled adult family members, distributions may begin anytime after they no longer can engage in any substantial gainful activity. Money distributed to pay for the care or supervision of beneficiaries of such trusts would not be taxable to them, nor could the assets of the trusts be considered for purposes of determining their eligibility for such benefits as supplemental security income.

The alternative to making it financially possible for families to provide for their own severely handicapped children or progressively disabled adults, of course, is to relv exclusively upon Government to provide the care at taxpayer expense. The existing Government programs to assist such persons surely have value. But, I believe that most Americans would support a governmental policy of offering financial encouragement to families with severely handicapped children or progressivelv disabled adults such that they can provide the essential care for as long as possible.

I am pleased that both providers of health care and supportive services, as well as organizations representing the handicapped, favor the bill. The American Congress of Rehabilitation Medicine, American Osteopathic Association, American Public Health Association, American Psychiatric Association, American Occupational Therapy Association, American Physical Therapy Association National Rehabilitation Counseling Association, American Personnel and Guidance Association, American Rehabilitation Counseling Association, Association on Rehabilitation Facilities, National Association of Private Psychiatric Hospitals, American Association on Mental Deficiency, National Easter Seal Association, National Association of the Deaf. Alexander Graham Bell Association for the Deaf, Arthritis Foundation, Epilepsy Foundation of America, National Association of Retarded Citizens, Muscular Dystrophy Association, and the National Multiple Sclerosis Society are among the organizations supporting the bill.

Mr. President, I now ask unanimous consent that the text of the Child Care and Family Care Trust Act of 1979, be printed in the RECORD.

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

S. 602

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF SECTION 44A CREDIT.

(a) IN GENERAL.—Subsection (f) of section 44A of the Internal Revenue Code of 1954 (relating to special rules for expenses for household and dependent care services necessary for gainful employment) is amended by adding at the end thereof the following new paragraph:

"(9) Special rule for handicapped child.—In the case of a qualifying individual described in subsection (c) (1) (B) who is the child (as defined in section 151 (e) (3)) of the taxpayer—

"(A) expenses for the care of the qualifying individual shall be treated as employment-related expenses without regard to whether or not such expenses are incurred—

"(i) to enable the taxpayer to be gainfully employed, or

"(ii) outside the taxpayer's household;

"(B) the amounts '$4,000' and '$8,000' shall be substituted for '$2,000' and '$4,000', respectively, in subsection (d); and

"(C) the limitation contained in subsection (e) shall not apply.".

(b) CONFORMING AMENDMENTS.—

(1) The caption of section 44A of such Code is amended—

(A) by inserting "CERTAIN" before "HOUSEHOLD", and

(B) by striking out "NECESSARY FOR GAINFUL EMPLOYMENT".

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by striking out the item relating to section 44A and inserting in lieu thereof the following:

"Sec. 44A. Expenses for certain household and dependent care services.".

SEC. 2. ALLOWANCE OF DEDUCTION FOR CONTRIBUTIONS TO QUALIFIED CHILD CARE TRUSTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as 222 and by inserting after section 220 the following new section:

"SEC. 221. CONTRIBUTIONS TO QUALIFIED CHILD-CARE TRUSTS

"(a) General Rule.—In the case of an individual there is allowed as a deduction the sum of the amounts paid or contributed by that individual for the taxable year to or under a trust described in section 645 established by that individual.

"(b) Maximum Deduction—The deduction allowable by subsection (a) for any taxable year shall not exceed 15 percent of the compensation (as defined in section 401(c)(2)) includible in gross income for the taxable year, or $1,500, whichever is less.

"(c) No Deduction When Beneficiary Is Not a Dependent.—No deduction is allowed under subsection (a) for amounts contributed during any taxable year for which the taxpayer may not claim the deduction allowed by section 151 with respect to the beneficiary.".

(b) Allowance of Deduction from Gross Income.—Section 62 of such Code (relating to definition of adjusted gross income) is

amended by adding at the end thereof the following new paragraph:

"(14) Qualified child-care trust contributions.—The deduction allowed by section 221.".

(c) Clerical Amendment.—The table of sections for such part is amended by striking out the last item and by inserting in lieu thereof the following:

"Sec. 221. Contributions to qualified child-care trusts.

"Sec. 222. Cross references.".

SEC. 3. TRUST FOR CARE OF AN INCOMPETENT CHILD OF THE TAXPAYER

(a) In General.—Subpart A of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1954 (relating to general rules for taxation of estates and trusts) is amended by adding at the end thereof the following new section:

"SEC. 645. QUALIFIED CHILD-CARE TRUSTS

"(a) Exemption From Income Taxes.—

"(1) Exemption for qualified child-care trust.—Except as provided in paragraph (3), a qualified child-care trust shall be exempt from taxation under this subtitle for the taxable year.

"(2) Exemption for beneficiary.—Except in the case of a mandatory distribution provided for in subsection (b)(1), any amount distributed during the taxable year by a qualified child-care trust shall not be included in the gross income for the taxable year of the qualified beneficiary to or for whom such amount is so distributed to the extent that such amount is received by any individual—

"(A) who is not the spouse of the grantor of such trust, and

"(B) whose relationship to such grantor is not described in paragraph (1), (2), (3), (4), or (5) of section 152(a),

for the purpose of providing care for such beneficiary.

"(3) Trust funds to be taxed on distributions.—Except in the case of a mandatory distribution provided for in subsection (b), a qualified child-care trust shall be treated as having taxable income for the taxable year in an amount equal to the sum of the amounts distributed by the trust during the taxable year, reduced by any portion of such distributions included in the gross income of a beneficiary for the taxable year under paragraph (2).

"(b) Mandatory Distributions.—

"(1) To beneficiary upon cessation of dependence.—If the grantor of a qualified child-care trust cannot claim the deduction allowed by section 151 with respect to the beneficiary for 5 successive taxable years because of the earned income of the beneficiary, then, beginning with taxable year beginning after the fifth such taxable year, the amount in the trust shall be distributed to the beneficiary over a period of not more than 5 taxable years.

"(2) To grantor upon death of beneficiary.—If the beneficiary of a qualified child-care trust dies during any taxable year of the grantor of the trust, the amount in the trust shall be distributed to the grantor over a period of not more than 5 taxable years.

"(C) Definitions.—For purposes of this section—

"(1) Qualified child-care trust.—The term 'qualified child-care trust' means any trust—

"(A) which is created and governed by a written instrument under which—

"(i) it is impossible, at any time before the termination of the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of care for any qualified beneficiary of the trust, the payment of administrative expenses of the trust, or a mandatory distribution required under subsection (b), and

"(ii) the grantor of the trust has no reversionary interest in any portion of the trust (other than in the case of a mandatory distribution required under subsection (b)(2)) which may take effect in possession or enjoyment before the death of all qualified beneficiaries of the trust or before all beneficiaries of the trust cease to be qualified beneficiaries of such trust;

"(B) the trustee of which is a bank (as defined in section 401(d)(1) or any person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the purpose of the trust; and

"(C) no beneficiary of which is a beneficiary of any other qualified child-care trust.

"(2) Qualified beneficiary.—The term 'qualified beneficiary' means any individual—

"(A) who is the son, stepson, daughter, or stepdaughter of the grantor;

"(B) who, under regulations prescribed by the Secretary, at the time such trust is established, is unable to engage in any substantial gainful activity because of a medically determinable mental or physical impairment which can be expected to be of long-continued and indefinite duration, and

"(C) who, if the grantor is alive at the close of the taxable year of the trust, has attained the age of twenty-one years.".

(b) Clerical Amendment.—The table of sections for such subpart A is amended by adding at the end thereof the following new item:

"Sec. 645. Qualified child-care trusts.".

SEC. 4. AMOUNTS FROM TRUST NOT TAKEN INTO ACCOUNT FOR PURPOSES OF OTHER FEDERAL ASSISTANCE.

Amounts paid from a qualified child-care trust (as defined by subsection (c)(1) of section 645 of the Internal Revenue Code of 1954) for the care of a beneficiary of such trust, other than amounts required to be distributed under subsection (b)(1) of such section, shall not be taken into account for purposes of determining the eligibility of such beneficiary for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to taxable years beginning after the date of enactment of this Act.●

By Mr. JAVITS (for himself, Mr. STAFFORD, Mr. CHAFEE, Mr. SCHWEIKER, and Mr. HAYAKAWA):

S. 603. A bill to amend title XIX of the Social Security Act to provide that States may include coverage under medicaid for individuals who perform substantial gainful activity despite a severe medical disability; to the Committee on Finance.

● Mr. JAVITS. Mr. President, I am introducing for myself and Senators CHAFEE, SCHWEIKER, STAFFORD, and HAYAKAWA a bill which will enable severely disabled persons who are capable of gainful employment to receive medicaid assistance.

Employable disabled persons in our country are victims of a most egregious situation: The medicaid program, designed to help people, instead may place severely handicapped individuals in very real "life-or-death" dilemmas, which virtually require them to go on public assistance.

Under title XIX of the Social Security Act, a disabled person's eligibility for medicaid depends not only upon financial eligibility under State-established standards; but also upon meeting the requirements of the definition of "disabled" used for purposes of the supplemental security income (SSI) program under title XVI of the act. Section 1614

The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. Notwithstanding . . . [an individual otherwise meeting the SSI medical definition of disability], an individual whose services or earnings meet such criteria . . . shall be found not to be disabled.

Mr. President, "substantial gainful activity" under current Federal regulations is defined by a $240 monthly gross earnings limitation. This means that most disabled persons earning more than $240 monthly are considered legally not disabled, and hence, are ineligible for any medicaid services.

There are only two exceptions to this "substantial gainful activity" limitation. First, any disabled person may receive medicaid services if he or she engages in a trial work period of up to 9 months per disability regardless of monthly gross earnings over this period. Second, any disabled person eligible for medicaid services in December 1973 is still eligible, provided that his or her State's approved medicaid plan did not at that time include a "substantial gainful activity" test. Despite these exceptions, many severely disabled workers are eliminated from eligibility for required services.

Mr. President, severely disabled workers in this Nation frequently need home health aides, prescription drugs, and other services covered under State medicaid plans to assist them in meeting their daily personal requirements. The cost of these services may be quite high depending upon the individual's needs. Many disabled persons who are employed earn incomes above the $240 monthly gross earnings limitation—incomes too high for medicaid eligibility but often unquestionably too low to cover the cost of life-sustaining care. Thus, the employable disabled person who wishes to work may be forced by this limitation upon his or her earnings to remain unemployed—or underemployed—since his or her earnings cannot cover the cost of necessary personal services.

To force an individual to choose between employment and personal attendant care, for example, is unacceptable. Our employable disabled citizens should have the opportunity for both, so that they may lead productive, independent lives.

The case of a woman in New York is instructive of the devastating effect of this situation faced by disabled workers. She was forced to make the untenable choice between work or life. When she first wrote me, the earnings limitation for purposes of defining her as "disabled" was $140 per month, but the precise figure is less relevant to the issue than the very clear fact that, regardless of employment, a disabled person is still disabled and still may require life-sustaining services such as a home health aide. I should like to read into the RECORD a part of her original letter to me:

I am a 26-year-old severely disabled woman

who was put through school by the Division of Vocational Rehabilitation. I graduated Hofstra University in 1969 and sought work. In 1971 I began work for the Department of Social Services as a caseworker aide. I lived with my family; mother took care of my personal needs such as bathing, dressing, toileting, as well as those of my disabled younger sister. In 1973 I moved into my own apartment as I realized that as my sister grew older it was increasingly more difficult for my mother to care for us (my sister is now 14).

I wanted to try to live independently, now, before I had to. My parent would someday be unable to care for me. I shared my apartment with a disabled roommate on public assistance. She had an aide paid for by medicaid. I supplemented the aide and she took care of me too. In June, my roommate moved. I used my savings to pay an aide and tried several "arrangements" where I offered free room and board in exchange for service. I had my life jeopardized by an alcoholic, a drug addict, and a mentally ill woman.

I applied for medicaid and was told I could not qualify as anyone between the ages of 21 to 64 who earns more than $140.00 per month cannot be considered disabled. I earned $9400 per year; took home $133.00 per week; paid $241.00 per month for utilities and rent and an aide costs from $25.00–$35.00 per day. I applied for public assistance on the grounds that the Home Health Aide was a necessary expenditure to my working. I was denied because if I needed a Home Health Aide I was disabled and should apply for SSI. Social Security said I would not be eligible for SSI, because if I worked full time I was not disabled.

The emotional strain and lack of proper care brought about by this catch–22 situation caused my condition to worsen. I resigned from my job with a Doctor's note. My case was opened for welfare and medicaid, and a Home Health Aide provided.

I can work, but I cannot live without a Home Health Aide. If I return to work, I lose my medicaid, my Aide, and therefore, my life. I do not want to remain on welfare or SSI. I want to be considered disabled because I cannot independently provide for my own personal activities of daily living (toileting, bathing, turning in bed, dressing, etc.)

Mr. President, this is a tragic situation, unfortunately not an uncommon one, which we must not allow to continue.

I have asked officials of the Department of Health, Education, and Welfare and their counterparts in State government whether this unintended result can be remedied by regulation. After much discussion and correspondence over a period of time, it has become apparent that the most feasible remedy to this highly inequitable situation is for the Congress to amend the Social Security Act.

The legislation which I introduce today will correct this intolerable situation by amending title XIX of the Social Security Act to permit any severely disabled individual who is unable to care for his or her own personal needs, even though employable, to receive the services of a home health aide, and other medicaid services, under applicable State plans. The bill will extend attendant care and medical assistance covered by medicaid to disabled individuals who would not otherwise qualify because their incomes, while low, nevertheless are presently deemed too high solely because of the substantial gainful activity test of current law which is applied only to disabled persons.

This bill establishes eligibility for medical assistance under medicaid programs for handicapped persons who presently are barred from eligibility by the "substantial gainful activity test" of present law which prohibits eligibility regardless of severity of need. Severely handicapped persons are no less in need of medical assistance, and no less deserving of such assistance, than, for example, are blind persons, the very young, or the elderly.

Under our proposal, disabled persons would be subject to the same State-determined financial eligibility requirements for medicaid as are, for example, blind and elderly persons. This bill simply removes the "substantial gainful activity" test, currently applicable only to the disabled, for purposes of receiving medicaid. The test will continue to apply for eligibility of disabled persons for title XVI SSI assistance.

Under the provisions of this bill, disabled workers would be required to meet the Federal medical test of severe disability and State medical and financial eligibility standards for receipt of medicaid. Thus, under most State medicaid eligibility formulae, disabled individuals with substantial annual incomes would not be eligible for any such assistance unless their personal medical expenses were astronomical.

Joined by nine other Senators, including two distinguished members of the Committee on Finance, Senators DOLE and MOYNIHAN, I introduced an initial version of this legislation, as S. 2505, in the 95th Congress. I would like to review briefly for my colleagues the history of S. 2505 and related legislation in the last Congress.

Near the end of the 95th Congress, the other body considered and passed legislation to modify title XVI, SSI provisions by increasing the amount of earnings disabled individuals could receive and still be eligible for SSI disability payments, provided they continued to meet the medical definition of disability. During its consideration of this legislation, after hearings on the issue of work disincentives and disability assistance, the Senate Committee on Finance incorporated the basic form and concepts of S. 2505 into the modified version of H.R. 12972 reported by the committee to the full Senate. The modifications made in H.R. 12972, which addressed certain serious reservations held by members of the committee and by representatives of the administration regarding H.R. 12972, were the result of the exemplary efforts of Senators DOLE and MOYNIHAN.

As reported, H.R. 12972 would have enabled severely disabled SSI recipients who lose eligibility because of the performance of "substantial gainful activity," but otherwise continued to meet SSI eligibility requirements, including medical criteria, to receive medicaid and title XX assistance through receipt of a special monthly benefit of $10 per month. In addition, under H.R. 12972, severely handicapped individuals who received this special benefit, but whose earnings reached the "breakeven point" for receipt of SSI—currently $443 per month—could have continued to be eligible for medicaid and title XX services, if the loss of such services would result in an individual's inability to continue employment.

The legislation also provided, for a severely handicapped individual who became eligible for SSI on the basis of medical criteria, and who subsequently sought or obtained employment, that the Secretary of HEW disregard from that person's income, for purposes of determining "substantial gainful activity," such amounts of earned income as necessary to pay the cost of needed attendant care, provided that such care was necessary to enable such individual to work.

Unfortunately, due to the crush of business in the final hours of the last Congress, no final action was taken on H.R. 12972 as modified. As this, I believe, was one of the most important pieces of legislation the last Congress considered, it is critical that the issue of work disincentives be reopened by again introducing legislation to remove the most egregious barrier to gainful employment for severely handicapped persons—to wit, the Damocles sword of facing the possible loss of life-sustaining medical care and attendant assistance.

I understand that the administration plans to recommend legislation to rectify the problems of work disincentives in the title II disability insurance and title XVI SSI disability programs. I believe that the issue of work disincentives can be initially and easily addressed by legislation such as that which we introduce today, and would hope that the rectification of this problem will not be tied up in the general debate over welfare reform and cash assistance which, as we all know, may take considerable time and much discussion before final resolution by Congress.

New York has more than 225,000 disabled individuals currently receiving SSI benefits, many of whom are also in need of, and receiving, medical assistance under title XIX. Many of these persons can, and wish to work, and this legislation will enable them to do so.

The cost of the measure reported last year by the Finance Committee was estimated by the Congressional Budget Office to be $6 million over 3 years. The cost of the bill we introduce today, addressing only medical assistance under title XIX and not the cash assistance portion of title XVI, will be even less, and that is indeed a small price to pay.

This legislation could be, in fact, cost-saving, for part of the expenses incurred would be recoverable through the taxes of disabled citizens who now would be enabled to work and pay taxes. Most of our severely disabled workers do not wish to be on public assistance; we should not require them to be so.

Mr. President, this measure will provide severely disabled workers with the opportunity for full and productive lives, and will remedy an injustice which has for too long precluded our disabled citizens from exercising their right to live and work.

To present the disabled worker with a choice of either working and losing all

assistance, or not working to retain eligibility for needed daily assistance is, in effect, no choice at all.

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

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

S. 603

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 1905 (a) of the Social Security Act is amended—

(1) by striking out "or" at the end of clause (vi);

(2) by inserting "or" at the end of clause (vii); and

(3) by adding after clause (vii) the following new clause:

"(viii) severely disabled individuals who meet such criteria of medical severity of disability as the Secretary shall prescribe in regulations, notwithstanding such individuals' performance of 'substantial gainful activity' within the meaning of title XVI of this Act;".

SEC. 2. The amendments made by this Act shall be effective with respect to services furnished in calendar quarters beginning on or after the date of the enactment of this Act.●

By Mr. HATCH (for himself and Mr. SCHWEIKER):

S. 604. A bill to amend the Small Business Act; to the Select Committee on Small Business.

SMALL BUSINESS PAPERWORK COST REIMBURSEMENT ACT OF 1979

Mr. HATCH. Mr. President, I am pleased to introduce legislation designed to relieve the most onerous burden imposed on free enterprise—paperwork.

Do you realize that small businesses annually file a required 10 billion sheets of paper to Federal agencies? Time spent on this noncompensatory exercise is counterproductive to business interests. Compliance drains the limited resources of a small business concern with a promise of no benefit. Too often the entrepreneur is not in the competitive position to pass these hidden costs on in the form of increased prices. Too often small businessmen have neither the time, ability or know-how to influence regulatory agencies or Congress in their behalf.

Mr. President, 97 percent of the Nation's business concerns who provide 43 percent of the Nation's national product while employing 58 percent of the Nation's nonagricultural work force are helpless against the onslaught of paper.

We are on the verge of choking America's greatest resource: private incentive. Our strength is sapped; we must turn the tide, and this bill will do just that.

Mr. President, this bill requires Federal agencies to reimburse small businesses for the reasonable cost of completing and filing paperwork. It also authorizes a suit against the responsible agency to recover costs where reasonable reimbursement is not made on a timely basis. By requiring reimbursement funds to come out of an agency's currently appropriated funds, the payments will be a source of valid current information concerning the true cost of paperwork to the economy while at the same time providing incentive to an agency to reduce paperwork demands. As a side benefit, reimbursement will provide capital to finance productive pursuits.

Mr. President, I ask unanimous consent that the text of the bill and its summary be printed in the RECORD.

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

S. 604

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Paperwork Cost Reimbursement Act of 1979".

SEC. 2. The Small Business Act is amended by adding at the end thereof the following:

"SEC. 22 (a) The reasonable cost of preparing, furnishing, and submitting any form, report, data, or information, incurred by any small business concern in complying with the requirement of any department, bureau, or agency of the Federal government shall be reimbursed to such conern by such agency from its currently appropriated and budgeted funds as herein provided.

(b) Reimbursement hereunder will be made promptly upon agency receipt of an invoice stating the costs of providing the required material.

(c) Where the agency finds the invoice to be less than the reasonable cost of preparing and filing the material, the agency may pay such additional amount as it deems necessary to cover such costs. Where the agency finds the invoice to exceed the reasonable cost of preparing and filing the material, the agency will obtain a determination of such cost reasonableness from the Administrator, and promptly pay the amount determined.

(d) Claims for any number of unpaid, partially paid or contested invoices may be included in a single action at law. When the petitioner in such action is awarded judgment of any sum, the court may also include interest, court costs, punitive damages (including, but not limited to, "lack of promptness in payment"), and attorney fees in such judgment. No action may be brought on an invoice remaining unpaid for longer than two years after submittal.

(e) This section shall not apply to any filing required for tax purposes by the Internal Revenue Service.

SUMMARY OF THE SMALL BUSINESS PAPERWORK COST REIMBURSEMENT ACT OF 1979

The bill will provide that the cost of preparing and submitting required forms to an agency of the Federal Government must be reimbursed to the submitting small business from an agency's currently appropriated and budgeted funds, and that reimbursement must be paid promptly when an agency receives an invoice for paperwork costs from a small business. The bill allows the agency to obtain a Small Business Administration determination of the cost reasonableness of the invoice submitted by a small business concern. The agency may pay the invoiced amount, or the amount determined by the SBA Administrator to be reasonable.

The bill also allows a small business concern to sue the appropriate agency for a partially paid invoice, an unpaid invoice, or, in the case where the lower SBA determined amount has been paid, for the difference between the determined amount and the invoiced amount. Any number of claims may be included in a single action at law. If the petitioner is awarded judgment, the court may also award: 1) interest, 2) court costs, 3) punitive damages, which includes the situation where the agency does not promptly pay a properly submitted invoice, 4) and attorney's fees. A statute of limitations on bringing an action would be limited to within 2 years after submitting the invoice. Finally, the bill provides that it shall not apply to any paperwork required for tax purposes by the Internal Revenue Service.

By Mr. BELLMON (for himself and Mr. DOMENICI):

S. 605. A bill to permit the States to consolidate and reorganize certain food programs administered by the Department of Agriculture for the benefit of needy persons; to the Committee on Agriculture, Nutrition, and Forestry.

FOOD AND NUTRITION PROGRAM OPTIONAL CONSOLIDATION AND REORGANIZATION ACT OF 1979

● Mr. BELLMON. Mr. President, today I am introducing the Food and Nutrition Program Optional Consolidation and Reorganization Act of 1979. I am joined in this initiative by the senior Senator from New Mexico (Mr. DOMENICI) whose influence upon the concept of consolidation of Federal programs for State administration and design is significant. Before describing this approach, it is necessary to recount the history of present programs.

The psychology of many current Federal food programs is tied to the depression. At that time, needy families and school lunch programs were selected as desirable outlets for the distribution of commodities purchased by the Government to bolster agricultural prices and incomes. When the National School Lunch Act of 1946 was passed, the Federal Government's commitment to supporting school lunch programs was clearly established. This legislation had two clear purposes: to safeguard the health and well-being of the Nation's children and to encourage domestic consumption of agricultural commodities. Later, in 1954, special legislation was enacted making reduced-price milk more widely available to preschool and school age children.

During the 1950's and 1960's surplus agricultural commodities were distributed to needy persons in programs imitative of those begun during the depression. After some pilot food stamp programs were undertaken in the early 1960's to test the effectiveness of this alternative for improving nutrition of needy people, the 1964 Food Stamp Act was adopted, increasing the availability of this program to low-income families.

Increased attention to food and nutrition problems in the United States during the 1960's led to a new focus within the Department of Agriculture, the Food and Nutrition Service. Over the years, participation in the food stamp plan and extensions of the school lunch program have increased Federal efforts enormously: a food stamp plan begun with $35 million in 1965 cost $5.5 billion in 1978 and is estimated to have outlays in 1979 of $6.3 billion. If we add to this substantial base the child-feeding programs, which have grown in their categorical numbers and their coverage, the nutrition program for the elderly, the community food and nutrition program, food distribution programs, and the expanded

food and nutrition program, we have 1976 Federal obligations of $8.3 billion, an 1,100-percent increase in this Nation's food program expenditures between 1965 and 1976.

There is evidence that, if we have not eradicated the desperate needs for sustenance which prompted these programs, we have certainly reduced them quite considerably. Considering the widespread diffusion of Federal food programs and the dramatic upsurge in Federal funding in recent years, it is not unreasonable to presume that we are reaching a plateau of funding sufficiency, if our concern is to be limited to the emergency considerations which originated the programs. If, on the other hand, our concern is shifting to such considerations as appropriate program design and nutritional effectiveness, then our current problems with these categorical programs must be said to include administrative clumsiness and inefficiency, fraud and abuse, the revelations that some school lunch programs do not meet the minimum nutritional standards for Federal reimbursement, and plate waste in school lunch programs.

In addition, we are becoming aware that, while there are still persons whose basic caloric needs remain to be met, the larger problem is one of targeting food programs to special populations, the prevention of obesity, and the provision of nutritional counseling. We are just now beginning nutrition education efforts in conjunction with the national school lunch program, yet its need has been evident for years. The momentum and inertia of large-scale Federal programs, which have developed their own professional constituents, make it difficult to adapt these programs to the somewhat variable needs of local and State populations. Suggestions for change which would allow more flexibility at the State and local levels are met with a barrage of objections from those who fear that change might possibly diminish their stake in the Federal funding configuration. In the process, the true needs of populations are forgotten, and program structures are perpetuated to satisfy the income security needs and other needs of those associated with the programs.

There is little evidence of the desirable nutritional consequences of our massive Federal feeding effort, and that ought to be of considerable concern to us since the health consequences of diet appear to be substantial. Faced as we are with the enormous inflationary pressures of rising medical care costs, it makes sense to tie nutritional information and education to our public feeding efforts. Prevention of serious disease related to dietary habits would ease the pressure on our system of health care.

Part of the difficulty we have in adjusting our Federal efforts to these inevitable shifts in need and emphasis stems from the assumption that we can structure Federal categorical programs which are appropriate across the broad range of geographic, demographic, economic, and social conditions which make up this country. In other words, Mr. President, in my judgment we have been hampered by the feeling that all wisdom resides in Washington and that all programs must be designed here to apply in every State and every locality across the country.

Instead of new or better categorical programs, or consolidation of Federal programs at the highest possible level in order to put together a more effective uniform national approach, I am suggesting a consolidation for State administration, rather than an unrestricted block grant to States. I propose that we establish a procedure by which citizens and agencies at the State level could reorganize and administer food and nutrition programs now federally determined.

This proposal is based upon the realization that State and local needs vary considerably, that administrative complexity is the inevitable result of accountability to remote bureaucracies. I propose that States be granted the option of consolidating, for State reorganization and administration, a number of Federal categorical food and nutrition programs. This legislation would not mandate State consolidation and reorganization, allowing States to continue the present Federal categorical arrangement, if desired. For States which choose the option, the bill I am offering would consolidate:

The food stamp program provided for under the Food Stamp Act of 1977.

The child feeding programs provided for under the National School Lunch Act and the Child Nutrition Act of 1966, including the national school lunch program, the school breakfast program, the child care food program, the summer food service program for children, the special milk program, the special supplemental food program for women, infants, and children (the WIC program), the supplemental food program, the nonfood assistance program (equipment), State administrative expenses, nutritional training and survey program, and special developmental projects.

The expanded food and nutrition education program provided for under the Smith-Lever Act, as amended.

The commodity supplement food program.

In all, Mr. President, there are 14 programs that would be available for the States that opt to use this approach.

All of these programs are currently administered at the Federal level through the Department of Agriculture. Other food and nutrition programs administered through such agencies as HEW and CSA as well as commodity distribution programs would not be consolidated, but States which choose to consolidate would be required to account for all State and Federal food and nutrition programs in the required comprehensive State plan mandated by this bill, so as to avoid overlap and duplication.

Each State which chose the consolidation option would be eligible for a planning grant to be used over a period prior to the actual program consolidation. During this period, a single State agency would be designated to perform the required assessments, formulate the State plan, receive and apportion the funds, monitor the progress of programs, prepare general guidelines, and examine all required reports and audits.

The State plan would be initiated with a comprehensive assessment of the food and nutritional requirements of the neediest people of that State. It would also incorporate the results of a comprehensive assessment of the need for food and nutrition education among the people of the State. It would also incorporate the results of a comprehensive assessment of the need for food and nutrition education among the people of the State. These assessments must include, but are not limited to, the children, infants, expectant mothers, elderly people, institutionalized populations, and isolated populations of the State. who are living in circumstances of poverty or who are unable to provide themselves with an adequate nutritional diet. The Secretary of Agriculture would participate in the planning process and his approval would be required before the consolidation process could begin.

States which chose the consolidation would not be bound to pattern State programs after existing Federal models: they would be free to design a package of programs which would meet the needs of populations as revealed by the assessments of need.

An open planning process requiring the participation of interested citizens, local organizations, units of general local government, and appropriate State agencies is required. The State plan would establish program priorities, and would insure that funds would be coordinated with other State and Federal funds so as to avoid duplication of effort and to safeguard program effectiveness.

The State plan would contain procedures for, and results of, the needs assessments; the goals to be achieved by the consolidated programs; program descriptions; policies and procedures to be followed; description of the organization structure for program administration; procedures for necessary monitoring and technical assistance with respect to agencies, institutions and organizations within the State; audit requirements; procedures to eliminate unnecessary paperwork and duplication; methods for insuring that local agencies develop and implement program plans; an appeal process for local agencies; and the requirement that the Secretary of Agriculture will make timely notification to the State as to whether or not its State plan complies with the requirements of the act and, if it does not, in what respects it is deficient.

The State choosing to consolidate would receive funds equal to the amount in total received by that State under the categorical programs specified earlier in the most recent fiscal year in which the State received funds. This amount would be adjusted semiannually to reflect changes in the price of food. Federal funds would have to be used to supplement, and not to supplant, State and/or local funds.

Each State which elected and qualified for the consolidation would also be eligible for an additional amount of funds equal to up to 10 percent of the

consolidated Federal funds, providing the State matched that amount with an equal amount of funds from non-Federal sources—considering Federal-State revenue sharing funds to be non-Federal.

No more than 7½ percent of the funds made available to a State under this bill could be used for administrative purposes. The State would not lose funds if it used than 7½ percent for administration.

In addition to the procedural and auditing safeguards required in the State plan, States would be required to perform annual program evaluations, using an evaluation model developed by the Secretary of Agriculture or a model designed by the State. No later than the end of the 5th fiscal year after enactment of this bill, the Comptroller General would evaluate the entire consolidation experience and make recommendations for legislation, if he sees fit.

To insure implementation of programs for conformity with the act, the Secretary of Agriculture would undertake such monitoring efforts as are deemed necessary. The Department would be required to undertake an evaluation of consolidated programs every 2 years. That process would include the conduct of open public hearings in the States which have exercised the option to consolidate. When noncompliance with the State plan was found, steps to be taken for the necessary modifications would be arranged with the appropriate State agency. The Secretary of Agriculture would provide advice, counsel, and technical assistance upon request of State and local agencies.

In case of noncompliance, the Secretary of Agriculture could reduce the amount otherwise payable to the State by an amount not to exceed 7½ percent; he could seek an injunction requiring compliance from the Attorney General; or he could terminate the participation of the State in the consolidated program and permit the State to return to categorical programing.

Funds under this act would be subject to the usual civil rights protections. Nonpublic school children would participate. There would be criminal penalties for individual fraud.

Those States not exercising the consolidation option would have the right to do so at a later date. Unless and until they do, they would continue receiving funds through regular categorical programs.

In order to accommodate the dual track of regular categorical and consolidated programs, the Secretary of Agriculture would establish a separate identifiable administrative unit within the Department of Agriculture. Depending upon the number and size of the States which elect to consolidate, personnel to be employed in the administration of the consolidation program would be transferred to the new unit from program units administering the categorical programs consolidated under this bill.

Mr. President, these are the principal features of the legislation that I am offering today.

With my remarks I am submitting a copy of the bill, and I ask unanimous consent that the bill be printed in the RECORD.

Mr. President, I urge that the Senate consider carefully this decentralized approach to the reform of Federal food programs. The optional approach utilized in this proposal would permit, if you will, a number of pilot efforts at reform which would allow program design to flow from assessed need instead of some notion of national uniformity. It does not force States which may be unprepared for consolidation to undertake it.

It places the burden of economizing and policing upon State and local agencies, who are in the best position to respond. It provides up to 10 percent more Federal funding for food and nutrition programs, which, when matched by the State, would result in a maximum increase of 20 percent in program funds. It undertakes to infuse food and nutrition programs with information and education intended to improve the public health. It replaces the practice of categorical program proliferation with more economical consolidation, including elimination of program duplication and multiple eligibilty standards. It depends heavily upon an open planning process and upon the anticipatory planning required to implement programs effectively. It would raise the level of sophistication of food and nutrition programs from the depression-reaction context which we now experience.

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

S. 605

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food and Nutrition Program Optional Consolidation and Reorganization Act of 1979".

STATEMENT OF PURPOSE

SEC. 2. (a) It is the purpose of this Act to afford to the States the option of consolidating and reorganizing the following food assistance programs presently being provided the States under existing laws:

(1) the food stamp program provided for under the Food Stamp Act of 1977;

(2) the child feeding programs provided for under the National School Lunch Act and the Child Nutrition Act of 1966;

(3) the expanded food and nutrition education program provided for under the Smith-Lever Act; and

(4) the commodity supplemental food program.

(b) It is the further purpose of this Act to permit those States which select the consolidation and reorganization program authorized by this Act greater flexibility in the use of Federal funds provided for food and nutrition assistance than such States presently have under the separate programs described in subsection (a); to permit the States to formulate, establish, and administer food and nutrition programs which match the requirements of their neediest populations; to develop effective methods of educating their citizens regarding the health consequences of diet and nutrition; and to encourage the States to operate food and nutrition programs in an efficient and effective manner.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "Secretary" means the Secretary of Agriculture.

(2) The term "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. Such term also includes any agency designated in accordance with applicable State law to receive and disburse funds made available under this Act.

CONSOLIDATED PROGRAM OPTION

SEC. 4. (a) Any State may, upon application to the Secretary and subject to the other provisions of this Act, participate in the consolidated program provided for in this Act. Any State which elects and qualifies to participate in such program shall receive the funds it would have otherwise received under—

(1) the food stamp program provided for under the Food Stamp Act of 1977;

(2) the programs provided for under the National School Lunch Act and the Child Nutrition Act of 1966, including the special supplemental food program provided for pregnant women, infants, and children carried out under section 17 of the Child Nutrition Act of 1966;

(3) the expanded food and nutrition education program provided for under the Smith-Lever Act;

(4) any other program which is enacted after the date of enactment of this Act, administered by the Department of Agriculture, and provides food assistance to needy persons or provides nutrition information or education to the citizens of the several States, unless the legislation enacting such program specifically provides otherwise.

(b) (1) Any State which elects to participate in the consolidated program in lieu of the categorical programs described in subsection (a) may withdraw its election to participate in the consolidated program and continue participation in the categorical programs if such State withdraws its election at any time prior to the beginning of the first fiscal year it would have been eligible to receive funds (other than planning funds) under the consolidated program.

(2) Any State which has participated in the consolidated program for at least two fiscal years may terminate its participation in such program upon written notice to the Secretary at least sixty days prior to the end of any fiscal year.

(3) A State which terminates its participation in the consolidated program as provided in paragraph (2) shall become eligible to participate in the categorical programs described in subsection (a) at the beginning of the fiscal year following the fiscal year in which participation in the consolidated program ends.

(c) All States which elect to participate in the consolidated program shall begin participation at the beginning of a fiscal year. In no case may a State participate in the consolidated program and in one or more of the categorical programs described in subsection (a) in the same fiscal year.

CONSOLIDATION PROGRAM PAYMENTS

SEC. 5. (a) Each State which elects and qualifies under this Act to receive funds for carrying out the consolidated program provided for in this Act shall be paid by the Secretary of the Treasury each fiscal year such amount as shall be certified to him by the Secretary.

(b) The Secretary shall certify for payment in the case of any State participating in the consolidated program in any fiscal year an amount equal to the total amount received by such State under the categorical programs described in section 4(a) in the most recent fiscal year in which such State received funds under such programs. In no case shall the amount certified for payment in any fiscal year in the case of any State which participated in the consolidated program in the

preceding year be less than the amount such State received under this subsection in such preceding year.

(c) The amount to which any State is entitled under this section shall be adjusted each fiscal year to reflect changes in the preceding fiscal year in the prices of food as published by the Bureau of Labor Statistics, Department of Labor.

PLANNING GRANTS

SEC. 6. (a) Any State desiring to participate in the consolidated program authorized by this Act may, for the purposes of preparing a consolidated plan in accordance with this Act, receive a planning grant for use in not more than two consecutive fiscal years. Any State desiring to receive a planning grant under this section shall file an application at such time, in such manner, and including such information as the Secretary may reasonably require consistent with this section. Each such application shall include, but not be limited to, provisions which—

(1) describe the objectives to be achieved in the development of the State plan with assistance made available under this Act,

(2) set forth procedures to assure an opportunity for comments to be submitted by the chief executive of the State,

(3) set forth assurances that the comprehensive State plan required under section 9 will be prepared in accordance with section 8, and

(4) describe procedures for the promulgation of regulations for the State administration of the programs consolidated by this Act.

(b) The maximum amount of a grant which a State may receive under this section is equal to not more than 2 per centum of the total amount of funds allocated to that State under the programs described in section 4(a) in the most recent fiscal year, and the minimum amount is $500,000.

STATE ADMINISTRATION

SEC. 7. (a) Each State desiring to receive funds for the consolidation program authorized by this Act for any fiscal year shall—

(1) designate, as provided by the constitution and laws of the State, the single State agency within the State which will be responsible for—

(A) assessing the food and nutrition needs of the neediest population of the State;

(B) formulating the State plan provided for under section 9;

(C) receiving and apportioning the funds (Federal and State) made available for carrying out in such State the consolidated program provided for in this Act;

(D) monitoring on a continuing basis the progress of the programs carried out in such State under this Act;

(E) preparing the general guidelines for the State plan; and

(F) examining all reports and audits required in connection with the consolidated program carried out in such State under this Act;

(2) publish prior to the first year of consolidated assistance made to that State under this Act, and each fourth year thereafter, a four-year comprehensive State plan which—

(A) is developed in accordance with the procedures described in section 8, and

(B) contains the provisions designed to meet the requirements of section 9,

(3) develop and publish an annual update of the comprehensive State plan, and

(4) certify to the Secretary that it has developed and published the comprehensive State plan or annual update in accordance with the provisions of this Act.

(b) A State desiring to receive funds for the consolidation program authorized by this Act for any fiscal year shall, in addition to the requirements of subsection (a), provide for—

(1) an audit of expenditures for each program year as provided in the State plan;

(2) an annual evaluation of the implementation of the State's final comprehensive plan, and any amendment thereto, adopted under section 8; and

(3) an annual report of that audit and evaluation which report shall include—

(A) such information as the Secretary may prescribe consistent with the consolidation and provisions of this Act, and

(B) assurance that funds were expended in accordance with the Act and the comprehensive State plan.

PROCEDURE FOR DEVELOPING THE COMPREHENSIVE STATE PLAN

SEC. 8. Each State shall, in the development of the comprehensive State plan, establish procedures designed to assure that—

(1) a comprehensive assessment is made to determine the food and nutritional requirements of the neediest people of the State, such assessment to include, but not be limited to the children, infants, expectant mothers, elderly people, institutionalized populations, and isolated populations of the State, who are living in circumstances of poverty or who are unable to provide themselves with an adequate nutritional diet;

(2) a comprehensive assessment is made to determine the need for food and nutrition education among the people of the State, including segments of the State's population which may be suffering from overnutrition as well as those segments which may be suffering from inadequate nutrition;

(3) procedures are established for obtaining the participation of interested citizens, local organizations, units of general local government, and appropriate State agencies prior to and during the development of the comprehensive plan;

(4) the legislature of the State will be informed of the development of the procedures required by this subsection;

(5) programs will be identified in terms of priorities for which funds will be allotted, distributed, and expended;

(6) the use of funds for purposes described in this Act will be coordinated with the use of State, local, and Federal funds (including commodities) made available for similar purposes;

(7) the use of funds for purposes described in this Act will be coordinated with each other and other Federal programs to avoid duplication of effort;

(8) the proposed comprehensive State plan or the annual update thereof will be published at least one hundred and twenty days prior to its effective date and such plan or update thereof will be available to interested parties and to local agencies within the State. Comment relating to such plan must be accepted for a minimum of forty-five days after such publication;

(9) a final comprehensive State plan or annual update thereof, will be published and made generally available prior to its effective date together with a summary of the comments received and an explanation of the differences between the proposed plan and the final plan and the reasons therefor;

(10) any amendment to the final comprehensive State plan prepared by the State agency designated pursuant to section 7(a)(1) will be published as a proposed amendment on which the public may comment for a period of at least twenty days, and thereafter the final amendment, together with a summary of the comments received and the action taken on such comments, will be published;

(11) procedures will be established to assure that regulations and rules established, amended, or repealed by that State will be established, amended, or repealed with the counsel of local agencies and consistent with State administrative procedures and due process;

(12) the aggregate amount to be expended by the State and its agencies from funds derived from non-Federal sources for the consolidation program for any fiscal year will not be less than the amount expended by the State and its agencies in the preceding fiscal year on programs described in section 4(a) and on similar or related programs; and

(13) Federal funds provided under this Act supplement and in no case supplant State and/or local funds.

PROVISIONS OF THE COMPREHENSIVE STATE PLAN

SEC. 9. (a) A comprehensive State plan meets the requirements of this section if such plan—

(1) sets forth the procedure for, and the results of, the needs assessments conducted pursuant to section 8(a)(1);

(2) sets forth the goals to be achieved under the plan, the basic program objectives and a description of the programs to be carried out under the plan;

(3) sets forth the State's program for providing food and nutrition education and information designed to meet the needs of its people as revealed in the needs assessment;

(4) sets forth the policies and procedures to be followed by the State to assure that the distribution of funds to State and local agencies, institutions, and organizations within the State is in accordance with the provisions of this Act;

(5) contains a description of the organizational structure through which the program consolidated by this Act will be administered;

(6) sets forth the State's program (if any) for providing meals and food and nutrition education in connection with or as a part of (A) any Head Start or Follow Through program for children, (B) the nutrition program for the elderly carried out under title VII of the Older Americans Act of 1965, (C) the community food and nutrition program, and (D) any other federally funded food or nutrition education or information program carried out with funds not provided under this Act.

(7) sets forth the procedures for monitoring activities of the agencies, institutions, and organizations within the State responsible for administering the comprehensive plan of the State, including a provision for technical assistance by the State to each such agency, institution, and organization;

(8) contains a description of the process that the State will use to insure that any agency, institution, or organization in the State which receives funds under this Act will annually develop or update a comprehensive plan for the use of such funds and that the plan will be made available to the public for comment as provided in the comprehensive State plan;

(9) provides, consistent with State law and practice, for an audit of the expenditure of funds received under this Act by local agencies, institutions, and organizations;

(10) sets forth procedures to be used by the State to eliminate unnecessary paperwork and duplication of informational requests in regard to local agency applications, evaluations, and reporting;

(11) prescribes procedures to be followed by the State when a local agency fails to develop or implement a program plan, including procedures for notice and opportunity for hearing in any case funds are to be withheld;

(12) provides a local agency appeal process within the State for any local agency which is dissatisfied with the State's action with respect to the State's compliance with substantive and procedural provisions of the Act. A local agency may appeal the final ruling of the State to the Secretary;

(13) provides for an audit of expenditures for each program year in accordance with generally accepted accounting principles, conducted, in a manner approved by the Secretary, by—

(A) an auditor of the State, using certified public accountants, or

(B) a private certified public accountant

or auditing firm utilizing certified public accountants; and

(14) provides for an annual report of such audit.

(b) The Secretary shall, within sixty days after receiving any comprehensive State plan from any State, notify such State in writing whether such plan complies with the requirements of this Act. In the event the Secretary fails to notify any State within the time period prescribed, the comprehensive State plan shall be deemed to have been approved by the Secretary. If the Secretary notifies a State that a plan does not meet the requirements of this Act, he shall indicate specifically in what respect such plan failed and what action must be taken to meet the requirements.

SUPPLEMENTAL PAYMENT

SEC. 10. (a) Each State which elects and qualifies to receive funds for carrying out a consolidated program under this Act shall also be eligible, upon application therefor, to an additional amount of funds for carrying out such program equal to 10 per centum of the amount to which such State is entitled under section 5 on the condition that such amount is matched by such State with an equal amount of funds from non-Federal sources which will be used for carrying out the purposes of this Act. A State may, if it so elects, receive any amount under this section equal to less than 10 per centum of the amount it is entitled to receive under section 5 on the condition that such lesser amount is matched by such State with an equal amount from non-Federal funds which will be used to carry out the purposes of this Act. For purposes of this section, funds received by any State under a Federal-State revenue sharing plan shall be considered to be funds from a non-Federal source.

(b) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the amount to which each State is entitled under this section for such fiscal year, the amounts which all States may receive under this section for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(c) Additional funds under this section shall be paid to a State by the Secretary of the Treasury upon certification of the amount to be paid by the Secretary.

TIME OF PAYMENTS

SEC. 11. The Secretary shall determine the time or times at which payments under this Act are to be made to States.

FEDERAL SERVICES; USE OF FUND FOR FOOD SERVICE EQUIPMENT AND FACILITIES

SEC. 12. (a) Whenever any State elects to carry out a consolidated feeding program under this Act and any part of such program is substantially the same or provides substantially the same benefits as any of the programs described in section 4(a), the Secretary shall, upon the request of such State, furnish with respect to such part of such program any services in-kind which would have been furnished such State by the Federal Government had such State participated in the programs described in section 4(a) on a separate basis rather than electing to participate in a consolidated program under this Act.

(b) Funds made available to any State under this Act may be used for the purchase of any food service equipment and facilities necessary or appropriate to carry out effectively the comprehensive State plan of such State.

ADMINISTRATIVE EXPENSES

SEC. 13. None of the funds made available to a State under this Act in any fiscal year (excluding the State's share of matching funds under section 10) in any amount in excess of an amount equal to 7½ per centum of such funds may be used for administrative expenses in carrying out the consolidated programs under this Act in such fiscal year.

EVALUATIONS

SEC. 14. (a) The Secretary, after consulting with and obtaining the assistance of the State agency designated pursuant to section 7(a)(1), shall prepare and design several models for evaluation of program effectiveness which will be consistent with the purposes of the consolidation program authorized by this Act. Evaluation of local agency programs should focus on the food and nutrition services provided for needy persons in the State, the food and nutrition education program, the number of such persons served by each program, and the effect or results of such services and programs.

(b)(1) Each State participating in the consolidation program authorized by this Act shall (A) select one of the models developed under subsection (a) of this section, or (B) use a model developed by that State, and shall be responsible for the use of that model in program evaluation of the consolidation program authorized by this Act. Each such evaluation design shall involve participation by local agencies of that State.

(2) An evaluation report which is consistent with the procedures established pursuant to this section and the State comprehensive plan shall be prepared annually by each local agency and submitted to the State agency designated pursuant to section 7(a)(1). No other evaluation reports for programs authorized by this Act may be required of local agencies by the State agency.

(3) The annual State agency evaluation report prepared pursuant to this subsection shall be submitted to the Secretary on such date as the Secretary shall establish. The Secretary shall analyze the State evaluations received under this paragraph and shall, not later than March 1 in the year succeeding the year in which the evaluations are submitted, prepare and submit to the Congress a report on such evaluations.

(c) The Comptroller General shall conduct an evaluation of the program authorized by this Act and, not later than the end of the fifth fiscal year following the fiscal year in which this Act is enacted, prepare and submit to the Speaker of the House of Representatives and the President of the Senate a report on such evaluation together with such recommendations, including such recommendations for legislation, as the Comptroller General deems advisable.

(d) The Secretary is authorized to make applicable to the consolidated programs of all States those program components of the various State consolidated programs determined by him on the basis of evaluations carried out under this section to most effectively and efficiently meet the objectives of this Act.

(e) The Secretary shall conduct a comprehensive evaluation of the operation of the consolidated program in the case of each State electing to participate in such a program. The first such evaluation shall be conducted by the Secretary within three months after one or more States have participated in such program for a period of two years. Thereafter such evaluation shall be made at the end of every second year. In carrying out his evaluation of the operation of the consolidated program in the case of any State, the Secretary shall hold public hearings in such State to afford interested persons a reasonable opportunity to give testimony regarding such program. The Secretary shall report the results of each such evaluation to the Speaker of the House of Representatives and to the President of the Senate together with such comments and recommendations as the Secretary deems appropriate.

MONITORING AND TECHNICAL ASSISTANCE

SEC. 15. (a) The Secretary shall conduct annually such monitoring programs in each State selecting the consolidation program authorized by this Act as he deems appropriate. The monitoring program authorized by this section shall include review of the development of the comprehensive State plan for compliance with the provisions of this Act. Monitoring shall also include review of implementation of programs for conformity with this Act and with the comprehensive State plan. In order to avoid duplication of monitoring visits as well as an excess of such visits, the Secretary shall coordinate his visits under this section with monitoring visits made by other Federal departments and agencies of the Government.

(b) Whenever, as a result of monitoring activities conducted pursuant to this section, the Secretary identifies areas of noncompliance, the Secretary shall establish procedures with the appropriate State agency designated under section 7(a)(1) for the necessary modifications.

(c) The Secretary shall provide advice, counsel, and technical assistance upon request of State and local agencies.

INTERSTATE COOPERATION

SEC. 16. (a) The Secretary shall carry out a program of making grants to States which have elected to consolidate under this Act for the purpose of interstate cooperation.

(b) Such grants for cooperation among States shall be for the purpose of addressing common administrative problems under this Act and for planning and research.

(c) There are authorized to be appropriated $3,000,000 for each of the ten fiscal years beginning October 1, 1977, to carry out the provisions of this section.

FEDERAL ADMINISTRATION

SEC. 17. (a) The consolidated program authorized by this Act shall be administered by a separate identifiable administrative unit to be established within sixty days after the date of enactment of this Act by the Secretary in the Department of Agriculture.

(b) Personnel to be employed in the administration of the consolidation program authorized by this Act shall come from program units administering the categorical programs consolidated under this Act. Any additional personnel necessary for the administration of such consolidated program shall be based on the number and population of the States which elect to consolidate.

(c) The Secretary shall establish procedures to minimize all paper work in regard to information required of State and local agencies.

DELEGATIONS, TRANSFERS OF FUNDS, AND CONTRACTS BY THE STATE AGENCY

SEC. 18. The State agency designated pursuant to subsection 7(a)(1) may, to the extent necessary to carry out the provisions of this Act—

(1) delegate its administrative functions, under this Act to other appropriate State agencies,

(2) transfer to such agencies administrative responsibilities and any funds provided to the State under this Act, and

(3) enter into contracts with public and private agencies, organizations, and institutions for carrying out activities authorized under this Act. Any arrangements entered into under this section for any fiscal year shall be set forth in the comprehensive State plan for that year.

ENFORCEMENT

SEC. 19. (a)(1) No payment may be made under section 5 or 10 to any State that has failed to provide the certification required by section 7(a)(4).

(2) In the case of any State that has provided those certifications, if the Secretary, after reasonable notice and opportunity for

a hearing to the State, finds that the comprehensive plan fails to comply with the requirements of sections 8 and 9, or the State has failed substantially to comply with any provision of that plan, or has failed to inform the Secretary of any substantial failure to comply with any provision of that plan or those sections, the Secretary is authorized to (A) reduce the amount otherwise payable to the State under section 5 by any amount equal to not in excess of 7½ per centum, (B) refer to the Attorney General of the United States the matter regarding any such failure by a State with a request that the Attorney General seek an injunction requiring compliance by the State with the requirements of sections 8 and 9 or the provisions of the State plan, as the case may be, (C) terminate the participation of the State in the consolidated program and permit the State to return to participation in the categorical programs described in section 4(a), or (D) utilize any combination of (A), (B), and (C) as he deems appropriate.

(b) The Secretary shall establish a due process procedure to consider appeals made by local agencies under section 9(a)(12).

(c)(1) If any State or local agency is dissatisfied with the Secretary's final action with respect to any action taken under this Act, the State may, within sixty days after notice of that action, file with the United States court of appeals for the circuit in which the State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(d) The Secretary and the Comptroller General of the United States, in the exercising of their authority under this Act may not prescribe to the State any requirement for expenditures of funds other than funds provided under this Act.

CIVIL RIGHTS REQUIREMENTS

SEC. 20. Funds made available under this Act shall be subject to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000 d-5), title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

PARTICIPATION OF NONPUBLIC SCHOOL CHILDREN

SEC. 21. If a State is prohibited by law from providing for the participation of children enrolled in private nonprofit or Indian tribal elementary and secondary schools, or if the Secretary determines, after affording notice and an opportunity for a hearing, that a State has substantially failed to provide for such participation, he shall arrange, by contract or otherwise, for such children to receive, on an equitable basis, services similar to those provided under this Act to public school children in the State. The cost of providing those services for any fiscal year shall be paid from the allotment of the State under section 5.

CRIMINAL PENALTY

SEC. 22. Any individual who is an officer, director, agent, or employee of, or who is connected in any capacity with, any partnership, association, firm, group, corporation, business, organization, or other entity, public or private, which receives benefits under this Act by means of a grant, contract of assistance, subsidy, or any other form of Federal assistance, and who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any funds, assets, or property obtained under any program authorized by this Act shall be fined not more than $10,000 or imprisoned for not more than five years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud, false statement, or forgery does not exceed $200, such individual shall be fined not more than $1,000 or imprisoned not more than one year, or both.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 23. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, subject to the limitation contained in section 16(c) on the amount that may be appropriated for interstate cooperation grants.●

● Mr. DOMENICI. Mr. President, I am pleased today to join my distinguished colleague, the senior Senator from Oklahoma, in sponsoring what I believe to be a very important, progressive, and far-reaching piece of legislation, the Food and Nutrition Program Optional Consolidation and Reorganization Act of 1979. This bill will be familiar to many of you, as it was introduced during the 95th Congress.

I will not burden the RECORD with a lengthy reiteration of the specifics of this bill, which my colleague has ably summarized in his introductory remarks. Rather, I would prefer to offer some philosophical comments.

As both a legislator and a former mayor of the city of Albuquerque, I am familiar with the depth of frustration one experiences in attempting to carry out Federal assistance programs for the benefit of the people. This frustration is derived from two basic problems which are intrinsic to so many Federal assistance programs—first is the problem of nonspecificity; second is the problem of redtape.

I am concerned that we in the Congress, along with our counterparts in the administration, underestimate the wisdom and ability of the citizens of this country to know what is best for them and to effectively manage their own programs. This arrogance is often reflected in sweeping Federal programs which we, here in Washington, contrive and offer as solutions to local problems. Clearly, Federal assistance is needed and greatly sought after by State and local governments. Nevertheless, many of our Federal programs, in attempting to meet the general needs of all, fail to meet the specific needs of any. Thus, we see massive sums of mistargeted Federal money, shameful abuses of Federal programs, and growing local disenchantment with centralized government

The second problem faced daily by local administrators is the enigma of Federal redtape, and how to cope with it. The plethora of rules, regulations, and guidelines which are built into Federal spending programs are intended to assure that the taxpayer's dollars are being wisely and prudently spent. How ironic it is that vast sums of taxpayers' dollars are expended to implement these same rules, regulations, and guidelines.

Another unfortunate characteristic of redtape is that it tends to build on itself. Every year more rules and regulations are promulgated in order to implement new programs and to fine tune existing ones. It is an impossible task for the conscientious local administrator to keep up to date with these new rules which seem to proliferate uncontrolled.

In conclusion, I believe that the principal contribution of the Bellmon-Domenici food and nutrition consolidation bill is that it effectively circumvents the above mentioned problems by permitting the States—if they so desire—to plan their own food programs based upon their own needs and to run them with a minimum of Federal interference. The end result, in my judgment, will be a higher level of nutrition for millions of Americans, with minimal increase in Federal spending.

Mr. President, today everyone, both in and out of government, is talking about the need for reform in Federal programs: the need to build flexibility into the programs; the need to eliminate the ever-growing arbitrariness of categorical grant programs; the need to reduce regulations and redtape; and, perhaps most vehemently, the need to derive more from the taxpayer's dollar through effective management of programs. I believe that these concerns are held by a predominance of people in the United States and that all of those in the executive branch, at the local level and here in Congress are responsible for recognizing that concern and acting upon it. I strongly suggest that each of you look carefully at the concept and philosophy espoused in this bill brought here to the Senate by the good senior Senator from Oklahoma, and also that you look at Senate bill 1780 of the 95th Congress, an optional consolidation and simplification system in education which Senator BELLMON and I will be reintroducing in the near future.●

By Mr. BAUCUS (for himself and Mr. DURKIN):

S.J. Res. 47. A joint resolution designating May 1979, as "Family Camping Month"; to the Committee on the Judiciary.

FAMILY CAMPING MONTH

● Mr. BAUCUS. Mr. President, today it is with great pleasure that I am introducing a resolution to proclaim May 1979 as Family Camping Month.

This year more Americans than ever will enjoy the beauty and recreation provided by our national resources, and camping is perhaps the most wholesome and economical form of this recreation.

The number of campers is increasing each year. More than 58 million Americans currently participate in this healthy recreational activity. Camping, in fact, is the fourth largest ranking sport in the United States today. In 1977, the National Park Service reported over 17 million overnight stays in National Park areas alone. This figure does not include

the number of overnight stays in the more than 800 camping areas administered by Kampgrounds of America, Inc.

The American family's love for camping is indicated by the expanding camping industry. In 1977, sales of camping equipment totaled $517 million. This figure represented a 7-percent increase over sales in 1976. More specifically, in 1977 over 500,000 recreational vehicles were shipped throughout the United States.

Family camping is an economical activity. Inflation and rising prices have made it increasingly difficult for the American family to enjoy a week's vacation together. But a family vacation in one of our beautiful wilderness areas is affordable. The average family of four on an 8-day camping vacation saves about $700 over the motel-restaurant type of vacation.

National support for camping is revealed by the existence of large camping associations. The National Campers and Hikers Association has a membership of over 500,000 families. All across the Nation, hundreds of trade, business, and commercial organizations have been established in response to this expanding recreational activity.

Family Camping Month has received endorsements from major camping and recreational associations. As a Member of the House of Representatives I urged my colleagues to support family camping. I received letters from individuals representing many regions of the Nation, expressing their support for this noncontroversial commemorative event.

I believe that a Family Camping Month really does have significance. There are many reasons to support this proclamation. Family camping is wholesome recreation; it is healthy; it is one of the few activities which allows a family to participate as a unit; it is economical; camping teaches appreciation and respect for our natural resources and the list could go on. Above and beyond these reasons, however, is the simple fact that over 58 million Americans enjoy this activity each year. It is in honor of these Americans that I am introducing this resolution today.

I ask that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 47

Whereas family camping encourages conservation of the Nation's beauty and wise use of natural resources for better outdoor recreation;

Whereas family camping stimulates public interest in, and enjoyment of, the Nation's great outdoors;

Whereas family camping is a wholesome and economical form of family recreation; and

Whereas approximately fourteen million American families go camping every year: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May, 1979, is hereby designated as "Family Camping Month" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities.●

● Mr. DURKIN. Mr. President, one of the greatest assets this country has is the outdoors. From the gentle, rolling Appalachian hills of New Hampshire to the snow-capped mountains of the high Sierras, our Nation is blessed with an abundance of pristine, unspoiled country ideally suited for outdoor recreation.

It is little wonder, then that an estimated 14 million American families pack knapsacks full of tents, food and camping gear each year and take to the countryside in search of closer contact with nature.

When it comes to family camping, I can speak from firsthand experience. My home State of New Hampshire—with its clear lakes and streams, thick forests and majestic mountains—is an ideal place for outdoor activity, and my family and I have on a number of occasions had the pleasure of living in the midst of New Hampshire's natural beauty. We have hiked along wooded trails, fished its waters and relished the special pleasure that comes from experiencing New Hampshire's scenic land.

From my own point of view, I cannot underestimate the value of these family encounters with the outdoors.

They not only enable us to come to grips with our heritage, but they also help promote conservation of this Nations' beauty and a wise use of our increasingly limited resources for outdoor recreation.

More importantly, they help us to escape, at least temporarily, the pressures and distractions of everyday living and renew the unique bonds that tie families together. In the end, they enable us to get to know ourselves better.

Because of my strong support for family camping, it is a great pleasure for me to cosponsor a resolution—introduced by my colleague, Senator BAUCUS—designating May 1979 as Family Camping Month." ●

ADDITIONAL COSPONSORS

S. 6

At the request of Mr. LEAHY, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 6, to amend the Agricultural Act of 1949, and for other purposes.

S. 76

At the request of Mr. STONE, the Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. PRESSLER) were added as cosponsors of S. 76, a bill to amend title XVIII of the Social Security Act to authorize payment under medicare for certain services performed by chiropractors.

S. 221

At the request of Mr. WALLOP, the Senator from Montana (Mr. BAUCUS), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Mississippi (Mr. COCHRAN), the Senator from Maine (Mr. COHEN), the Senator from Kansas (Mr. DOLE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Oregon (Mr. HATFIELD), the Senator from North Carolina (Mr. HELMS), the Senator from Nevada (Mr. LAXALT), the Senator from Rhode Island (Mr. PELL), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Michigan (Mr. RIEGLE), the Senator from Vermont (Mr. STAFFORD), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 221, a bill to establish a congressional award program.

S. 246

At the request of Mr. BENTSEN, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 246, to amend the Internal Revenue Code to encourage greater individual savings.

S. 268

At the request of Mr. DURKIN, the Senator from South Dakota (Mr. PRESSLER) was withdrawn as a cosponsor of S. 268, a bill to amend the Federal Trade Commission Act to provide that under certain circumstances exclusive territorial arrangements relating to the manufacture, sale, or distribution of soft drink products are not unlawful.

S. 331

At the request of Mr. PROXMIRE, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 331, to require a balanced budget when the economy grows at a real rate of 3 percent or more.

S. 340

At the request of Mr. LEAHY, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 340. the Rural Health Needs Planning Act of 1979.

S. 420

At the request of Mr. WILLIAMS, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 420, the National Workers' Compensation Standards Act of 1979.

S. 445

At the request of Mr. PERCY, the Senator from Arizona (Mr. DECONCINI) was added as a cosponsor of S. 445, the Regulatory Reform Act of 1979.

S. 446

At the request of Mr. WILLIAMS, the Senator from South Dakota (Mr. PRESSLER), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Massachusetts (Mr. TSONGAS) were added as cosponsors of S. 446, a bill to amend title VII of the Civil Rights Act of 1964 to prohibit discrimination against individuals because they are handicapped, and for other purposes.

S. 505

At the request of Mr. TALMADGE, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of S. 505 to provide for the reform of the administrative and reimbursement procedures currently employed under the medicare and medicaid programs.

SENATE JOINT RESOLUTION 3

At the request of Mr. HARRY F. BYRD, JR., the Senator from North Carolina (Mr. HELMS), the Senator from California (Mr. HAYAKAWA), the Senator from Utah (Mr. GARN), and the Senator from Wisconsin (Mr. PROXMIRE) were added as cosponsors of Senate Joint Resolution 3, regarding mutual defense treaties.

SENATE RESOLUTION 15

At the request of Mr. HARRY F. BYRD, JR., the Senator from Wisconsin (Mr. PROXMIRE) was added as a cosponsor of Senate Resolution 15, a resolution concerning mutual defense treaties.

SENATE RESOLUTION 49

At the request of Mr. SCHMITT, the Senator from Arizona (Mr. DECONCINI) was added as a cosponsor of Senate Resolution 49, to disapprove the Amtrak route terminations.

SENATE RESOLUTION 62

At the request of Mr. LEAHY, the Senator from Alabama (Mr. STEWART) and the Senator from New Hampshire (Mr. DURKIN) were added as cosponsors of Senate Resolution 62, to disapprove the final recommendations of the Secretary of Transportation designating the basic route system for Amtrak.

SENATE RESOLUTION 78

At the request of Mr. HATFIELD, the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Jersey (Mr. BRADLEY), the Senator from Kentucky (Mr. FORD), the Senator from Montana (Mr. MELCHER), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Connecticut (Mr. WEICKER) were added as cosponsors of Senate Resolution 78, expressing the sense of the Senate with respect to the immediate need for energy emergency preparedness in the United States, in light of world oil supplies and the situation in Iran.

AMENDMENT NO. 80

At the request of Mr. BOREN, the Senator from West Virginia (Mr. RANDOLPH) was added as a cosponsor of Amendment No. 80, intended to be proposed to S. 245, the Taiwan Enabling Act.

SENATE RESOLUTION 95—SUBMISSION OF A RESOLUTION RELATING TO THE IMPORTANCE OF RECREATION IN AMERICAN LIFE

Mr. BAUCUS submitted to the following resolution, which was referred to the Committee on Governmental Affairs:

S. RES. 95

Whereas Americans value their leisure time and participate in a wide variety of recreational activities;

Whereas there is a consensus among experts that recreation is essential to the physical and mental health of the individual;

Whereas the industries that provide goods and services for recreational activities account for a large portion of national employment and production, and Americans spend more than $160 billion a year on goods and services provided by those industries; and

Whereas departments and agencies of the Federal Government make policy determinations on such issues as the use of limited resources and public lands, fuel allocation, and taxation, and these policy determinations may have a direct effect on recreation and the industries providing recreational goods and services: Now, therefore, be it

Resolved, That it is the sense of the Senate that, when departments and agencies of the Federal Government make policy determinations to curtail spending, allocate resources, regulate industry, raise revenue and counter the effects of inflation, considerable weight should be given to the contribution of recreation to the health, safety and welfare of the country, and the important roles of recreation facilities and the industries that provide recreation goods and services in our nation.

● Mr. BAUCUS. Mr. President, today I am submitting a resolution concerning the significant importance of the recreational industry upon our way of life and our national economy.

The recreation industry, and all its individual segments, has become the Nation's No. 1 industry. America's recreation industry accounts for annual expenditures of more than $160 billion.

My purpose for introducing this resolution is to draw attention to the significant contribution of the recreation industry to our public health, safety, and welfare. Federal departments and regulatory agencies contemplating actions in such national concerns as energy allocation, public land use, and taxation must recognize the importance of the recreation industry on the national economy.

During this period of national sacrifice, particularly in the area of energy consumption, the recreation industry should shoulder its fair share of the burden. It should not be discriminated against or asked to carry a disproportionate share compared to the other elements of the American economy.

In my home State of Montana, tourism and recreation contribute significantly to the economic well-being of the State. Montana has been blessed with Glacier and Yellowstone National Parks, numerous blue-ribbon trout streams, unparalleled snow skiing, abundant wilderness and wildlife.

For these reasons, I submit this resolution.●

AMENDMENTS SUBMITTED FOR PRINTING

TAIWAN ENABLING ACT—S. 245

AMENDMENTS NOS. 96 THROUGH 98

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted three amendments intended to be proposed by him to S. 245, a bill to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis.

NOTICE OF HEARINGS

SENATE BUDGET COMMITTEE

● Mr. MUSKIE. Mr. President, the Senate Budget Committee will continue its hearing on the first budget resolution for fiscal year 1980 with the appearance of Secretary of Agriculture, Bob Bergland, on Friday, March 9, 1979, at 10 a.m. The Secretary will discuss the health of American agriculture and the administration's agriculture budget for fiscal year 1980.

Mr. President, the Budget Committee is also extending its previously announced morning hearings on national priorities and State and local issues to provide the opportunity for additional public witnesses to present their views during afternoon sessions. All hearings will be held in 6202 Dirksen Senate Office Building. A revised schedule for March 14 and 16 follows:

REVISED SCHEDULE

March 14, 1979—National priorities: Morning Session 10 a.m. Shearon Harris, Chairman of the Board, U.S. Chamber of Commerce; Douglas Fraser, President, United Auto Workers; Carl Holman, Executive Director, National Urban Coalition.

Afternoon Session 2 p.m. Patsy Mink, Americans for Democratic Action, on behalf of the ad hoc coalition on the FY 1980 Budget; Mylio Kraja, Director of Legislation, American Legion; Ruth Hinerfeld, President, League of Women Voters; Reuben Johnson, Director of Legislation, Farmers Union.

March 16, 1979—State and local issues. Morning Session 10 a.m. John Shannon, ACIR; Governor Richard Snelling of Vermont; Mayor John Rousakis (Savannah, Ga.), President, League of Cities.

Afternoon Session 2 p.m. Jon Weintraub, Associate Director, National Association of Counties; Mayor Coleman Young, Chairman, Urban Economics Committee, Conference of Mayors; John Bragg, Chairman, State-Federal Assembly, Association of State Legislators; Anthony Carnevale, Director, Department of Legislation, American Federation of State and County Municipal Employees (AFSCME).●

DEPARTMENT OF EDUCATION MARKUP

● Mr. RIBICOFF. Mr. President, I wish to announce that the Committee on Governmental Affairs will meet in an open business session to mark up legislation (S. 210) to establish a separate, Cabinet-level Department of Education in the Federal Government at 10 a.m., Wednesday, March 14, 1979, in room 3302 of the Dirksen Senate Office Building.●

SUBCOMMITTEE ON CHILD AND HUMAN DEVELOPMENT

● Mr. CRANSTON. Mr. President, I would like to announce that the Subcommittee on Child and Human Development will continue hearings on S. 4, the proposed "Child Care Act of 1979," on Tuesday, March 20, in 4232 Dirksen from 9:30 a.m. until 12:30 p.m.●

COMMITTEE ON LABOR AND HUMAN RESOURCES

● Mr. WILLIAMS. Mr. President, I wish to announce that the Committee on Labor and Human Resources and the Committee on Veterans' Affairs has scheduled a joint hearing on Monday, March 12, 1979, at 9:30 a.m. in room 4232, Dirksen Senate Office Building, on the nomination of Dennis R. Wyant, of Maryland, to be Deputy Assistant Secretary of Labor for Veterans' Employment. Immediately following this hearing the Committee on Labor and Human Resources will hold a hearing to consider the following nominations to be members of the Board of Directors of the Legal Services Corporation:

Michael Kantor, of California; Robert J. Kutak, of Nebraska; F. William McCalpin, of Missouri; Revius O. Ortique, Jr., of Louisiana; Howard R. Sacks, of Connecticut; and Ramona Toledo Shump, of Kansas.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate today to mark up the committee's report to the Budget Committee.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today to hold an executive session to hear a briefing by the Departments of State and Defense on the impending SALT treaty.

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

SUBCOMMITTEE ON LATIN AMERICA AND SOUTH AMERICA

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Subcommittee on Latin America and South America of the Committee on Foreign Relations be authorized to meet during the session of the Senate today to consider United States-Latin American affairs.

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

ADDITIONAL STATEMENTS

CHINA

● Mr. WILLIAMS. Mr. President, no amount of advance preparation really prepares one for the reality of China. Its enormity; its massive population; the warmth of the people; the hardships; the indominable spirit and the charm of that nation all exceed any of the feelings that can be obtained from talking to travelers or from reading the available materials.

Our travels, made at the request of President Carter, took us from Peking in the north to Canton in the south; from Shanghai on the coast deep into the mountains of Lushan, an area visited rarely by Western visitors even before the advent of the People's Republic and, of course, even less since then.

Our journey took us into factories; hospitals; schools; a commercial commune; through cities and countryside and into the homes of people. Thus, while we only scratched the geographic surface of that enormous nation, we do feel that we received a most meaningful impression of China, its people and its leadership.

To the outsider, China sometimes seems to be a nation held together by the fortitude of the human spirit. The labors of the people are legendary; the absence of mechanization well known. People still do by hand the onerous and basic chores. Scenes of a hundred years ago roll past one's eyes.

We saw a team of laborers in Lushan moving massive rocks by hand, chanting a rythmic song to keep their lifting and hauling movements in concert. Roadbeds were being laid by hand, rock by rock. Buildings which were being cleared for new construction were taken away brick by brick. People laboriously pulled heavy carts through the countryside. Fields were being irrigated and fertilized bucket by bucket, bone-wearying trip by bone-wearying trip.

The human being clearly is China's most valuable natural resource and it is a resource that never should be underestimated.

Living conditions are primitive. While electricity stretches into rural communes, central heating is a rarity. Apartments are small and overcrowded. Dirt floors predominate in the countryside.

There is no doubt that the people would opt for an easier life with more material goods, but they bear their hardships with great fortitude and even a high degree of cheer. One determines this not only from conversations for it cannot be expected the people would verbalize their complaints to foreign visitors. No, it is not through words but rather through feelings that can be transmitted above and beyond language barriers that this feeling comes across.

I ascribe this spirit to several factors. First, the Chinese have a clear historic perception of where they have been and where they are. Few people talked at length about the hardships and deprivations of the past, except to recite production statistics and other figures showing great improvement in recent years. The full horror of China's history only becomes apparent when a commune leader makes an incidental and offhand comment that his brothers were sold off as laborers in the late 1930's and he has not seen them since then.

Thus, what might seem bad to a visitor, clearly is viewed as far better than what had been. And, the people feel most strongly that rather than working for a landlord, their labors and their sacrifices today are being made for their own benefit and that of all of the people of China.

A second factor which seems to maintain the human spirit is the simple, yet so important feeling of hope for the future. There seems to be no doubt in the mind of the Chinese that the future will bring great improvements in the nation and in individual standards of living.

These are people who know that they have survived a landlord system akin to slavery; corrupt national government; the cultural revolution and the gang of four. They now feel that they are on their true course as a nation.

Another contributing factor is the universal belief that normalization of relations with our country will be a major factor in bringing a modern age to China. It was a fact universally mentioned in our conversations with the people and with their leaders.

When one views the problems of China, the problems of this Nation pale by comparison. I only wish that we could marshal just a small amount of the collective determination of the Chinese people. If we could do that, I am convinced that there is no dilemma facing our Nation that could not be dealt with.

However, part of the Chinese unity reflects the fact that at this point it is a most monolithic nation; although such events as the posting of dissident wall posters indicate that the individual spirit is beginning to manifest itself.

Everywhere we went, people expressed very much the same views. As you know, the people's uniform is the prevailing dress style. Even the great swarms of bicycle riders all seemed to move at the same speed, like great clouds. No one lagged behind and no one attempted to get ahead.

Conversations everywhere carried the same themes; the importance of normalization; the threat of the Soviet Union, or the "Russian Bear" or "Northern Bear", and its proxies, Castro, Vietnam; the terrible impact of the Gang of Four.

And, I might add that as you well know, the Gang of Four inflicted a toll on China that could exceed that extracted on any nation in this century by its leadership. No students were admitted to Peking University for years; the teaching of geography and history was halted; admissions to schools was on the basis of politics and not scholarly merit.

Much of the nation's production came to a halt. We visited a tractor factory in which nothing was produced for 21 months.

Many of the nation's most talented people were shunted from the positions for which they were most qualified. A municipal official in Shanghai, with whom we met, educated at Harvard and the University of Pennsylvania, had just recently been brought back from the countryside.

Historic culture had been shunted aside. We were privileged to witness a traditional opera and a performance of the Shanghai Ballet Orchestra, both events which could not have taken place during the reign of the Gang of Four.

I might add that both events were among the highlights of our trip and that the orchestra certainly was on a par with the best of our western ensembles. Incidentally, at the orchestral performance, a program was distributed written in Chinese. However, an interpreter explained that it did not indicate the order of performance but rather listed the orchestra's repertoire.

It is obviously frightening in retrospect to think that such a small coterie could extract such a price. One is forced to believe that it was a unique event that would only have happened with the aegis of someone so revered as Chairman Mao and that it could not happen again.

Despite the fact that the society is monolithic and certainly not democratic, there was no feeling of overt oppression. Those of us who had traveled in eastern European nations, or into Russia, noticed a vast difference in the atmosphere.

While the language barrier represented a major difficulty, we were free to go where we wanted in the brief periods of free time which were available to us. There was no strictures on photographs, a noticeable difference from just a couple of years ago.

And, most importantly, we were made to feel welcome and at home. I do not believe that there is a nation on earth—particularly in these times—where Americans are so warmly welcomed and respected.

The warmth and friendship that prevailed universally is our most cherished memory of a trip that most of us regarded as the most monumental travel experience of our lives.

There are, unfortunately, less happy aspects that we must deal with in our new relationship. One of these is the Chinese invasion into Vietnam, an action that hopefully is coming to an end.

No war; no combat is excusable. However, I must believe that the Chinese regarded it as essential to their national sovereignty and to its efforts to help Cambodia.

In our discussions throughout the country, there was a universal recognition of the fact that China could ill afford to waste its resources in war. This came not only from leaders, but from all segments of the population, including students at Peking University.

Threats to China from external forces seemed to generate a paranoic concern; although historically, it might be regarded as a much more real concern; a national fear as old as the Great Wall.

Further, I think that one must also realize the great Chinese belief in the manifest destinies of peoples, not governments. In our discussions, the Chinese would not deal with the questions concerning atrocities that have been inflicted upon the people of Cambodia by its government. One university student said, "The only place I hear that is on the Voice of America" then went on to say that even if it were true, it was not important. The destiny of the people was what was at stake.

Historically, I think it also true that China has not engaged in aggression for territory beyond which it considers legitimately its own. Of course what is, and what is not China's, can be the subject of great debate and I make the point only in an attempt to shed some light on that nation's thinking.

In Korea, there are those who now are convinced that the Chinese only came into the war because of their concern that the Americans would drive up into its industrial heartland. And, in Vietnam, they regarded the Americans as aggressors; thwarting the rights of the Vietnamese people.

It is interesting that the Chinese interest in people, as distinct from government, came through most clearly in our discussions about Taiwan. Time and time again, Chinese leaders stressed that they understood our interest in the well-being of the people of Taiwan and assured us that nothing would be done to adversely affect that.

Obviously, we as a nation have the most solemn obligations to make sure that that is the case.

Finally, I have been asked to discuss trade with China and its possible impact on New Jersey. This is a somewhat difficult question to deal with in practical terms because we are faced with the usual mixture of good news and bad news that seems to surround everything in these times.

The good news is that the Chinese needs are enormous. The bad news is that they will have problems paying for what they need and want. How they develop their own ability to pay will be one of the major factors in determining the parameters of our trade.

Hopefully, the Chinese oil supply will be one major source of revenue that will enable them to solve their dilemma.

In addition, China does not enjoy most favored national status with us; nor we with them. China has no access to export-import loans and guarantees, or other financial programs of our government with the exception of agriculture credits.

Further, over the long run, the questions of export licensing, commercial representation and patent protection must also be addressed.

However, these are matters which are susceptible to solution and, like the claims and assets question, I am confident that they will be solved.

As most of you know, trade with China now is at about the rate of $1 billion annually. This, under present conditions, is expected to total about $10 billion over the next 5 years.

However, the potential for a much greater trade is apparent. China, under its ambitious modernization plans, expects to import $50 billion of complete plants between 1979 and 1985 and the total purchases of capital equipment could run in the neighborhood of $70 and $85 billion.

As the most technologically advanced nation, we would seem to have an excellent chance at a large share of that market. And, as the Chinese themselves have pointed out, the devalued dollar helps us in our competition with such nations as Japan. I might point out that during our trip while the Chinese expressed a great willingness to trade with us, they made it clear that they were going for the best possible prices in the world market.

No State in the Nation has more technological and research capacity than New Jersey. So, I would expect our State to be in the forefront of the new wave of business with China.

It is imperative that our business community respond to this challenge. We have gotten a later start than some nations so we must make every effort to draw even, and to forge ahead.

We saw a number of examples of this in China. Outside Shanghai, we toured a new city developed around a most modern petrochemical complex. That complex was developed with Japanese help. And, in a tour of the crowded Shanghai waterfront, we were told that China had turned to European experts to redesign the port for containership operations. In both of these areas, we clearly had the expertise to compete but were unable to before normalization.

As a concluding note, I think that while we increase our opportunities for trade and proceed toward truly normal relations, we can learn a great deal from the Chinese. Their fortitude and spirit is just one example.

Another is in the total utilization of resources. We saw an example of that in the commercial commune that we visited. One of its major products are silkworms. As you know, silkworms live on mulberries.

The Chinese take the residue from the mulberries and dump it into ponds where fish are raised. Periodically, the fish are harvested and the bottom of the pond cleared. The material taken is used as fertilizer not only for mulberries but for bananas and sugarcane as well.

The cycle is constantly repeated; creating an artificial but naturally functioning ecological cycle. We could well do with similar efforts in our country.

So, I thank you for inviting me here and know that we can work together toward the advancement of mutual trade, mutual benefit and mutual understanding with the world's largest nation.●

THE SOVIET BUILDUP

● Mr. GOLDWATER. Mr. President, one of the disturbing elements surrounding the very obvious Soviet military buildup are the growing indications that the American people are not being told the whole truth. It has become increasingly apparent that administration officials—anxious to sell a SALT II agreement to the American people—have not been forthcoming about the size and importance of the Soviet buildup. And now, the highly respected Armed Forces Journal has leveled a direct charge of coverup at Pentagon officials in this regard. In its March issue, the magazine accuses the Pentagon official spokesman, Assistant Defense Secretary Thomas B. Ross, of covering up "an unprecedented, unexpected, and massive Soviet strategic arms buildup" in 1978. The magazine says the Pentagon knew but refused to acknowledge that the Soviets were continuing to deploy new warheads and ICBM's at twice the forecast rate; that Russia was developing and flight testing a new long range air-to-surface cruise missile and that Soviet warheads and ICBM's were becoming more accurate than predicted.

Mr. President, I ask that the Armed Forces Journal article by Benjamin F. Schemmer be printed in the RECORD.

The article follows:

PENTAGON COVER UP UNPRECEDENTED 1978 USSR STRATEGIC ARMS BUILD-UP

(By Benjamin F. Schemmer)

From last June thru late January, the Pentagon's official spokesman covered-up an unprecedented, unexpected and massive Soviet strategic arms build-up, which leaked in part to the press soon after it became known to senior DoD officials, but went unreported because the spokesman said that a story revealing the build-up was wrong. Some of the data in the story *was* wrong—but not the most important revelations in it.

JOURNAL REVELATIONS, JUNE 1972

The story, given to the Pentagon in early June on a "confirm or deny" basis, was to have appeared in last July's *Journal* and reported in its lead sentence that:

"Russia has deployed in the past six months between 200-300 more new strategic nuclear warheads or modern missiles than U.S. intelligence estimates last October said would probably be fielded by now."

It added that "among the ominous Soviet deployments detected in recent months" were "more accurate warheads and ICBM's than those being replaced," and revealed, that "Russia has a new long range air-to-surface missile to increase the Backfire bomber's stand off distance."

PENTAGON REVELATIONS, JANUARY 1979

Late in January, Defense Secretary Harold Brown admitted in his Fiscal Year 1980 "Annual Report" that:

"The Soviets are now estimated to be introducing new missiles with more accurate warheads and improving the accuracy of their warheads more rapidly than we expected about a year ago." Elsewhere in his report. Brown acknowledged that Soviet "force loadings" (independently targetable nuclear weapons carried by deployed strategic missiles and bombers) "have increased by around 1,000 since last year." Brown did *not* say so, but that represents a 20% *increase in warhead deployments in one year.* (The rate of increase has to be calculated from other data nearby in Brown's report.)

Brown's report also did not reveal that Russia was *testing* a new, long range cruise missile. He said only, that "they *may* be developing a long range cruise missile of their own design." [italics added for emphasis.] Since Brown's statement on the military balance was released January 24th, however, news that the Soviets, in fact, have *tested* a 1200km range (600nm) cruise missile has leaked out elsewhere, made prominent headlines, *and* been confirmed by the Pentagon.

AFJ has learned that seven or eight such tests were made in 1978. Some of them were made from the Backfire. The Soviets have made at least three more flight tests of the new air-to-surface missile this year.

The Soviet arms build-up and the Pentagon's cover-up of it continue.

Brown's statement in his Annual Report that the Soviet's "*may* be developing a new long range cruise missile" amounts to pure dissembling. He knew far back in 1978 that the Soviets were developing the missile *AFJ* wrote of last June, yet would not admit its existence even to Congress as recently as late January in his only annual comprehensive public survey of the strategic balance.

These discrepancies raise serious questions about the accuracy, timeliness, and integrity of the Carter Administration reporting to the American public and to Congress on the US/USSR strategic balance, and White House efforts to sell the new SALT II agreement.

At the time *AFJ* killed its July story on these arms developments, the Carter Administration was still working to obtain a SALT II agreement by mid-August.

Between last June and December, further *Journal* queries were made of the Pentagon, both on and off the record, about unexpected or major new Soviet strategic arms developments and deployments. They elicited official and informal replies from the Pentagon public affairs office that said out-right, in some cases, and clearly implied in others, that no new or surprising changes had been detected by American intelligence.

In fact, however, the Pentagon knew throughout this period that the Soviets were continuing to deploy new warheads and ICBM's at about twice the forecast rate; that Russia was developing and flight testing a new long range air-to-surface cruise missile, and testing it off Backfire; and that Soviet warheads and ISBMs were not only becoming more accurate, but more acurate than had been predicted.

The extent to which the June cover-up was, and is now, intentional and Administration-directed, or the result of superficial, erroneous and possibly cavalier work on a grave national security matter, is not clear—in part because of Pentagon footdragging since *AFJ* asked it in early February to clarify and explain its denials of last June, and in part because the Pentagon insists that more recent corroborative information on Soviet strategic developments is "classified."

The spokesman behind the cover-up is Thomas B. Ross, Assistant Secretary of Defense for Public Affairs. Ross is a Presidential-appointee confirmed by the Senate who was the first person recruited by Harold Brown in 1977 for the Carter Administration's new Pentagon team.●

HELLER-GREENSPAN TESTIMONY

● Mr. MUSKIE. Mr. President, on Monday, March 5, the Budget Committee heard testimony from a distinguished panel of economists regarding statutory and constitutional restraints on Federal spending and budgeting.

Dr. Walter Heller and Dr. Alan Greenspan speak from widely different points of view. While each has served as chairman of the Council of Economic Advisers, Dr. Heller served Presidents Kennedy and Johnson while Dr. Greenspan served Presidents Nixon and Ford.

Despite many differences and conflicting opinions, both men agree that a constitutional amendment to balance the Federal budget would be a very serious mistake. Their testimony is persuasive. Moreover, their additional views on the character of our current economic difficulties and on various approaches toward solving them are also particularly thought-provoking and instructive.

I recommend that their views be given a careful reading by all who are concerned about the need for taking rational and realistic approaches to fiscal policy.

Mr. President, I ask that the statements of Dr. Heller and Dr. Greenspan be printed in the RECORD.

The statements follows:

STATEMENT BY WALTER W. HELLER

I appreciate this opportunity to appear before the Senate Budget Committee on the hotly debated topic of mandatory budget-balancing and spending limits constitutional or otherwise.

The territory that Chairman Muskie has asked us to roam is very wide and deep, comprising budget-balancing, spending-limit, and tax-cutting proposals, both constitutional and legislative. To make this Herculean task more manageable, let me start with the proposal that seems to have caught the popular imagination—a constitutional amendment mandating a balanced-budget—and is claimed to have the support of 26 to 28 state legislatures.

I am not unaware that leading members of this Committee have forcefully and cogently attacked the proposal to enshrine a rigidly balanced-budget in the Constitution. Senator Muskie has called it "unworkable, counter-productive, and even irresponsible." Senator Bellmon has warned Governors not to "go overboard and adopt a mechanistic process that will make it difficult to deal with changing circumstances." And they have been joined by other Congressional leaders like Senator Kennedy (Chairman of the Senate Judiciary Committee), Representative Rodino (Chairman of the House Judiciary Committee), and House Minority Leader John Rhodes (who has expressed "grave reservations" about a balanced-budget amendment). So it might appear that an attack on the balanced-budget proposal is a bit like flaying a dead or at least dying horse.

But the Gallup Poll, the legislators of some 28 states, and the half dozen members of this Committee who are co-sponsors of bills to mandate a balanced-budget in one form or another all suggest that the movement is by no means on its last legs.

In an era of dissatisfaction with big government, high taxes, and stubborn inflation, it is not too surprising that the Gallup Poll shows a six-to-one majority favoring a balanced-budget amendment. And it must be a strong temptation for an elected official—if he or she wants to be re-elected—to vote for such a proposal.

But this is one case where the majority is simply wrong—not in seeking some curbs on government and inflation, for that is their inherent right in a democracy—but in seeking to do so by putting the federal government in a fiscal straitjacket. In other words this is a case where responsible political leadership consists in leading voters out of the valley of error and supporting better and sounder ways to achieve their goals.

Since the major thrust for the balanced-budget amendment (and some of its half-siblings) comes from a misinformed public, it may be worth while to examine some of the fallacies that seem to underlie public thinking on this subject.

FALLACY NO. ONE

"Individuals, families, and households have to run a balanced-budget—so why shouldn't Uncle Sam?" People fail to realize that typically when they buy a car or a boat, or most obviously, a house, they are doing anything but running a balanced-budget. At times, they run deficits—often huge deficits—relative to current income. So they are asking Uncle Sam to adhere to a rigid and austere standard that they don't observe themselves.

Prudent budgeting and balanced-budgets simply aren't the same thing. Often, a rigidly balanced-budget is pure fiscal *im*prudence. Unlike the household, the federal government has the specific statutory responsibility to serve as a balance wheel for the economy, using the federal budget not simply as a means of financing government activities but as a means of overcoming unemployment and recessions on one hand and an overheated economy on the other. More often than not, that calls for unbalanced-budgets.

FALLACY NO. TWO

Closely related to the first fallacy is the second one that runs something like this: "We consumers (homeowners, corporations) pay back our debts, but Uncle Sam just keeps piling up his debts without end."

The surprising—to some even jolting—truth is that in the period since World War II, the federal debt has been the slowest growing major form of debt. As the following table shows, the federal debt today is less than three times the size it was in 1950, while consumer installment debt is nearly fourteen times, mortgage debt sixteen times, corporate debt eleven times, and state-local debt thirteen times its 1950 level.

Even with the unprecedented run-up of federal debt in the face of two recessions in the 1970's, the doubling of that debt since 1970 is just about equaled by the rise of corporate and state-local debt, while consumers and homeowners have substantially out-distanced Uncle Sam in expanding their debt.

None of this is meant to justify the present levels of federal deficits or debts nor to suggest that the federal debt poses no problems. But the figures do serve to put the federal debt in a perspective that is often misunderstood.

POSTWAR GROWTH OF MAJOR FORMS OF DEBT

[Dollar amounts in billions]

Type of debt	1950	1970	1978	Ratio of 1978 to 1950 (times)	Ratio of 1978 to 1970 (percent)
Consumer installment	$22	$127	$299	13.6	235
Mortgage (1–4 family homes)	45	298	732	16.3	246
Corporate	142	797	[1] 1,580	11.1	198
State-local	22	145	[2] 290	13.2	200
Federal (in hands of public)	217	301	611	2.8	203
GNP	288	1,063	2,110	7.4	198

[1] Approximation based on table B-64 in 1978 report and table B-62 in 1979 report.
[2] Estimate.

Sources: Economic Reports of the President and Economic Indicators.

FALLACY NO. THREE

"State and local governments have to live by the balanced-budget rule, so why shouldn't Uncle Sam?"

True, states and localities have to balance their budgets annually, *except for* capital outlays, for which they can borrow. But federal budgetary accounting throws current and capital outlays (as it should) into the same pot. So balancing the federal budget means matching *total* outlays with current tax revenues, which is quite different from the balanced-budget concept for states and localities.

Not only is the state-federal budget analogy off base, but states would be the first, or at least one of the first, to feel the sting of a balanced-budget mandate in the Federal Constitution. There is already serious talk in Congress of cutting revenue sharing and other grants to state and local governments as the most natural targets of budget austerity, especially if the states force a year-in-year-out balanced-budget on the federal government.

Let me underscore another decisive difference between state and federal budget impacts: a state or local budget can be balanced by tax hikes or spending cuts without jarring the whole U.S. economy. The federal budget cannot. If the national economy starts to slide, joblessness rises, income and profits fall, and the federal budget automatically goes into deficit as revenues shrink and spending rises. Try to balance it by boosting taxes or forcing cuts in spending, and the result will inevitably be to draw that much more purchasing power out of an already soft and sluggish economy.

Trying to balance the budget under these circumstances would send the economy into a deeper tailspin, thereby throwing more people out of work, further cutting tax revenues and boosting unemployment compensation, food stamps, and similar entitlement expenditures, thus throwing the budget even more out of whack. A dog chasing its own tail comes to mind.

FALLACY NO. FOUR

"But unlike private and state-local deficit financing, federal deficits are a major, perhaps even the major, source of inflation." Both analysis and evidence fail to support this proposition.

Except where federal deficits pump more purchasing power into an already prosperous or overheated economy, they simply are not inflationary. When the economy is slack or in a recession, when there are idle workers and idle plants and machinery to be activated by additional demand for goods and services, the deficit will help the economy get back on its feet. In those cases, tax cuts or spending hikes that enlarge the deficit serve to overcome the waste of human and material resources associated with economic slack or recession.

In other words, there are both destructive federal deficits and constructive deficits, depending on the state of the private economy. What we should seek is fiscal discipline—the avoidance of waste, inefficiency, boondoggling, and unnecessary government programs—but not at the cost of strangling the federal government in its attempts to serve as a balance wheel for the national economy and an instrument for avoiding that greatest of wastes, namely, the idling of millions of human beings and machines and factories in recession and slack.

Even a cursory inspection of the data on deficits and inflation shows little relation between the two:

Reaching back to 1919–20, we note that rapid inflation was associated with a large surplus.

Then Milton Friedman also reminds us that "one of the most extreme deflations we had in history—decline in prices—was in the 1931–33 period. In those years, the federal government was running a deficit."

From 1959 to 1965, federal deficits were the order of the day, yet price inflation was little more than 1 percent a year.

In the face of huge deficits in 1974–76, price inflation dropped from over 12 percent to less than 6 percent.

FALLACY NO. FIVE

"Well, even if deficits aren't as bad as we thought the federal budget is out of control, and the only way to get it under control is to slap some kind of a Constitutional lid on it."

Once again, the facts run to the contrary:

As a proportion of the Gross National Product, the budget is being reduced from 22.6% in 1976 to 21.2% in 1980.

As against 12.2% annual increases in spending for 1973–78, the rise from 1979 to 1980 will be only 7.7%.

According to the Congressional Budget Office staff, President Carter's proposed $531 billion budget for 1980 falls $20 billion short of the amount that it would cost simply to maintain current services under current law.

The trend growth in revenues from 1978 to 1980 will be 12%, well ahead of the trend growth of 8½% in expenditures. (These are the comparative growth rates in an economy that is growing at a steady trend rate.)

Quite apart from the numbers, the popular clamor for "getting the budget under control" seems to ignore two important facts:

For the past four years, the Congress has been operating under a new budget procedure that has brought vastly more discipline and responsibility into the budget process. In other words, the mechanism for getting the budget under control is already in place and is working.

Both the White House and the Congress have heard and heeded the message implicit in Proposition 13, calls for Constitutional budget limits, and the like. Whether one likes it or not, budget austerity is the political order of the day.

FALLACY NO. SIX

"The balanced-budget mandate is a simple and workable way to force the White House and Congress at long last to match spending and tax revenues."

The simple truth is that this simplistic approach is beset with simply prohibitive difficulties of definition, administration, evasion, and incentives for bad government practice:

A mandate to balance taxes and expenditures first has to define them. Does spending include outlays of social security and highway trust funds? (It didn't until 1968.) Does it include lending activities? If not, moving things from expenditures into loan programs would be an inviting loophole. Imagine the Founding Fathers two centuries ago trying to draw a dividing line between "on-budget" and "off-budget" expenditures. No less an authority then House Minority Leader Rhodes has noted that "it would be so easy to end-run it."

Administering the mandate would be a nightmare. In January each year, the President submits a budget for a fiscal year that ends eighteen months later. Given the unexpected twists and turns of the economy, revenues may well fall below the forecast path. Imagine the scramble to adjust and readjust the budget as revenues misbehaved or unexpected shifts occurred in the costs of farm programs, Medicare, costs-of-living adjustments in social security benefits, and so on.

It does not take too much imagination to foresee Congress, caught in the balanced-budget vice, shoving some expenditures off into the private sector (e.g., by requiring private industry to support laid-off workers); or onto state-local governments by mandating outlays on Medicaid, pollution control, and so on, without picking up the tab," or onto consumers by relying more on higher farm price supports and acreage set-asides and less on federal deficiency payments.

So many exceptions, exclusions, and special emergency provisions would be necessary to make the amendment workable that it would no longer be meaningful. The drafters of the amendment would find that they were writing a prescription for Congressional action, not a Constitutional mandate. A meaningful amendment would not be workable, and a workable amendment would not be meaningful.

Even if some magic formula could be found to hold the government's nose to the balanced budget grindstone, it would be an affront to responsible democratic government to do so. The essence of that government is to adapt economic, social, and other policies to the changing needs of the times and the changing wills of the majority. It is the job of the Constitution to protect basic human rights and define the framework of our self-governance. Taking the very stuff of democratic self-determination out of the hands of legislative bodies and freezing them into the Constitution would not only hobble our ability to govern ourselves but dilute and cheapen the fundamental law of the land.

That consideration applies also to other budget limits that have been proposed. Take for example the proposal by the Committee on National Tax Limitation (and Milton Friedman) to limit federal spending to a percentage of the immediate past Gross National Product, adjusted for inflation. Merely to put the definition of the limit into the Constitution—let alone the provisions for enforcement through the courts—has spawned draft Constitutional language that makes one despair for this Constitution that John Marshall told us was "intended to endure for ages to come."

The Friedman proposal *is* of the very stuff of which statutory law is made—a cutting of the budget cloth to suit the times—moving one way when an explosion of aspirations, school-age population, and public needs calls for an expansion of public services as in the 1960's and moving another way when the pendulum swings toward government aus-

terity as in the late 1970's. (One need not even invoke the technical objections that GNP for any given period is subject to frequent and prolonged revisions and that tying spending to GNP would invite political intrusion into the definition and measurement process.)

Suppose we remove the Constitutional constraint and shift the mandate from annual balance to something approximating balance over the business cycle. That is the underlying philosophy of a proposal by Senator Proxmire, co-sponsored by several members of this Senate Budget Committee, to enact a law requiring the President to bring to Congress a balanced budget whenever the real rate of economic growth is 3% or more. A statute is better than a Constitutional amendment, and requiring a balanced budget only when the economy is growing at 3% or more is better than a balanced budget requirement through thick and thin. But it is hard to say more than that on behalf of the proposal.

Suppose that the economy is growing at 3%, but is running about 10% below its potential: would one really want a rigid balanced-budget requirement under those circumstances? In effect, it would say that fiscal policy should be restrictive whenever the economy is moving up at a rate of 3% or better, no matter how far below par its level of operation might be. Fiscal and monetary policy have to take account not only of the *direction* of the economy but its *level*.

And as to Senator Proxmire's call for a proposal that "will at least provide us with a balanced budget over the cycle," I would agree with the statement of the London *Economist* some 30 years ago. In the 1940's when the proposal to balance the budget over the business cycle (presumed to average five years), was gaining a lot of attention, the *Economist* noted that "there is no greater sanctity in a quinquennium than in the time it takes the Earth to revolve around the Sun." That statement is no less true today than it was 30 years ago. To define the "business cycle," identifies its various phases, and force federal spending into equality with tax revenues over that cycle would provide a bit more flexibility than an annually balanced budget rule but might well put unbearable and perverse pressures on the budgetary process and economic policy as the cycle neared its stated end.

Time and space do not permit assessment of the many other proposals that now dot the budgetary landscape. But I should like to comment quickly on two of them:

One proposal imbed in the Constitution a provision that all "money bills"—that is, all those having to do with budget authorizations, appropriations, outlays, off-budget credits, and so on—would require a two-thirds vote by both Houses of Congress. Even leaving aside the problems of definition (and possible end runs via tax preferences), one wonders how this can be reconciled with the basic principle of majority rule that is so fundamental to American democracy. To give one-third of either House a veto power over all government programs and appropriations is to redefine the whole American concept of the "rule of the people."

Another approach to the budget problem has been suggested by those who would have the federal government set up a capital budget permitting debt financing of capital expenditures. While originally attracted by this idea some thirty years ago, I have long since seen the error of my ways. I agree entirely with the President's Commission on Budget Concepts, which stated in its October 1967 *Report* (page 33) that there is "little merit in proposals to exclude outlays for capital goods from the total of budget expenditures that is used to compute the budget surplus or deficit." It strongly recommended against such a budget on grounds that it would lead to inappropriate fiscal policy, temptations to stretch the capital budget rules to include current expenditures, and a tilting of Congressional decisions toward debt-financed capital outlays and against tax-financed current outlays. Beyond this, there would be monumental problems of deciding what is a true capital expenditure.

Let me, in closing, come back to the public pressure and clamor to do *something* to cut back spending, taxes, waste, and inflation. In the face of this irresistible force, the federal budget cannot be an immovable object. Wrong headed as the move for a rigidly balanced budget may be, it reflects a mood that demands a response.

Part of that response has already been forthcoming: both in the Congressional process and in the growing move toward budgetary pruning and restraint, one sees that response. One is even entitled to ask whether it may be pushed too far. But given that the Constitutional approach is unwise, unworkable, and unworthy of democratic self-government, one hopes that Congress will work out a statutory solution that will be responsive to the public will without imposing destructive shackles on itself.

EXCERPTS OF THE TESTIMONY OF ALAN GREENSPAN

It is a pleasure to appear before this Committee to testify on proposals to mandate fiscal restraint, either legislatively, or in its most dramatic form, through a Constitutional amendment. Most economists, myself included, do not favor such an amendment. However, it would be short-sighted of the Congress not to recognize that, while the growing pressures for such an amendment may be mistaken in form, they are a reflection of the increasing concern of the American people that the U.S. Congress cannot come to grips with the problem of chronic federal budget deficits and the inflationary pressures they support. The advocvacy for a Constitutional amendment, I believe, is largely symbolic. It is a proxy to do something on the fiscal front.

It would accordingly be inappropriate for the Congress to respond narrowly with a Constitutional amendment mandating a balanced budget. Such an amendment, should it come to pass, would, in fact, not achieve the very purposes which those advocating it desire. It, in itself, will not prevent the growth in government and leaves open and, in fact, creates, the likelihood that budget balancing would be achieved more through increasing taxation, than through curbing expenditures.

Moreover, the Congress cannot readily control the actual budget deficit in the short run—say, a year. Except for relatively small parts of the budget, the levels of expenditures in the short run are determined either by entitlement programs or previously committed funds for which scheduled payments to private contractors are relatively fixed. Hence, the level of outlays in the short run is, to a substantial extent, outside the realm of executive or Congressional discretion. Similarly, the Congress sets a tax rate structure which means that the level of federal receipts largely becomes a function of the level of taxable incomes generated. Notwithstanding those who believe that the federal government can fine tune the economy, taxable income levels, at least in the short run, remain outside the discretion of government.

Finally, even where considerable discretion does exist, outlays often are unpredictable; the surprising outlay shortfalls in recent years being a clear case in point.

The fact that there are technical difficulties in achieving budget balance or expenditure restraint in the short run makes it all the more imperative that we come to grips with the underlying long-term rate of growth in federal outlays. Unrestrained, federal outlay growth will soon run ahead of our tax raising capacity. It is becoming increasingly evident that we must create a far more effective mechanism to restrain outlay expansion than we have constructed to date.

The basic problem is that, while restraint in total outlays is supported by virtually everybody, when it comes to a specific expenditure proposal, the short-term benefits to a specific constituency tend to override the long-term costs to the nation as a whole. The current services budget estimates for future years invariably indicate that expenditure growth will slow rather markedly. But this is partly illusory, since there is an implicit assumption that the Congress will be on vacation fifty-two weeks a year and will add no new spending to the Budget. We often forget that there is a special type of uncontrollable spending which is built into our political system.

It derives from the fact that the Congress meets for extended periods each year and that most bills on which committees hold hearings have a significant price tab on them. It is rare that a Congressional committee will meet in extended session on an inconsequential budgetary matter unless it has wide political or media interest. One cannot tell in advance which particular bills will pass or which particular expenditures will be authorized. However, we would not be terribly far off if we specified a certain aggregate level of newly authorized outlays per day of Congressional session. This, in a certain sense, is as much an uncontrollable add-on as previously mandated outlays.

It appears, therefore, that the only way in which we can permanently curb a rate of growth in federal outlays which outruns the revenue raising capacity of the economy is to impose some form of restraint on outlays which cannot be bypassed by simple majority votes. This would require a Constitutional amendment. I endorse this with great reluctance. Constitutional amendments should not have to deal with technical problems such as those which now confront us on the budget. However, given our institutional structure, I see little hope of achieving the type of restraint that our economy requires other than through the Constitution.

While the Constitutional amendment proposals which endeavor to limit expenditures, rather than mandate a balanced budget, skirt some of the obvious problems of a balanced budget amendment, they, too, have a significant problem associated with them: namely, the criteria against which budget restraint is measured. Any attempt to employ, for example, the gross national product as a measure to guide expenditure growth confronts the obvious problem that the gross national product is continuously undergoing redefinition with respect to inclusion and coverage.

Moreover, estimates, especially preliminary estimates, are subject to revision of as much as a full percentage point. (For a $500 billion budget tied to GNP, this implies a potential shift in the ceiling of $10 billion.) Remember, a Constitutional amendment

must be as meaningful fifty years from now as today. Various statistical measures such as gross national product or the consumer price index are not likely to live in perpetuity in their current form. One may, of course, bypass this technical problem by merely creating a generic basis for expenditure restraint in the Constitution and have Congressional enabling legislation specify the elements which would guide that restraint.

I find this solution, however, complex and unsatisfactory. We need something simpler. We should probably resolve the outlay growth problem by requiring that all budget authority, appropriation, expenditure and credit-guarantee bills be passed by a two-thirds, rather than a simple, majority of both houses. A Presidential veto would merely require that the two-thirds vote be reaffirmed. Such a procedure would avoid many of the problems associated with defining an appropriate Constitutional amendment. It would not, however, resolve the problem of defining what, in fact, constitutes expenditures.

I have no doubt that if we restrain what is covered under the current definition of outlay or expenditure by some legal prohibition, the Congress, in its wisdom, will find alternate means to accomplish what it ordinarily would do on the expenditure side. However, I nonetheless believe that such means are limited and that while we can never expect a Constitutional amendment requiring a two-thirds vote on money bills to be fully effective, it clearly would have a major impact on restraining the growth of the federal sector.

Most of the areas where the Congress is apt to create expenditure bypassing devices are on the tax side, through credits. I do not consider this totally undesirable. We will need periodic cuts in tax rates, and any restraint on expenditure levels will probably exert additional pressure on the Congress to cut taxes in order to avoid excessive budget surpluses.

Pending the passage of a Constitutional amendment requiring a two-thirds vote on money bills, we might wisely amend the Budget Act of 1974 in a similar fashion. While the two-thirds vote requirement could be rescinded by a majority of the Congress (with the acquiescence of the President), individual Congressmen might well be persuaded not to vote for such a rescission since it might stamp them as less than fiscally responsible. So there is a possibility that a legislative two-thirds requirement could indeed hold. I doubt, however, that one could rely on that for an overly extended period. A Constitutional amendment mandating such a requirement appears to be the only viable long-term solution.

Restraining budget outlays, however, will not be enough, in itself, if our underlying goal is to defuse inflationary pressures. We must focus not only on on-budget outlays and financing requirements, but on all of the direct and indirect preemptions of private savings embodied in federal policy as well. The inflationary impact of the federal government is only partly related to the on-budget deficit financing requirements and I believe we take far too simplistic a view by employing the deficit as our sole measure of fiscal policy.

Off-budget borrowing has risen sharply in recent years. So have mandated capital investments by business (pollution, safety equipment, etc.) which must be financed; and matching grants, which have induced increased spending and borrowing by state and local governments. These demands have added heavily to capital market pressures, but in total have been small compared with the extraordinary expansion in mortgage credit.

Prior to the 1970's an increase in mortgage credit on one- to four-family homes rarely exceeded $15 billion per year. During the past year, the increase has approached $100 billion. Changes in institutional structures and subsidy programs sponsored by the federal government, from mortgage-backed bonds to the newest six-month certificates tied to the Treasury bill rate, have been responsible for this explosion in mortgage credit.

As a result, we have arrived at a point where we no longer have the luxury of employing sophisticated mixes of fiscal and monetary policy. Monetary policy has become increasingly hostage to fiscal policy in recent years. Until we reduce the aggregate drains on the credit markets created by federal policy, direct and indirect, the Federal Reserve will have little leeway to pursue a discretionary monetary policy. We have largely run out of options which enable us to calibrate various degrees of monetary restraint and budgetary stimulus.

Unless we apply strong restraining policies, both on the fiscal and the monetary side, we risk being unable to subdue, and ultimately defuse, the inflationary pressures which undercut the productiveness of the American economy. There is no question that policies of restraint risk the inadvertent triggering of a recession. But we have procrastinated so long in suppressing inflationary pressures that we have run out of low risk policies.●

CITIZENS' COMMISSION ON ECONOMIC REGULATORY OVERSIGHT

● Mr. TOWER. Mr. President, complaints have been rising about excessive Government regulation. But most of the proposals to do something about this have scant chance of success. The reason for this is that the inevitable solution for a system that works poorly is to add another system on top of the existing one. The added layer often compounds the problem.

These are the conclusions of Dick Givens in his recent article appearing in the January 22, 1979, issue of Photo Weekly. Mr. Givens sees as a solution the alternative approach in the proposal to establish a Citizens' Commission on Economic Regulatory Oversight. The members of this Commission, composed of citizens from outside Government, could perform the function of taking a fresh look at Government regulations and agencies to see which ones are still needed. The examination would be from the standpoint of the "consumers" of governmental activity rather than from the perspective of those providing such services.

Mr. President, I request that the article be printed in the RECORD.

The article follows:

CITIZENS COMMISSION ON ECONOMIC REGULATORY OVERSIGHT

(By Dick Givens)

For a long time, complaints have been rising about the burden of what many consider to be excessive, overlapping and unnecessary regulation which has an inhibiting effect on economic activity and raises the cost of goods and services to the public.

Most of the proposals for doing anything about this have a scant chance of effectiveness. Parkinson's law insures that usually whatever we do merely adds to the amount of complexity in the system. Society knows only how to ADD not SUBTRACT. Like entropy in physics, complexity in society seems always to increase, never to decrease.

If any of our systems for handling problems work poorly, the answer almost always seems to be to add another system on top of the existing one. This, no matter what the theoretical objective, turns out to add to the systems lower down as well. The more there is for a higher-level system to control, the more important *it* in turn becomes, no matter what the objective is supposed to be.

This type of behavior of organizations has been noted as far back as 1967 by Herbert Stein, who recently received the Nobel Prize for economics, in his book *Organizations*. Perhaps the award of a Nobel Prize to a student of organization will increase attention to this subject, pioneered in the past by such leading thinkers as Peter Drucker (*Concept of the Corporation*, 1960), Antony Jay (*Management and Machiavelli*, 1968), Robert Townsend (*Up the Organization*, 1970), C. Northcote Parkinson (*Parkinson's Law*, 1957), Peter & Hull (*The Peter Principle*, 1969), Robert Karasch (*The Institutional Imperative*, 1973), R. Alec Mackenzie (*The Time Trap*, 1972) and Gall, whose name also describes the phenomenon he describes ("Why Nothing Works the Way It's Supposed To," N.Y. Times Magazine 12/26/76). The tendency of complexity to feed on itself is also brilliantly portrayed by the novelist Hermann Hesse in *The Glass Bead Game* (1943).

How can review of excessively burdensome compliance requirements and bureaucracy be moved forward against the tremendous inertia involved? One possible technique is the creation of a "Citizens Commission on Economic Regulatory Oversight," proposed by Senator John Tower of Texas in the closing days of the 95th Congress as Senate Bill No. 3459 (Aug. 24, 1978). Although introduced too late to receive serious consideration in the 95th Congress, this proposal deserves further attention as a means of bringing about impartial review of the need for and effect of regulations which have accumulated over the past few decades like debris piling up on top of the ruins of an ancient historic site. At some point, there is a need to dig through the strata to see what is there and why.

At the federal level, throughout most of the nineteenth century, the authority of Congress to enact economic regulation under its power over interstate commerce was narrowly construed. In 1895, even a nationwide monopoly in a manufacturing industry was held to be purely a local matter because the manufacturing itself occurred within individual states and did not cross states lines!

Today, of course, the opposite is the rule: if activities, even in their totality, have an effect on interstate commerce, they are within the scope of federal power under the commerce clause of the constitution. Regulation can therefore be imposed absent violation of some other specific constitutional provision, such as the guarantee of due process of law or the First Amendment protection of freedom of expression (which now clearly includes commercial speech). As a result of the clarification of the broad extent of the power of Congress over commerce, the exercise of this power has expanded more and more rapidly. New major economic regulatory legislation has been added at an increased pace every decade, while virtually none of it has been repealed or simplified.

A Citizens Commission on Economic Regulatory Oversight could perform the function of taking a fresh look at all this. The personnel of the Commission would not come

from the agencies whose work would be reviewed. Rather, outside citizens would be called upon, as was the case with the Hoover Commission which reviewed the structure of governmental agencies several decades ago.

The new "little Hoover Commission" would not be concerned with the organizational charts of agencies, or how the work is divided among them. Rather, it would look at the impact on the citizen and the private sector in terms of what requirements and burdens are imposed on non-governmental persons and entities. It could also look at the functional structure of how agencies work as viewed from the bottom—in other words, what actual steps have to be taken for routine actions to occur, and what is the delay, expense, inconvenience, or other harm if any generated?

The examination would be from the standpoint of the "consumers" of governmental activity rather than the perspective of those providing such helpful or harmful services.

This could be a breath of fresh air.●

COMMENTS ON SUGAR POLICY: PRODUCERS AND CONSUMERS

● Mr. McGOVERN. Mr. President, on May 4, 1977, President Carter said:

I believe that a strong and viable domestic sugar industry is vital to the economic well-being of the American people.

The President is correct in wanting to maintain "a strong and viable domestic sugar industry."

I want to help him attain this desirable objective. It is right and makes sense in our economy.

However, the evidence available to me reveals that we are not going in that direction. On February 5, 1979, the World Food and Agricultural Outlook and Situation Board at USDA released a significant report for domestic sugar growers. It admits that the administration's sugar policy is failing and contributing in a major way to the budget deficit and to the unfavorable balance of payments.

According to the report:

Early season planting intentions by U.S. sugarbeet growers in 14 States report plans to cut seedings by about 11 percent (about 139,000 acres). This would suggest about 1.11 million acres in sugarbeets this year in the surveyed States. Growers will be surveyed again in April to get an up-date closer to planting time. About four-fifths of the decline came from Colorado, Idaho, Utah, and Washington where five sugarbeet plants will close.

The 6-million-ton production from the domestic sugar industry is essential if we are to maintain reasonable sugar prices in the United States. In the absence of such an industry, the United States could be the victim of another OPEC, a sugar cartel.

In introducing the Sugar Supply Assurance Act of 1976, then Congressman and now Secretary of Agriculture Bergland stated correctly:

In addition to the obvious effects on those engaged in the domestic sugar industry, dislocation and disruption of domestic sugar cane and sugarbeet production capability would make American consumers dependent upon the unstable world sugar market for up to 100 per cent of their sugar supplies, putting them at the mercy not only of the vagaries of the world market, but also of possible cartel arrangements by sugar exporting nations.

I want to avoid this type of unfavorable circumstance and the resultant drain on our economy.

Even in the absence of a cartel, consumers should not forget that a relatively small shortage in production propelled domestic prices to over 65 cents per pound in 1974. Moreover, the United States expended over $2.5 billion to import sugar in the year ending June 30, 1975. This was the result of world consumption demand exceeding supplies briefly in 1973–74. Currently, the import costs are down to about $1 billion per year. We need a viable and strong domestic industry if we are to avoid a repetition of this inflationary effect.

Further in the February 5, 1979, report, we find the following:

(1) Thus, in January 1979, the derived domestic sugar price fell short of the price objective.

In its first test of this price level objective it has failed. It has not done what Vice President MONDALE promised last October when he committed himself to 15 cents in the marketplace. This policy implementation failure resulted in the following as revealed in that report:

(2) U.S. imports are expected to total 5 to 5.5 million shorts tons (raw value) in calendar 1979, increasing from the preliminary estimate of 4.6 million for 1978. The prospective increase reflects (1) reduced domestic beet sugar production, (2) likely CCC acquisition of significant quantities of sugar, and (3) substantial quantities of domestic sugar placed under CCC loans.

The increased imports will add to the balance-of-payments deficit about $150 million, thus weakening the value of the dollar. On September 26, 1978, President Carter said:

The large trade deficits the United States States has experienced in recent years have weakened the value of the dollar, intensified inflationary pressures in our own economy, and heightened instability in the world economy.

The President wants to correct this imbalance, as I do. I want to help him attain this objective.

On February 19, 1979, there were about $715 million of sugar loans outstanding plus about $50 million worth of sugar owned by CCC. Thus, the administration has an investment of about $765 million in sugar stored in warehouses. This is being displaced by imported sugar. Customers of domestic sugar are turning to foreign sugarcane suppliers, while U.S. produced sugar remains in warehouses.

This is not a policy. It is a market abdication. It is adding to the budget deficit and to Treasury borrowing.

The proposed budget for fiscal year 1980 contains no provision for making sugar payments to enable industrial users of sugar to acquire that essential product at less than the cost of production. There is no sound economic reason for making such payments. Producers want their returns in the marketplace. They have told that to the Congress time after time. Moreover, there is no proof that the unappropriated sugar payments in excess of $200 million made for the 1977 crop resulted in lower costs to consumers.

The Secretary of State in a letter to the President, dated December 24, 1977, stated:

United States interests have been seriously affected by sugar price fluctuations. The United States produces more than half of its own sugar needs, and its producers are suffering from the current prices, which are below their costs of production. Low prices lend to production cut-backs, which leave the consumer vulnerable to extremely high prices, particularly if crop disasters do strike in the United States or elsewhere. Furthermore, recent history suggests that price increases for sugar-containing products are passed on to the ultimate consumer more readily than price declines.

There are certain basic facts that should be understood relative to sugar consumption. First, only about 15 percent is purchased directly by consumers at retail. The balance is purchased by industrial users, such as soft drink manufacturers, bakers, restaurants, institutions, schools, and so forth.

The U.S. market price for raw sugar peaked in November 1974, at an average of 57 cents per pound, and 4 years later was about 14½ cents per pound. Consumer price indices for sugar containing products hardly reflected these sugar price changes, and are now generally at record high levels—except for table sugar bought at retail—15 percent of consumption.

The uncommitted sugar of the world amounts to 20 percent of production and constitutes the so-called free world market. It is simply the dumping ground for the world's surplus sugar. The price is usually well below the cost of production. One year out of seven the world demand supply balance in sugar has been disrupted, and this surplus sugar has been bid up to very inflated prices. This last occurred in 1973–74.

The American market is now open to this surplus sugar. The U.S. market prices, even with the duty and fee, are still below the costs of production. American producers are forced to sell their sugar in competition with the 20 percent of the world's production and this surplus sugar enters well below the costs of production. They are beginning to quit production, as reflected in the January 1979 Intentions Report.

We must have sugar prices that will be fair to the domestic consumer and to the domestic producer.

We need to adopt such a sugar policy for the following reasons:

First. To scrap the industry would be unfair to sugar producers and a great waste of heavy capital investment in plant, equipment, and technical know-how. It would be stupid to do this because of a false idea that American sugar producers should compete in a "free" world sugar market which is really a dumping market.

Second. Thousands of lost jobs would result.

Third. Importing all our sugar would add at least $2.5 billion per year to our international trade deficit, thereby

weakening the dollar in international markets.

Fourth. Domestic producers can provide a significant portion of our total sugar needs and can protect us against supply curtailment due to war, embargoes, or internal upheavals in foreign countries.

Fifth. The industrial users of sugar who buy 80 percent of the product—for beverages, canned fruits, baked goods, confectioneries, preserves—would be better off with a steady price of sugar and a guaranteed supply at reasonable prices. The high sugar prices of 1974 and 1975 drove many consumers away from their products permanently.

On January 31, 1979, I inserted in the CONGRESSIONAL RECORD an interim audit report furnished me by the General Accounting Office relative to the operations of the 1977 sugar payment program. The Inspector General's report increases my deep concern, setting forth glaring weaknesses and abuses. We need a full scale inquiry into the operations of this payment program. The GAO has promised me a report in March.

It seems only prudent to carefully pursue this inquiry in great depth in view of indications that the administration is considering a return to the processor payment program as the basis for a domestic sugar program.

We must determine whether domestic sugar buyers could in fact afford to pay U.S. cost of production for their sugar requirements.

And we should determine whether imports at less than cost of production caused other sugar inventory to be turned over to the Government and stored indefinitely at taxpayers' expense.

Secretary of State Vance, in his letter of December 24, 1977, to the President stated:

> There has been a surplus of supply over demand in each of the past three years, and prices have now fallen to less than seven cents per pound, a level below the cost of production in most, if not all, countries.

All the sugar currently imported into the United States is still being sold at less than the cost of production—even at the extremely low wages of the producing countries.

USDA's top economist, Howard Hjort, testified before the Senate Finance Committee's Subcommittee on Tourism and Sugar on May 11, 1978, as follows:

> The national average cost of producing sugar is approximately 15.2 cents per pound.

That refers to 1978. Moreover, in an apparent adjustment of this cost of production estimate, Secretary of Agriculture Bergland stated on September 14, 1978, to the Agricultural Council of America, as follows:

> We know it costs about 16 cents a pound to produce American sugar, and so there lies a problem.

The Executive Office of the President on April 27, 1978, gave the following advice to U.S. sugar beet and sugarcane producers:

> It should be noted that sugarbeet and sugarcane producers have alternative uses for their land that are more in keeping with economic needs.

I do not believe that the President who desires a strong and viable domestic sugar production policy wishes to force many sugar producers out of production with resultant closing of sugar mills and loss of jobs. However, the effects of maintaining a domestic price at less than the cost of production is having just that undesirable effect, and impelling sugar producers to shift to other crops.

We must determine whether it is in the public interest to borrow hundreds of millions of dollars at high interest rates to make sugar payments so users can acquire sugar at less than the cost of production. And we must determine at the same time the real inflationary effect of such payment programs with borrowed money.

I am for a strong viable domestic sugar industry. However, I am opposed to shifting the costs of the sugar program to our children and grandchildren. New home owners and builders are already suffering from the interest rate for home mortgages exceeding 10 percent. The prime rate is 11½ to 11¾ percent. The U.S. Treasury is paying close to 10 percent for short-term money. Our children and grandchildren must not be asked to pay for what we are consuming now.

Sugar is a commodity for which we rely on imports to the extent of about 45 percent of our requirements. Therefore, it is not difficult to support a reasonable level of domestic prices through duties and import fees, or if necessary some other form of import management. A one-half cent per pound increase in import fees reduces the budget deficit by $50 million. A one-half cent per pound payment increases the budget deficit by $60 million.

Thus, the difference in the two approaches is about $110 million in the net immediate effect on the budget deficit.

Moreover, with current interest rates, the cost of a payment program to the Treasury will double in 7 years. It makes economic and fiscal sense for farmers to get their returns in the marketplace.

Ours is a market system. Therefore, we should not be following the approach of the Central Committee of the Chinese Communist Party which in a recent food communique stated:

> After the purchase price of farm produce is raised, the urban workers must be guaranteed against a fall in their living standards. The market price of all food grain will remain unchanged, and the selling price of other farm products needed for daily life must also be kept stable, if some prices have to be raised, appropriate subsidies will be given to the consumer.

The Senate Committee on Agriculture Nutrition and Forestry needs to examine all aspects of the 1977 payment program. Moreover, we need to assess blame where it occurs and learn from the hearings. Only thus can we develop a fair legislative proposal which will provide a permanent future to the domestic sugar industry—an essential ingredient of our national economy. A fair price in the marketplace is a reasonable approach.●

THE WORLD ADMINISTRATIVE RADIO CONFERENCE

● Mr. GOLDWATER. Mr. President, on February 27 in Munich, Germany, Ambassador John A. Gronouski, chairman of the U.S. Board for International Broadcasting, spoke before a group on WARC, which is the coming World Administrative Radio Conference. He brings out in very plain language what a number of us has been trying to get across to American users and our colleagues as to the dangers inherent and predictable in this coming session of WARC. I ask that the remarks of Ambassador Gronouski be printed in the RECORD, and I suggest my colleagues read this, because you are going to become deluged by mail from home when this conference takes place.

The remarks follow:

REMARKS OF AMBASSADOR JOHN A. GRONOUSKI

A major link that binds together the members of the NATO Alliance, one that is of paramount importance to this Committee, is the responsibility that we share for preserving and expanding the unimpeded free flow of information.

Rather than attempt to survey all the aspects of this question which have, as you know, in recent years occupied a number of international forums—the UN General Assembly, UNESCO and so on—I would like to concentrate on one critical aspect on which decisions are being made at the present time, and important actions will be taken later this year. I am referring to short-wave broadcasting in the context of the World Administrative Radio Conference of the International Telecommunication Union. This conference, more commonly referred to as WARC-79, will convene in Geneva for a 10-week session this September. If its results are favorable, it will insure a freer and more balanced flow of information among the countries of the world for the remainder of this century. If its outcome is unfavorable, this vital flow could be severely restricted and our short-wave broadcasting efforts—those of the VOA and RFE/RL, of the BBC, the Deutsche Welle, Radio Canada, Radio Nederland, and of our other NATO partners—would suffer.

I am talking here about international broadcasting on the short-wave bands often referred to as external broadcasting. In the field of human communication, short-wave radio plays a unique role. Technically, it is the only mass broadcasting medium capable of direct, universal, personal and immediate communication to individuals and audiences throughout the world. Unlike standard broadcast stations in the medium and longwave bands, or TV and FM stations that can be received only over relatively short distances, shortwave broadcasting has global reach.

Short-wave broadcasts, then, differ from all other media of communication—books, newspapers, magazines, motion pictures—in that they cannot be stopped at frontiers, refused an entrance visa, confiscated, delayed, or censored. These broadcasts do not require the prior consent of the recipient government. Short-wave broadcasts never intrude on individual privacy. They can enter a listener's home only by invitation by the flick of a switch, the turn of a dial.

Over more than a half-century, the short-wave broadcasting bands have become a market place for ideas and information, an arena for ideological and political argument a vehicle for news and entertainment, a channel for the dissemination of a wide variety of serious and popular cultural programs.

Short-wave broadcasting is not the exclusive domain of the more powerful industrialized nations. It is the only practical information medium at present through which the voice of the smaller, less affluent country can be heard, and can reply to the major powers. Installations are relatively inexpensive, within the means of most of the developing nations. Along with the issuance of currency and postage stamps, one of the first steps often taken by a newly independent country is the creation of a short-wave broadcasting service to communicate with its neighbors and the world.

In the open societies in which we live, we have available a wide diversity of uncensored communication and information media. But to many millions of people, particularly those living in closed societies, shortwave broadcasts are the primary source of news and information from outside. Some countries know and fear this, and attempt to block reception by jamming.

Jamming of radio broadcasts violates the spirit if not the letter of the U.N.'s Universal Declaration of Human Rights as well as the Convention of the International Telecommunication Union. In 1977, at the 23rd Annual Session of this Assembly. Resolution 68 was passed strongly condemning jamming as a flagrant violation of the Final Act of the Conference on Security an Cooperation in Europe. Yet, vast networks of jamming transmitters continue to operate in the Soviet Union, Czechoslovakia, Bulgaria and Poland.

Last year, I publicly suggested as a "civilized alternative" to jamming, the application to international short-wave broadcasts of the well known American principle of the "right to reply." The Board for International Broadcasting, in concert with Radio Free Europe and Radio Liberty, stood ready to seriously consider airing responses by the Soviet Union and Eastern European countries to specific complaints against our broadcasts which were found to have merit. So far, there have been no takers. The jamming continues.

What is this audience for short-wave broadcasts? While precise figures are not available, experts estimate that of the world total of more than 900 million radio sets, as many as 300 million may be capable of tuning short-wave broadcasts. The ongoing transistor revolution and the development of micro-miniature, ultra-reliable space age components have made possible the manufacture of more compact, more sensitive radios than ever before, and at a price that more people can afford. On a typical day, it is estimated that as many as 200 million listeners throughout the world may be tuned to short-wave broadcasts. This is an impressive audience.

In this age of satellite communications, a question arises as to the likelihood of direct broadcasting satellites eventually replacing short-wave broadcasting and extending international broadcasting into the realm of television. I'm referring here to a system in which the broadcast signal would be focused from the ground to the satellite, and then beamed from the satellite directly to the listener's home receiver. This would require a satellite many times more powerful than those now being used for international telecommunications, since the satellite would be required to beam its signal to a small home-type television antenna rather than to a giant earth station.

The potentialities of such satellites have already been demonstrated successfully with the U.S.-Canadian joint experimental Communication Technology Satellite—CTS. Good quality signals were received from this satellite on conventional TV sets adapted with special signal converters and using outdoor disc antennas as small as a meter in diameter. The Japanese plan to inaugurate a direct broadcasting satellite system for domestic TV coverage within the next year or so. Plans for similar systems are on the drawing boards here in Europe and in North America.

Technically, direct broadcasting satellite systems appear to be feasible. But when we consider the resources necessary to design, manufacture and launch such systems, they are from the practical point of view still a long way off for all except the most technologically advanced countries. Moreover, even if such systems were to become practical on a worldwide basis, reception from satellites may be confined to receivers within the borders of the transmitting country. This is because international technical ground rules have already been established by the International Telecommunication Union that have the effect of requiring prior consent of the receiving country for transmission by satellite to viewers in that country. The use of broadcasting satellites for direct uncensored transmission of radio and television broadcasts across international borders may well have been stifled even before its birth!

Short-wave radio, therefore, appears to be the only viable medium for international broadcasting in the foreseeable future. This is why the WARC meeting later this year is so important to the members of NATO. Let me be specific. Approximately 150 countries presently broadcast on the shortwave bands. The number of transmitters in use has increased from 300 in 1950 to 1,500 today, and the amount of broadcasting has increased five-fold since the end of World War II. Most short-wave frequencies are now being used by double, and during preferential broadcasting hours, by three and four times the number of transmitters recommended as a reasonable norm by the ITU.

The results of this congestion, familiar to anyone who has tried to listen to short-wave broadcasts, is the all too common phenomenon of co-channel interference, when an otherwise clear signal is marred or blotted out by the program of another station on the same channel. A recent survey conducted by the European Broadcasting Union concluded that reception on two out of every three channels used for short-wave broadcasting is rendered ineffective by interference. This checks closely with what the VOA and RFE/RL have found; more than half the frequencies that they use are marred by interference and this does not include those RFE/RL channels which are intentionally jammed. I dare say that you will find the situation much the same for the short-wave broadcasts of your countries. The shortage of frequencies and the resulting high level of interference has in itself become a serious impediment to the free flow of information.

One might ask at this point: why isn't this a problem for telecommunication engineers and P.T.T. officials to tackle? Why should Parliamentarians and political scientists be concerned?

Traditionally, radio frequency management has been viewed as a highly specialized technical matter. But, in the case of short-wave broadcasting, there are strong political implications. They involve the East-West ideological struggle, for more than a third of the world's short-wave broadcasting stations are located in NATO and Warsaw Pact countries. (The Soviet Union is the leader in broadcast hours followed closely by the U.S., with the United Kingdom and the Federal Republic of Germany not far behind.) The North-South communication imbalance is also involved, for the developing countries claim to have been squeezed out by the industrial nations who were there first and who have greater resources. WARC-79 thus looms as a serious three-way confrontation between East, West and the Third World for control of broadcasting frequencies. I don't see how it can be avoided, and we must be alert to politically motivated strategies disguised as technical proposals.

Let me elaborate. We must assume that countries which maintain closed societies, resort to jamming foreign broadcasts and exercise censorship and other media controls are certain to use WARC-79 as a platform to press for further restrictions on short-wave broadcasting under the guise of technical proposals. The Soviet Union, for example, which recently announced the bringing into operation of 29 of the world's most powerful short-wave broadcasting transmitters, is calling for no increase in frequencies for broadcasting. The Soviets can afford to take such a position. Along with most other countries of the Warsaw Pact, they have established "safe havens" for their broadcasting by preempting segments of the short-wave spectrum reserved originally for other communication services, most of which have subsequently moved to satellites or other technologically advanced telecommunication systems. By resorting to a series of reservations taken at previous ITU conferences for justifying the takeover of these frequencies, Soviet broadcasts escape most of the interference that the rest of the world is encountering. Obviously, the Soviets would like to keep these more or less exclusive broadcasting enclaves for themselves and their allies at WARC-79.

In 1959, at the last ITU conference where frequencies were reallocated throughout the entire communication spectrum, the technologically advanced countries had the voting edge to sort out their differences among themselves. But voting power and patterns have changed drastically since then. Following the voting rules of the United Nations, each of the 154-members of the ITU has a single and equal vote. Togo and Fiji, for example, have the same voting rights as the United States and Russia. In recent years the non-aligned bloc has on several important issues demonstrated its ability to control the voting pattern in the ITU, and we must assume that they will be in a similar position at WARC-79.

If the Soviet proposal for no increase in broadcast frequencies were to prevail and the Third World majority were successful in forcing a redistribution of the present congested frequencies to "obtain their share of the pie" as some have already threatened, members of the NATO Alliance could expect to lose the most. If an adequate number of additional channels are not made available for short-wave broadcasting, satisfactory accommodation of the scores of "have not" nations would entail substantial reductions on the part of the few "haves." If this were to happen at WARC-79, the entire short-wave broadcasting effort of the NATO members might be seriously imperiled.

What can we do to avoid such an outcome?

First, we must recognize that collectively the NATO community is responsible for the bulk of the free world's international broadcasting and that this mandates responsibility for leading the conference towards an equitable solution which, at the same time, protects our interests. If we fail to assume a leadership role, free world international broadcasting could suffer irreparable damage.

Second, we must see to it through our proposals that a sufficient amount of additional short-wave spectrum is allocated to broadcasting. We should be able to demonstrate clearly that the reasonable and legitimate interference-free requirements of all countries, developed as well as developing, can be accommodated for the remainder of this century. It is a matter of simple arithmetic that the present broadcasting spectrum must be expanded two-fold to achieve this. This would involve but a small reduction (less than 20%) in the number of frequen-

cies presently reserved for what is called the "fixed service," which for the most part would encompass the Soviet broadcasting enclaves, making them available for the entire world. The fixed service, used mainly for commercial and military communications, has made far-reaching advances in the utilization of worldwide satellite, cable and microwave technology, advances which have sharply reduced former needs for shortwave frequencies.

Third, if we are to gain majority support for our proposals, we must identify them with the responsible desires and goals of Third World nations who want to improve their communications posture and want to develop a greater balance in shortwave broadcasting. We cannot hope to achieve our goals at WARC-79, I submit, unless we can gain the support of these nations or, at least, avoid their active opposition.

As you will recall, these very points are contained in the resolution adopted at the 24th annual meeting of this Assembly last November.

In closing, I hope I have made the point clear that there is considerably more involved in the WARC-79 short-wave broadcasting issue than technical questions. I urge each of you, in your capacity as Parlamentarians with a special interest in seeing the continued unimpeded flow of information, to review the WARC-79 proposals of your respective countries in light of the NATO Assembly resolution.

If we can develop a coordinated NATO position around the three key points of Conference leadership, the availability of sufficient interference-free frequencies for all countries, and the tabling of a proposal that merits the support of the Third World, then I believe that we can hopefully anticipate results from WARC-79 that will satisfy world-wide short-wave requirements and, at the same time, see the rejection of proposals which could require forced reductions in our broadcasting efforts.●

JOBS AND THE TAX DEDUCTION FOR BUSINESS MEALS—A REBUTTAL

● Mr. KENNEDY. Mr. President, as part of the ongoing debate on the effort to reduce the tax deduction for business meals, a study was included in the February 22 RECORD, page 3111, purporting to show that a significant loss of jobs in the industry might occur if the deduction were to be reduced by 50 percent in accord with the Carter administration proposal in the past Congress.

The new study was prepared within the Bureau of Labor Statistics, although it was specifically stated that the study was not attributable to the Bureau. Its finding of significant job loss differed substantially from the conclusion reached by a Library of Congress study last year, which had estimated a much smaller jobs effect.

In light of the well-deserved reputation of the Bureau of Labor Statistics for impartial and accurate economic analysis, the lack of attribution of the new study to BLS turns out to be well-advised, since both the methodology of the study and its conclusions are highly questionable.

When the new study appeared, I asked the Library of Congress to analyze it. The analysis has now been completed, and the Library of Congress finds that, when certain errors in the BLS-related study are taken into account, the purported job loss vanishes. As a result, the BLS-related study verifies the earlier Library of Congress conclusion that the modification of the deduction will not result in any significant layoffs, either in the restaurant industry as a whole or in any segment of the industry.

Mr. President, I request that the analysis by the Library of Congress be printed in the RECORD.

The material follows:

EMPLOYMENT EFFECT IN THE RESTAURANT INDUSTRY OF THE PROPOSED RESTRICTION OF BUSINESS ENTERTAINMENT EXPENSES: COMPARISON OF CONGRESSIONAL RESEARCH STUDY AND STUDY PREPARED IN BUREAU OF LABOR STATISTICS

(By Jane G. Gravelle, Specialist in Taxation and Fiscal Policy, Congressional Research Service, Library of Congress, March 6, 1979)

I. Introduction:

Recently, a study was inserted into the Congressional Record done in the Bureau of Labor Statistics (BLS) on the employment impact of a 1978 Administration tax proposal to restrict deductibility of business entertainment meals.[1] The statement accompanying that study reported the finding that 250,000 employees in the restaurant industry would probably lose their jobs as a result of enactment of the tax proposal.

This finding is substantially different from that of a Congressional Research Service (CRS) study prepared last year which estimates a much smaller effect for the same year (1976).[2] As the following analysis indicates, however, the BLS study, if correctly interpreted and if certain errors in data use are recognized, is quite compatible with the CRS study.

II. Description of the Two Studies:

A. CRS Study:

The CRS study converted the limitation on deduction into a price effect and then estimated the impact on quantity supplied based on a price elasticity of 1. Some refinements were introduced with use of a curved demand function with a constant price elasticity of 1 and with assumption of a slightly elastic supply curve. The analysis then assumed that the reduction in demand would lead to a proportional reduction in employment, leading to a reduction of 40,000 jobs in 1976, the last year for which data were available. This job loss was termed the relative price effect.

In an attempt to arrive at a more complete representation of the effect on the industry (and particularly on actual layoffs) the CRS study also examined the impact on the industry stemming from increased demand in the economy in general due to the stimulus from the overall tax cut proposal which contained the proposed business entertainment restriction. Based on simulations of the impact of this stimulus by Data Resources Inc., its effect, termed the income effect, would also be a magnitude of 40,000 jobs in the restaurant industry, with the aggregate impact on the industry being no change. The study noted, however, that this effect would not be true for every restaurant in the industry.

In a similar pursuit of the goal of more complete representation of the effect on actual layoffs (where a similar job might not be attainable) the CRS study also examined the changes in employment in a dynamic context. Given the net offsetting of the relative price effect and the income effect, the industry would have continued to grow at its pre-tax-change growth rate, which in 1976 was equivalent to 7.7% or 280,000 jobs. This rate was somewhat higher than previous years; the three annual growth rates for 1973–1974, 1974–1975, and 1975–1976 averaged 5%.

B. BLS Study:

The BLS study actually reported in its tables four different estimates of the job loss: 24,407, 43,319, 127,336 and 218,958. These estimates cover a very wide range and represent use of different marginal tax rate assumptions and data bases. An attempt to explain the reasons for this range will be undertaken subsequently.

The basic methodology of the BLS study is, as in the case of the CRS study, to use the standard approach of estimating impact on quantity supplied of the change in price deriving from the restricted deductibility. The BLS study reflected price elasticities in a large scale consumer demand model. However, rather than assuming a proportional reduction in employment, the demand estimates were then entered into an input-output model which actually resulted in a less than proportional reduction in employment.

The study only estimates the "relative price effect" in the CRS study and, as the author notes, is a partial analysis. There is no consideration of the impact of the tax-cut stimulus, nor is there any examination of the employment effects in terms of a change in the growth rate rather than an absolute positive or negative decline. Thus the numbers in the BLS study should be compared with the 40,000 job relative price effect which was the first step in the CRS analysis.

III. Examination of the Range of Estimates in the BLS Study.

Because of the wide range of estimates presented in the BLS study this section will examine the reason for those ranges and try to determine the most apropriate estimate in the BLS study.

A. Marginal Tax Rate:

The 24,407 job estimate and the 127,336 estimate reflect use of a marginal tax rate of 29 percent (reflecting a 20 percent price increase)[3] and two different data bases: those from an IRS survey and the Bureau of Economic Analysis (BEA). The 43,319 and 218,958 estimates reflect use of a marginal tax rate of 44% (reflecting a 40% price increase). However, it is clear from the author's discussion that the marginal tax rate chosen on any empirical basis was 29 percent, reflecting an estimate of the marginal tax rate of individuals with income over $20,000. The 44% tax rate was chosen as a means of performing a sensitivity analysis—to explore how changing the tax rate would affect the outcome. No basis for this 44 percent rate was given. A rate lower than 29% could have been chosen as well to perform sensitivity analysis and the resulting range of estimates would have been lower. Therefore, the actual result of the study using empirically based marginal tax rates is a range of 24,407 to 127,336.

The CRS study used a marginal tax rate of 36 percent (reflecting a 28% price increase), the rate used by the Treasury Department in estimating the revenue loss.

[1] "The Employment Effects of the Proposed Change in the Tax Deductibility of the 'Three Martini' Lunch," by Stephen D. Braithwait, Congressional Record, February 22, 1978, pp. S1725–S1728. The study is not attributable to the Bureau.

[2] "The Proposed Curtailment of the Deduction for Business Expenses: General Issues and the Employment Impact in the Restaurant Industry," by Jane G. Gravelle, Congressional Research Service, Library of Congress, February 23, 1978.

[3] With a 29 percent marginal tax rate, the cost of $100 worth of entertainment expenses is $71. With the elimination of one-half of the deduction, the price will rise by $29x(½) or $14.50. $14.50/$71 equals 20 percent.

B. The Data Base:

The wide difference between the 24,407 job loss estimate and the 127,336 estimate derives from the use of two widely disparate data bases. The IRS data were based on a tax return survey and adjusted to reflect entertainment meals. This number was estimated at $2.4 billion in 1973. The Bureau of Economic Analysis data were the estimated portion of consumption of food and beverages in the economy which was associated with business expenditures. This estimate was $12.85 billion in 1973. The wide disparity between these two numbers can be explained by noting that the $12.85 billion BEA estimate consists mostly of expenditures which would not be affected by the restriction on deductibility, including expenditures of tax exempt entities (such as the government and other non-taxable entities) and business expenditures for food and beverages consumed when the employee is in travel status. Thus, the BEA data is conceptually incorrect for estimating the impact of the restriction on entertainment expenses on employment. When only the conceptually correct IRS data is used (adjusted to 1976), the estimate in the BLS study is 24,407 jobs, an estimate which is actually lower than the estimate in the CRS study.

C. Final Reconciliation of CRS and BLS Relative Price Effects:

The difference between the 40,000 job estimate in the CRS study and the 24,407 job loss estimate in the BLS study can be attributed to three factors, all of which lead to the lower BLS estimate. The first is the marginal tax rate effect described above. The second is that the consumer demand model generated slightly lower price elasticities than those used in the CRS study. The CRS study used a demand curve with a unitary elasticity. The BLS study reflects elasticities of .86 for food and .665 for alcohol when the 29% marginal tax rate is used and elasticities of .745 for food and .576 for alcohol when the 44% marginal tax rate is used. Thirdly, the BLS study used an in-put, out-put model for translating changes in demand to employment, which apparently led to an approximate ⅔ percent decline in employment for each 1 percent decline in demand.

The marginal tax rate data used in the CRS study is probably a better measure for determining relative price effects than that in the BLS study since the 36 percent marginal tax rate is directly associated with business expenditures. However, use of the empirically based elasticities in the consumer demand model and use of the in-put, out-put model would seem to present improvements over the parameters used in the CRS study. If the marginal tax rate in the CRS study were retained and the elasticities and employment parameters in the BLS study used, the job estimate for 1976 would be around 30,000 jobs. This more precise measure represents an improved estimate of the job effect deriving from the relative price effects.

D. The Income Effect and the Dynamic Context: Aggregation Problems:

The CRS study took the two additional steps of looking at the economic stimulus from the tax cut and the share of that increased demand accruing to the restaurant industry as well as placing the effects in a more dynamic context (i.e. looking at the change in growth rate rather than absolute levels). These steps were included because the public policy concern at that time was focused on the actual lay-offs with inability to obtain similar jobs. Subsequent to the CRS study, and also mentioned in the text accompanying the insertion of the BLS study, the question of the degree of aggregation in the CRS study was raised. Basically, the criticism is that while there would not be an absolute decline in jobs in the entire industry, there could be in the particular part of the industry (sit-down, full menu restaurants) which would be most affected. Furthermore, it was argued that the rate of growth in that segment was lower than the overall growth rate.

The BLS study reflects the same level of aggregation as the CRS study; however, it does not explore the further questions of stimulus from the tax cut and growth rates in the industry in general and cannot be criticized on that ground.

While the level of aggregation in the CRS study was necessitated by the limitations of available data, the criticism is a valid one. However, data which was subsequently presented in the hearings on the tax cut, and some of the data in the BLS study now allow some exploration of this question.

The National Restaurant Association presented data[4] indicating that the sit-down restaurants in 1977 represented $52.5 billion in revenues, and 3 million employees. If the decline in price of 2% ([.28 price increase x $3.777 billion (affected expenditures in 1977)] divided by $52.5 billion) is multiplied by the apparent elasticity in the BLS study (around .7) and by the implied less than proportional reduction of jobs (.67), the net effect on employment is .9%. However, in that same submission, employment in that segment of the industry is estimated to increase by 3.3% from 1977 to 1978. Thus jobs in that segment would still be expected to increase.

Further refinements in disaggregation are made more difficult because there are no growth figures for the particular segments of the industry being considered. A survey by the American Hotel and Motel Association[5] asked its members what percentage of food and beverage sales was business and convention expenditures. The response showed an average of 57.5 percent and 72 percent for the highest category. Using data from the BLS study and the 36 percent marginal tax rate, the employment effect would be 1.4% overall and 1.8% for the highest category.[6] A statement by Thomas W. Power, General Counsel, Food-service and Lodging Institute,[7] claimed that most of the estimated $3.2 billion in sales attributable to business entertainment occurred in a small percentage of the nation's restaurants—that is, higher-priced sit-down restaurants. The annual sales of this small group of restaurants were approximately $10 billion. If it is assumed that all of the entertainment expenses occurred in this sector, the net result would be a 4.2% decline.[8]

The basic unknown in this exercise is what rate of growth the higher-priced sit-down restaurants are experiencing. If, for example, the rapid growth rate in the fast food industries reflects a tendency to substitute fast food meals for those in moderately-priced restaurants as opposed to higher-priced sit-down restaurants, the higher priced restaurants may be growing faster than the 3.3 percent growth rate for sit-down restaurants overall.

Without sufficient data one cannot come to certain conclusions. However, except for the last estimate, the reduction of jobs was still less than overall projected growth rates; even with the last estimate, the shortfall was quite small (around 5,800 jobs for 1976). Therefore, it still seems unlikely that there will be any significant lay-offs which would result from enactment of the proposal, particularly in view of normal turnover in the industry.●

---

[4] Testimony of the National Restaurant Association, in hearings before the Senate Finance Committee on the Revenue Act of 1978, Part 2, August, 1978, pp. 526–527.

[5] Testimony of the American Hotel and Motel Association, in hearings before the Senate Finance Committee on the Revenue Act of 1978, Part 2, August, 1978, p. 534.

[6] Calculated in the following manner:

Percentage Business	0.575	0.720
Times Percentage of Business Reflecting Entertainment (IRS data divided by BEA data for 1973)	0.187	0.187
Times Percentage Price Reduction for 36% Marginal Tax Rate	0.28	0.28
Times Approximate Price Elasticity from BLS Study	0.7	0.7
Times Translation from Reduction in Demand to Reduction in Employment	0.67	0.67
Equals	0.014	0.018

[7] Statement of Thomas W. Power, General Counsel, Foodservice and Lodging Institute, in hearings before the Senate Finance Committee, Part 2, August, 1978, p. 544.

[8] Calculated similar to manner described in note 6: (.32)x(.28)x(.7)x(.67).

THE DEATH OF DEWEY BARTLETT

● Mr. WILLIAMS. Mr. President, we all mark with great sadness the passing of our former colleague, Dewey Bartlett. His service here among us was an example of extraordinary courage and a reminder that a smile and good humor can be most potent weapons when battling for one's convictions.

Dewey was a fine public servant and statesman and the comments others in the Chamber have made about his record reflect the high esteem in which we all held him. I have to confess that many of his greatest victories were moments of retreat for me but rarely has there been someone who was such a gracious adversary.

Mr. President, on that long night at the close of the 95th Congress we had an opportunity to express our appreciation and affection for Dewey while he was still here on the floor with us.

Thinking back on that time, I remember saying how much I appreciated in him the virtue of compassion which was reflected in a simple thing like his love for the pigeons which flock around the Russell Senate Building.

Well, Mr. President, during our storm a few weeks back I noticed that the pigeons are not getting as good treatment now that Dewey's gone, particularly when snow covers the ground, so I bought a bag of birdseed to help tide them over.

When I feed those birds, I will think of Dewey, his love for life and his devotion to making the world around him a little better for all who exist together in it.

Mr. President, we have lost a noble Senator and wonderful person.●

SENATE BUDGET COMMITTEE AND CONGRESSIONAL RESEARCH LETTER STUDIES ON BALANCED BUDGET

● Mr. MUSKIE. Mr. President, I call to Senators attention two staff studies that have been prepared by the staff of the Senate Budget Committee and the Congressional Research Service. They analyze the various approaches to a balanced budget proposed in State applications for a constitutional amendment and in legislative proposals introduced in the Senate to date. Mr. President, I ask that these documents be printed in the RECORD.

The documents follow:

MEMORANDUM

To Senator Muskie.
From Jill Scheu and Lew Shuster.
Date March 1, 1979.
Subject A balanced Federal budget: Analysis of State applications and Senate legislative proposals.

Almost 50 State Petitions, bills and resolutions focused on a balanced federal budget are now under consideration in the Senate. To aid the Budget Committee's review of these matters, an analysis of those documents has been prepared. This memorandum categorizes and summarizes the constitutional convention applications from the states for a balanced federal budget and the legislative proposals for budgetary balance introduced in the Senate in the 96th Congress. Categorization is based primarily on the formula used to achieve a balanced budget. For each category there is a brief description and analysis of the economic defects.

1. Balanced Federal budget formula:

a. State Applications:

(1) Four states (Florida, Georgia, North Carolina, and Oregon) have passed applications that incorporate the following wording:

". . . to require a balanced federal budget and to make certain exceptions with respect thereto." [1]

Three applications are convention calls only; the fourth also requests Congress to propose an amendment.[2]

Georgia would call convention for the "specific and exclusive" purpose of proposing this amendment. In addition, the Georgia application states that it constitutes a continuing application until ⅔ of the states have submitted applications, or if Congress proposes an "identical" amendment before January 1, 1977, the application will cease to be in effect.

Oregon's application is similar to Georgia's, except that it gives Congress until January 1, 1979, to propose an identical amendment. It also calls on other state legislatures to pass similar petitions.

North Carolina's application imposes a time limitation so that in the event Congress proposes the amendment, the budget must be balanced within four years of the amendment's ratification.

(2) Idaho adopted the new NTU model petition which provides:

". . . that the federal budget be balanced in the absence of a national emergency."

The application also contains the following resolutions:

Congress shall propose an amendment or, alternatively, Congress shall call a convention for the specific and exclusive purpose of proposing such an amendment;

This application constitutes a continuing application until ⅔ of the legislatures have made application, but if Congress proposes an identical amendment, then this petition is no longer in effect;

This application is null and void if the convention is not so limited;

This legislature proposes that legislatures or other states similarly apply to Congress.

It is probable that Indiana and Utah, states recently adopting applications, also adopted this model.[3]

b. Legislation Introduced in the Senate: None.

c. Defects:

Limits the ability of the federal government to respond quickly and flexibility to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression had already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of economic growth is refrain from cutting taxes.

2. Appropriations/revenues formula:

a. State Applications;

(1) 10 States (Alabama, Kansas, Nebraska, Nevada, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee and Virginia) passed applications using the following formula:

(In the absence of a national emergency . . . the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year."

(2) Eight of these states (Alabama, Kansas, Nebraska, New Mexico, Oklahoma, Pennsylvania, South Dakota and Virginia) passed identical petitions[4] based on the first model petition of the National Taxpayers Union which included the following resolutions:

That Congress shall submit an amendment containing this formula to the states for ratification;

That alternatively, Congress shall call a convention for the "specific and exclusive purpose" of proposing such an amendment;

That the legislatures of each of the several states shall pass similar applications.

The other two (Nevada and Tennessee) used the same basic formula, but only called for a convention.[5]

(3) Four more states (Arizona, Maryland, South Carolina and Wyoming) have passed applications using the same formula, but adding a clause which excludes from total revenues all revenues derived from borrowing.[6]

b. Legislation Introduced in the Senate: None.

c. Defects:

Goes well beyond the concept of a balanced budget; would require large budget surpluses because appropriations in recent years have run about 10% higher than outlays and are likely to continue to do so in an expanding economy. This would seriously slow economic growth.

Would be likely to undermine the "full funding" concept for multi-year projects under which the full cost of such projects is appropriated at the outset so that Congress and the public can see in advance the total cost.

Limits the ability of the federal government to respond quickly and flexibly to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression had already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of economic growth is to refrain from cutting taxes.

3. Outlays/revenues formula:

a. State Applications:

(1) Delaware passed a convention call only, to propose an amendment requiring that the costs of operating the federal government shall not exceed its income during any fiscal year except in the event of a declared war.

b. Legislation introduced in the Senate:

(1) Six resolutions (Talmadge, Helms, Lugar, McClure, Heflin, Byrd, H.) use simple balance-the-budget language stating that total expenditures or outlays shall not exceed receipts. Two provide for suspension of the terms of the amendment on a vote by 2/3 of each House; one provides for suspension if both Houses agree to a concurrent resolution declaring an emergency.

c. Defects:

Limits the ability of the federal government to respond quickly and flexibly to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression has already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of economic growth is to refrain from cutting taxes.

4. Balanced budget/national debt formula:

a. State Applications;

(1) Three states (Texas, Louisiana and Mississippi) have passed applications which deal with both a balanced budget and reducing the national debt:

---

[1] Exceptions are not spelled out in the call.

[2] Florida would call a convention for the "sole" purpose of proposing this amendment.

[3] Copies of these applications are not yet available for actual review.

[4] Kansas passed a petition identical in all respects except that a time limit is imposed in the event Congress proposes the amendment, so that the budget must "balance" within 5 years of the amendment's ratification by the states.

South Dakota's petition is also identical except that it adds a clause proclaiming the petition null and void if the constitutional convention is not limited to such exclusive purpose or if Congress proposes an amendment "identical in subject matter" to the one contained in the state's application.

[5] Nevada's application is a convention call only and does not request Congress to propose an amendment. Rather, it states that the petition constitutes a continuing application until two-thirds of the other states have made similar applications. However, should Congress propose a "similar" amendment before January 1, 1981, the application will cease to be in effect.

Tennessee's petition is also a convention call only. The suspension clause is also modified so that it takes the President and two-thirds of the Congress to declare a national emergency, and the suspension applies only to one particular fiscal year. A further provision states that the application is a continuing one and will cease to be in effect only if Congress proposes such an amendment within 60 days after two-thirds of the states have made application for a convention.

[6] In addition, Arizona's application included a clause stating the petition is to stay in effect until the will of the state to the contrary is communicated to the Congress.

Maryland, South Carolina and Wyoming include the requirement that the convention should be called for the specific and exclusive purpose of considering this amendment. In addition, all three applications contain a suspension clause which allows the President and two-thirds of all members of each House to set aside the requirement for that fiscal year in cases of national emergency. All three applications also call on other state legislatures to pass similar applications.

". . . achievement of a balanced budget and amortization of the national debt."

While Texas simply calls for an amendment, not a convention, which would require the achievement of a balanced budget within a reasonable time after adoption and establish a procedure for amortizing the national debt, the provisions of the Louisiana and Mississippi petitions call for a convention and present the same issue in more specific terms.[7]

b. Legislation introduced in the Senate:

(1) Three joint resolutions (Wallop, Thurmond and Armstrong) provide for both a balanced budget and repayment of the national debt. Two provide that 5% of the receipts shall be available only for repayment of the national debt over a twenty year period. The third requires repayment at the rate of 1/10 every 10 years for 100 years. All three contain clauses allowing suspension of the provision for national emergencies; one requires that any indebtedness incurred pursuant to such a suspension must be repaid within three years.

c. Defects:

The statement is internally inconsistent, since amortization of the national debt would require a budget surplus, not a budget balance.

Puts a further drag on economic growth.

Limits the ability of the federal government to respond quickly and flexibly to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression has already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of economic growth is to refrain from cutting taxes.

5. Year and GNP limitation formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) Two bills (Dole, Roth) have been introduced to amend the Budget Act by imposing limits on total outlays and revenues contained in concurrent budget resolutions to specific percentages of the GNP. The Dole bill also limits the number of budgets that may contain a deficit to not more than one every four years. In addition, any deficit must be made up within two years. Each bill provides for suspension of its provisions by a ⅔ vote in each House.

(2) One joint resolution (Dole) limits the number of years in which expenditures may exceed receipts to 3 out of 8 years. Each year's deficit must be made up by surpluses in the following years. Federal outlays shall not exceed 18 percent of the GNP beginning with the third year after ratification.

c. Defects:

Contains arbitrary limitations of 1 deficit in 4 years, or 3 deficits in 8 years—the state of the economy may require anywhere from 0 to 4 to 8 deficit years in a particular time period, and there is no way of knowing for sure in advance.

Imposes an arbitrary spending limit, constraining outlays without consideration of economic and social needs.

Has a perverse cyclical impact, allowing outlays to rise rapidly in inflationary periods and holding down outlay growth when ecoomy has just experienced a recession.

6. Surtax formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) Two joint resolutions (DeConcini, Stennis) require the President to determine the amount by which outlays exceeded receipts at the close of each fiscal year, and to then impose an income tax surtax that would produce the amount. The two resolutions are identical except that one requires a ⅔ vote for suspension, the other a ¾ vote.

c. Defects:

Places a heavy burden on the economy—if a deficit was experienced one year because the economy experienced a recession, the combined effect of a balanced budget and the surtax the following year might plunge the economy into an even deeper recession.

Promotes a spend now, pay later mentality—spend this year, taxes rise automatically next year.

Limits the ability of the federal government to respond quickly and flexibly to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression had already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of economic growth is to refrain from cutting taxes.

7. Percent of national income formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) One joint resolution (McClure) restricts outlays to not more than 33⅓% of the average national income for the 3 prior calendar years. A vote of ¾ from both Houses may approve expenditures in excess of 33⅓% in case of war or emergency.

c. Defects:

Imposes an arbitrary spending limit, constraining outlays without consideration of economic and social needs.

Averages 2 years of actual data with 1 year of projection, forcing us to base a spending limit on a forecast of national income that is uncertain and subject to change.

Has a perverse cyclical impact, allowing outlays to rise rapidly in inflationary periods and holding down outlay growth when economy has just experienced a recession.

Promotes the idea that this is how fast spending *should* grow—the specified ceiling might become a floor.

8. Spending limit tied to prior year's growth formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) Within the next two weeks a joint resolution is expected to be introduced (Stone and Heinz) that incorporates the Friedman formula. It would hold the growth of federal spending in any year to the rate at which the economy grew the year before. Restrictions would be even tighter if inflation exceeded 3%. Any surpluses would be used to reduce the national debt. The spending limits could be lifted in times of national emergency by a ⅔ vote of Congress. The limits could be lifted permanently only with a ¾ vote of Congress and approval of 26 state legislatures.

c. Defects:

Imposes an arbitrary spending limit, constraining outlays without consideration of economic and social needs.

Estimates of GNP represent the "best guess" of a group of Bureau of Economic Analysis experts—their judgment would be the basis for a limit on federal spending.

Holds down outlay growth when the economy has just experienced a recession, which could hinder progress of an economic recovery.

9. Deficit spending prohibition formula:

a. State Applications:

(1) Colorado passed a convention call only, for the specific and exclusive purpose of proposing an amendment which would prohibit deficit spending. The application would be void if the convention was not so limited.

b. Legislation Introduced in the Senate: None.

c. Defects:

Limits the ability of the federal government to respond quickly and flexibly to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression had already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of economic growth is to refrain from cutting taxes.

10. Limited Federal debt formula:

a. State Applications:

(1) Arkansas passed a convention call only to consider an amendment that would require no debt above the national debt ceiling existing at the date of ratification, unless voted by ⅔ of Congress, or unless to repel invasion, suppress insurrection, defend the United States in war or to pay the existing debt.

b. Legislation Introduced in the Senate: None.

c. Defects:

Would require a budget surplus of $31.3 billion in FY 80, which would seriously slow economic growth.

Limits the ability of the federal government to respond quickly and flexibly to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn

---

[7] Louisiana and Mississippi passed convention calls only, suggesting the following amendment:

Congress shall make no appropriation that would cause total appropriations to exceed revenues. (Section 1)

There shall be no increase in the national debt, and the existing debt shall be repaid over a 100 year period after ratification, with payments of no less than 1/10 every 10 years. (Section 2)

Where there is a national emergency declared by ¾ of the Congress, Section 1 may be suspended, but not for longer than the two year term of the Congress that suspended it.

If the national emergency continues, suspension of Section 1 must be reenacted.

National debt incurred pursuant to a suspension shall be repaid under the provisions of Section 2.

The amendment shall be effective for all fiscal years beginning 6 months after ratification.

The Louisiana application would strictly limit the scope of the Convention. Also the application is continuing until ⅔ of the other states pass similar applications.

The Mississippi application does not limit the scope of the convention. Also, it states that if Congress proposes an identical amendment before January 1, 1976, the application expires; otherwise it is continuing until ⅔ of the other states apply.

which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression had already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of ecoonmic growth is to refrain from cutting taxes.

11. Balanced budget in years of strong economic growth formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) A bill (Proxmire) would amend the Employment Act of 1946 to require outlays to equal receipts in any year in which real economic growth exceeds 3%. Should the President and ⅔ of Congress determine that a national emergency exists, the President may submit an alternative budget, in addition to the "balanced" budget.

c. Defects:

Imposes rigid formula as substitute for careful budget decisions in light of each year's economic circumstances.

Requires a balanced budget, and would therefore slow economic growth in the recovery years immediately following a recession, which could abort the recovery and plunge the economy into an even more severe recession or a depression.

Triggers the balanced budget requirement on the basis of an uncertain economic forecast which could be subject to substantial revision.

12. Federal spending freeze formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) A resolution (Stone) requires the Budget Committee to include in the concurrent resolutions for FY 80, FY 81, and FY 82 levels of outlays and budget authority which are not greater than 98% of the levels contained in the final concurrent budget resolution for FY 79.

c. Defects:

Freezes outlays at $447.8 billion through fiscal year 1982, resulting in cuts from current policy of $73 billion in fiscal year 1980 and $177 billion by fiscal year 1982.

Ignores growth in outlays required by current law, including effects of inflation adjustment and demographic changes on Social Security.

Means that by fiscal year 1982, we would have to abolish all Federal welfare, transportation, housing, agriculture, education, community development, employment and training, and energy programs and *still* fall short of cuts required to hold outlays to this level.

13. Unallocated $10 billion outlay cut formula:

a. State Applications: None.

b. Legislation Introduced in the Senate;

(1) A resolution (Roth) expresses the sense of the Senate that the first concurrent resolution for fiscal year 1980 should recommend a level of outlays at least $10,000,000,000 lower than the level recommended by the President.

c. Defects:

Imposes an arbitrary spending cut that has no rational basis and no analysis of economic and social needs or specific program areas to be cut.

Would require significant spending cuts below *current law*—something the Budget Committee expects to do this year, but which will be very difficult.

Falls heavily on outlays from new budget authority—26 percent of outlays are from prior year budget authority.

14. Balanced two-year formula;

a. State Applications;

(1) North Dakota's application calls upon "the people of the several states for a convention" to propose the following amendment:

The President shall submit a budget at the beginning of each new Congress.

Expenditures for each 2 year period shall not exceed estimated revenues except during war or national emergency declared by Congress.

b. Legislation Introduced in the Senate: None.

c. Defects:

Limits the ability of the federal government to respond quickly and flexibly to changing economic conditions, particularly in periods of recession and high unemployment.

May be absolutely impossible to achieve in periods of steep economic downturn which, though severe, would be difficult to characterize as a "national emergency."

Does not define "national emergency" thus causing the likelihood of prolonged debate which would likely go on until a deep recession or depression had already occurred, thus rendering any timely federal budget response impossible.

Could lead to higher future taxes and higher future spending, since the simplest way to balance the budget in periods of economic growth is to refrain from cutting taxes.

15. Separate Federal capital and operating budget formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) A resolution (Hart) expresses the sense of the Senate that both the President's Budget and the Congressional Budget should divide proposed outlays between those for capital items and investment-type programs, and those for operating or current program or purposes.

c. Defects:

Promotes false sense of budgetary balance and masks the impact of the federal budget on the economy.

Weakens the budget as a control mechanism—could lead to higher federal spending for programs included in the capital budget and higher total federal spending.

Fails to define capital and operating programs; capital programs for the Federal government are not the same as for private business, and the definitions could cause extended controversy, particularly if the capital portion gets less scrutiny.

Changes accounting without any change in Treasury financing needs or the impact of the budget on the economy.

16. Establishment of a regulatory budget formula:

a. State Applications: None.

b. Legislation Introduced in the Senate:

(1) A bill (Bentsen) to amend the Congressional Budget Act, calling for new procedures aimed at producing a regulatory budget which would set maximum costs of compliance with rules and regulations promulgated by every federal agency.

c. Defects:

Imposes an unwieldy layer of procedural requirements on top of a very tight Congressional budget timetable.

Duplicates existing requirements for regulation impact analysis, focuses on costs rather than a balancing of costs and benefits, and fails to put information to use to review and possibly alter current laws and regulations. (Sharp contrast to Sunset, which would use existing analysis and provide a review process for evaluating each program's costs and benefits and terminating those which are no longer productive.)

Suffers from the problem that we could never measure private sector "costs of compliance" with the certainty implied by a regulatory budget, and those private sector expenditures would be beyond direct federal control.

CONSTITUTIONAL LIMITATIONS ON THE BUDGET

During the first month of the 96th Congress, more than 50 constitutional amendments were proposed to require a balanced budget or to limit the expenditures of the federal government. Approximately one dozen of these measures have been introduced in the Senate, and more can be expected as the pace of legislative activity accelerates. Congressional action has been spurred by petitions of many state legislatures for a constitutional convention to consider a balanced budget amendment. According to some counts, more than three-quarters of the required 34 states have already applied to Congress for a constitutional convention.

This paper reviews the various approaches to balanced budgets and spending limitations. It then examines some of the possible impacts of these types of constitutional restrictions on congressional budget practices. Finally, it explores the possibility of a capital budget for the federal government.

BALANCED BUDGETS AND SPENDING RESTRICTIONS

All of the proposed amendments introduced in the Senate intend to circumscribe the budgetary powers of Congress, but they pursue this objective in different ways. Nine purport to require a balanced budget each year; three would limit the total outlays of the federal government. One of the proposals (S.J. Res. 5) combines types of restrictions; Sen. McClure has introduced parallel measures providing for a limitation on federal spending (S.J. Res. 9) and a balanced budget (S.J. Res. 10).

Although the balance budget proposals are more numerous, there are indications of a trend away from this approach in favor of spending limitations. The Tidewater conference of Republican officials refused to endorse a balanced budget amendment and opted for spending limitations instead. Moreover, the Friedman (National Tax Limitation Committee) proposals call for a spending limit, not a balanced budget. There appear to be two distinct explanations for the sudden cooling of interest in a balanced budget by constitutional fiat. First, the requirement could either be unworkable or damaging to the economic interests of the United States. In case of an economic downturn, government receipts inevitably would fall below their projected level, and if Congress tried to compensate for the shortfall and retain a balance by raising taxes or lowering expenditures, it would further aggravate the nation's economic problems. (As will be discussed below, most budget-balancing amendments authorize Congress to suspend this requirement in case of emergency.) Second, a balanced-budget rule might induce higher taxes rather than lower expenditures. While this requirement would not compel Congress to legislate increases in tax rates, it might thwart the passage of the types of tax-cutting legislation approved by Congress in each year since 1975. If this were to happen, during periods of high inflation and economic growth, the portion of personal income going to the payment of federal taxes would inexorably rise.

Many of the balanced budget amendments would not actually bar deficit spending. S.J. Res. 2 (DeConcini) and S.J. Res. 6 (Stennis) provide that Congress "shall seek to assure" a balanced budget, but they do not prohibit either appropriations or outlays in excess of revenues. S.J. Res. 4 (Lugar) would require that the concurrent resolutions on the budget adopted twice (or more often) each year by Congress be balanced, but under this procedure it still would be possible for the federal government to incur a deficit. Consider the following hypothetical circum-

stances: the second resolution adopted by Congress shortly before the start of the fiscal year projects a balance. With all of the regular appropriation bills already enacted, it no longer is necessary for Congress to take any budget-related action. But during the fiscal year, economic performance falls below the expected level with the result that federal revenues also decline, thereby turning the projected surplus into an actual deficit without any action by Congress. It should also be noted that the congressional budget resolutions presently exclude about $12 billion of off-budget outlays; federal spending could be imbalanced in this amount without violating the letter of the Lugar amendment.

Some of the amendments impose the balanced budget requirement on Congress, others merely declare that total outlays shall not exceed total revenues. S.J. Res. 7 (Armstrong) for example, provides that "Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total estimated revenues of the United States for such fiscal year." To the extent that deficits result from actions other than those taken by Congress in its appropriations process, Armstrong would not be an obstacle. The executive branch would be permitted to spend in excess of revenues, provided, of course, that it had budget authority to do so. Furthermore, deficits occasioned by shifts in federal revenues. whether by action of Congress or because of economic conditions, would not be directly covered by Armstrong. Another proposal, S.J. Res. 5 (Dole), does not mention Congress at all. It stipulates that "the aggregate amount of expenditures made by the government during any fiscal year shall not exceed the net amount of revenue." Leaving aside its obvious intent, a strict interpretation of the Dole Amendment is that Congress can appropriate in excess of revenues but that the executive branch would be barred from spending any excess.

Several amendments specify that "Congress shall assure that the total outlays . . . do not exceed the total receipts." (S.J. Res. 13, 16). This language clearly vests enforcement in Congress, but fulfillment of this responsibility might not be an easy task. Since actual outlays are made by the executive branch, a balanced budget requirement might lead to an expansion of executive impoundment practices which were curtailed by the Impoundment Control Act of 1974. If Congress were to require a President to use the impoundment controls even in the face of a prospective deficit, the effect might be to obstruct achievement of a balanced budget.

The problems in interpreting the Armstrong, Dole and other amendments are not semantic gyrations but arise out of the crucial fact that Congress does not presently make legally binding outlay decisions. The appropriations made by Congress relate to the amount of budget authority (authority to incure obligations) required by the federal government, not to its cash needs or expected outlays. Any effective constitutional prohibition would have to reckon with the budgetary practices of the United States and the division of responsibility between the executive and legislative branches. These issues will be considered later in this report.

The difficulty of securing budgetary balance by congressional action alone are rooted in two features of the federal budget process. First, as has been mentioned, Congress has an obligations-based appropriations process. As a result, the outlays made in any fiscal year depend not only on the current decisions of Congress but on past actions as well. Second, more than three-quarters of each year's budget outlays are "uncontrollable under existing law", either because of past legislative or executive actions or because of exogenous factors such as the inflation and unemployment rates.

Spending Limitations. Each of the measures calling for a limitation on total federal outlays takes a different approach. The Dole amendment would hold total outlays to no more than 18 percent of GNP: McClure's spending limitation (S.J. Res. 9) would restrict outlays to no more than one-third of national income; the Friedman proposal would limit each year's increase in outlays to the growth in GNP, minus an adjustment for inflation.

Dole's amendment would constrain federal spending at a level significantly below Carter's 1980 budget or projections for the next several years. His 18 percent of GNP ceiling compares to the 21.7 percent in Carter's budget and to the 22.6 average for the past 5 years. If the 18 percent limitation were in effect for fiscal 1980, total outlays would have to be restrained to approximately $450 billion. About $90 billion below the total (including off-budget) outlays recommended by the President. Although it deals only with the spending side of the budget, this limitation contemplates a truly significant reduction in federal tax revenues. Assuming no change in the existing tax structure, federal budgets in the 1980s would be running massive surpluses in excess of $100 billion per year. (Of course, this estimate does not take into account the likely dampening effect of such surpluses on the economy and budget receipts.) The overriding purpose of the 18 percent limit—as well as the other proposed spending limitations—is to retrench the relative size of the public sector.

This may be a difficult-to-achieve goal, however. Twenty years ago, in 1959, the federal budget was 19.5 percent of GNP; optimistic forecasts for the 1980s assume a larger federal government than would be allowed by the Dole amendment. Carter's latest budget projects that federal outlays will recede to 20.7 percent of GNP in fiscal 1982, but this target allows almost no room for program growth.

The Dole amendment would not prevent the government from using the budget to manage the economy but would effectively require that short-term fiscal stimulation be provided through tax reductions rather than expenditure increases. Yet changing economic conditions could play havoc with the 18-percent goal. Even if Congress were to approve budget resolutions and appropriations bills which conform to this target, unanticipated downturns in the economy could force expenditures well above 18 percent of GNP. Because of automatic features of fiscal stabilization, when economic output drops, there is a modest rise in federal expenditures. With smaller real GNP and higher outlays, the federal budget consumes a larger share of economic resources even without action by Congress. Thus, as a consequence of the 1958 recession, outlays climbed from 18.7 to 19.5 percent of GNP in fiscal 1959, only to recede to 18.5 percent in the following year when economic growth resumed. Similarly, the 1975 recession occasioned a 3 percent rise in federal outlays as a percent of GNP, with a dropoff (but not to the previous percentage level) when economic conditions improved.

McClure's amendment (S.J. Res. 9) would limit total outlays to no more than one-third of the average national income for the three prior calendar years. Unlike Dole, therefore, outlays would be linked to past rather than projected economic performance. Moreover, the use of a multiyear average in the McClure approach would shield the outlay limit somewhat from zigzagging economic performance.

National income is computed by subtracting capital consumption and various tax payments and liabilities from GNP along with several other statistical adjustments. In using this economic measure, McClure eschewed other, more familiar, computations such as personal income and disposable personal income. If it were applied, the 33⅓ percent limitation would compel a modest reduction in federal outlays (perhaps $10 billion below the total contemplated in the 1980 budget). Its main effect, however, would be to constrain future budgetary growth by limiting increases in federal outlays to the growth in national income. One can only conjecture about the severity of this constraint, for it depends on what the size of the budget would be in the absence of any limitation. But it is worth noting that outlays have climbed from approximately 30 percent of average national income at the start of the 1970s to about 34 percent at the present time.

The Friedman (National Tax Limitation Committee) proposal would limit each year's rise in total outlays to the increase in GNP during the preceding calendar year, but the allowable increase would be reduced by one-fourth of the rate of inflation above three percent. (The Friedman formula defines inflation as the difference between the change in real and nominal GNP.) Thus, if nominal GNP were to rise by 9.5 percent and prices by 7 percent (these rates approximate the Administration's economic forecast for 1980), the next year's budget outlays would be permitted to rise by no more than 8.5 percent.

This approach would not only bar any future permanent growth in the relative size of the budget, but it is likely to force a progressive decline as well. Although it lacks a rollback feature or an explicit ceiling (such as is found in the Cole and McClure measures), the inflation penalty in the Friedman formula would automatically compel a shrinkage in the government's relative expenditures every year that inflation exceeded three percent. Moreover, the Friedman formula differs critically from Dole and McClure in that it does not put a floor under the mandatory reduction in the federal budget. Dole does not require shrinkage below 18 percent of GNP; McClure does not compel outlays to be less than ⅓ of national income. But Friedman could set into motion a change in federal government that reduces it to well below either of the other targets.

The actual impact of Friedman will depend on the rate of inflation: the higher the rate, the faster and steeper will be the decline in relative outlays. For example, if the economic projections for 1980 with respect to inflation and GNP were to persist throughout the 1980s (prices rising 7 percent and output 9.5 percent), by the end of the decade the federal budget would have to drop from 21.7 percent of GNP to no more than 17.1 percent. While the economic assumptions upon which these calculations are based are not likely to materialize (it is highly unlikely that economic growth and inflation will experience constant rates through the decade), the implication nonetheless is unavoidable, that the Friedman scheme could require much steeper retrenchment than appears on its face.

The Friedman proposal speaks of a gentle as opposed to an abrupt scale-down in the relative size of government. But the potential change could be far greater than has been experienced in the postwar era. During the 1960s, outlays grew 2 percent in relative terms, and they have increased an additional one percent in the 1970s. As demonstrated above, with persistent inflation, the change within a single decade could be far greater under the Friedman idea.

The inflation penalty can have severely retrenching effects during periods of stagflation, when the economy is either stagnant or declining and inflation is high. The combination of these conditions would simultaneously lower the GNP base on which out-

lay increases are to be computed and raise the inflation penalty. The net effect could be a sharp decline in relative expenditures during a period of high unemployment. This real possibility can be shown by applying Friedman's formula to the economic conditions that prevailed in the mid-1960s when the OPEC boycott, worldwide food shortages, and other factors took a heavy economic toll. Real GNP fell in 1975 while unemployment soared to 9 percent, with more than 8 million Americans out of work. Nevertheless, inflation was extremely high, slightly in excess of 9 percent as measured by the Friedman formula. Had this spending limitation been in effect, it would have constrained budget outlays for fiscal 1977, the first full fiscal year after calendar year 1975. Total outlays in fiscal 1977 would not have been allowed to exceed $395.4 billion, $10 billion below the amount (including the off-budget entities) initially proposed by President Ford in what was widely regarded as an extremely tight budget, and $17 billion below the final results for that year. Without taking account of automatic adjustments in the economy (for example, a smaller budget might have led to lower GNP than was actually produced), federal outlays would have been about 21.5 percent of GNP, a drop of more than 1½ percent compared to the preceding fiscal year. Thus, in lieu of a gentle decline in GNP promised by the Friedman group, there might have been a steep, destabilizing drop during a period of continuing high unemployment.

The inflation penalty is intended to prod Congress to do something about inflation. In the words of its sponsors, "the higher the inflation rate, the greater the incentive for Congress to reduce inflation." The assumption is that inflation is always within the control of Congress, a position that ignores other contributing factors such as world markets and the actions of other countries.

At the core, the three spending limitations reviewed here seek a forced retrenchment in the size of the federal government. Their principal aim is to assure less rather than more government. McClure would require a modest cutback that probably could be accommodated within conventional budget methods. The cuts might be painful, but they could be achieved without requiring a significant redirection in the scale and priorities of the federal government. Dole would compel a much steeper reduction, amounting to about one-sixth of the size of the federal budget. Unless it was phased in over a number of years, the Dole amendment would be an abrupt turnabout in the role and scope of the federal government. Of course, Dole's concept could be retained but its impact mitigated by pegging the expenditure limit at above 18 percent of GNP. If 20 percent were set as the constitutional limit, it probably could be achieved without a disruptive effect on public policy.

The Friedman approach is open-ended with its impact depending on future economic growth and inflation. But it is possible that over time this could have a much more radical effect on the federal government than either of the other spending limitations. Unless inflation is significantly lower than it has been during the past decade, the size of the federal government will have to contract in order to abide the Friedman limits. Although the reductions would be decremental rather than all-at-once, the long-term consequences could be truly radical. One wonders whether a fundamental reordering of the role and purposes of the federal government should be considered under the guise of a spending limitation. The issues raised by Friedman are far more than budgetary matters alone, for they reach to almost every corner of public policy.

OVERRIDING THE CONSTITUTIONAL RESTRICTIONS

Most of the proposed constitutional amendments would authorize Congress to temporarily set aside the restrictions. While the procedures differ, they usually provide for a concurrent resolution (a legislative measure which is not presented to the President for his review) specifying that conditions warrant deficit spending or expenditures in excess of the constitutional limitation. A few (such as Friedman) predicate congressional override on a declaration of emergency by the President, but most enable Congress to act unilaterally without the participation (or concurrence) of the executive branch.

The proposed amendments differ as to the conditions that would permit an override.

Some refer to "national emergency," others to "grave national emergency"; some mention war, others speak in more general terms. As long as Congress can decide whether a particular condition meets the requirement, the differences in wording are of little consequence. However, the size of the congressional majority required to override could make a big difference. The requirement ranges from a majority of the voting members of the House and Senate in S.J. Res. 11 (Talmadge) to three-quarters of all the members of the House and Senate in S.J. Res. 7 (Armstrong). In a close vote, the numerical standard could spell the difference between victory and defeat for an override attempt. It bears noting that in recent years most of the concurrent resolutions on the budget have passed the House with razor-thin majorities, sometimes fewer than a handful of votes. With House Republicans lined up in virtually solid opposition to deficit spending, the resolutions have barely managed to squeak through. A high constitutional threshold for overriding the limitation is likely to bolster the bargaining positions of congressmen who favor smaller deficits or lower spending. By withholding their support until the deficit or spending level is brought closer to their preference, the holdouts would be able to magnify their influence over the budget. Thus, while a high requirement would not necessarily rule out imbalanced budgets or breaches of the spending limitations, it might lead to smaller deficits and less spending by Congress.

Some of the proposed amendments would place substantive restrictions on the power of Congress to override a balanced budget requirement. S.J. Res. 16 (Wallop) would not permit the deficit to exceed total revenues by more than 10 percent. At current budget levels, this would allow a deficit of about $50 billion. S.J. Res. 5 (Dole) would not permit a deficit in more than three years out of any eight consecutive years. If this restriction were to have retroactive effect, it would bar deficit spending during the first 5 years that the constitutional provision was operative.

REPAYING THE DEFICIT AND THE PUBLIC DEBT

A number of the proposed amendments provide for Congress to liquidate any deficit incurred after the constitutional restrictions take effect. S.J. Res. 2 (DeConcini) and S.J. Res 6 (Stennis) require that any deficit is to be paid off by a surtax levied in the next calendar year. The surtax would become effective without congressional action; all that would be required is a presidential message setting the surcharge at a rate sufficient to cover the deficit. However, Congress could suspend all or part of the surtax by a two-thirds (S.J. Res. 2) or three-quarters (S.J. Res. 6) vote. S.J. Res. 5 and S.J. Res. 16 allow more time for repayment, up to three years in the former and as much as four years in the latter.

A few of the proposed amendments would require the accumulation of surpluses to retire the public debt. S.J. Res. 7 would spread repayment of the debt over 100 years, with 10 percent repaid during each 10 year period. S.J. Res. 16 would establish a 20-year repayment schedule, with annual surpluses equal to 5.5 percent of total outlays used for this purpose.

WHAT'S IN A BUDGET?

Any constitutional restriction on deficits or expenditures must come to grips with the issue of what constitutes the budget of the United States Government. The question of what ought to go into the budget is by no means settled; current practices are a compound of written and unwritten rules, many of which were introduced by the executive branch without the explicit concurrence of Congress. Moreover, the emplacement of an expenditure or budgetary restriction in the Constitution will not bring an end to the improvisation of new governmental forms and accounting procedures. Quite the opposite, one can expect that the more formidable the restriction the more likely that it will invite the executive and legislative branches to contrive new practices. Only one thing can be certain: the more inclusive the definitive of the budget, the more restrictive will be any constitutional limitation on deficits or expenditures.

Off-budget programs. The leading candidates for inclusion in the budget are six federal agencies all or portions of whose activities have been excluded from the budget's totals by Congress. The six off-budget agencies are the Federal Financing Bank (FFB), the Rural Electrification and Telephone Revolving Fund, the Rural Telephone Bank, the Pension Benefit Guaranty Corporation, the Postal Service Fund, and the U.S. Railway Association. A seventh, the Board of Governors of the Federal Reserve System, has a somewhat ambiguous status. It is excluded from the budget by tradition rather than by law.

Off-budget outlays are expected to total $12 billion in fiscal 1980. More than $11 billion of this amount is accounted for by the purchase of federally-guaranteed obligations by FFB. Under its charter, the Federal Financing Bank is authorized to acquire any obligation guaranteed in whole or in part by any federal agency. (It also can purchase direct federal obligations, but these are included in the budgets of agencies making the loans.) There is no limit on the amount of guaranteed loans that can be purchased by FFB. When it needs funds to finance these purchases, FFB borrows from the Treasury which, in turn, provides for its cash needs by borrowing from the public. Thus, FFB's loan activities have the same impact as the regular budget deficit on capital markets.

The House Budget Committee recommended in 1976 (H. Rept. No. 94–1740) that various off-budget agencies be included in the federal budget, but it withheld a recommendation on the status of the Federal Financing Bank pending further study. However, in 1978 (H. Rept. 95–1055, p. 23) the Budget Committee supported legislation to include FFB in the budget. If all off-budget agencies were placed on-budget, there would be an estimated net addition of $12 billion to the fiscal 1980 outlays and deficit. Presumably, this additional amount would be covered by a budget or expenditure limitation written into the Constitution.

Government-Sponsored Enterprises. These enterprises are privately-owned corporations established and chartered by the United States to perform certain "public" functions. Seven such enterprises are identified in the fiscal 1980 budget, and their financial statements are annexed to the Budget Appendix. However, the finances of these organizations are not included in the outlay or deficit totals of the United States Government. The seven sponsored enterprises are credit operations: Student Loan Marketing Association;

Federal National Mortgage Association; Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Land Banks; Federal Home Banks; and the Federal Home Loan Mortgage Corporation.

These enterprises are only a few of the hundreds of corporations created or chartered by Congress since 1791. During the past two decades, Congress has devised a variety of organizations forms combining elements of public and private enterprise. These include private corporations which are funded entirely by federal appropriations (e.g., the Legal Services Corporation) private for-profit corporations which have public and private sources of revenues (Consolidated Rail Corporation), and profit-making corporations partly owned by the federal government (National Railroad Passenger Corporation).

The 1967 President's Commission on Budget Concepts devised a simple test for determining whether a government-sponsored corporation should be on- or off-budget:

"The criterion recommended by the Commission is basically that Government sponsored enterprises be omitted from the budget when such enterprises are completely privately owned."

As the activities and finances of the "quasi-governments" (as they are sometimes referred to) have become more complex, it has become increasingly difficult to use the private ownership test to distinguish between public and private activities. In a 1978 paper for the National Academy of Public Administration, Graham S. Finney argued that "an either/or, public/private world, separating government and for profit enterprises, has long ceased to exist, if it ever really did." But whether or not such distinctions are valid, they would have to be made in applying a constitutional limitation on the budget. Government sponsored corporations would have to be placed either within or outside the budget; no gray areas could be tolerated in deciding whether or not a quasi-public expenditure creates a deficit or exceeds a spending limitation.

The private ownership test is not a full measure of the federal government's involvement—financial and administrative—in the activities of sponsored organizations. With respect to the seven privately-owned enterprises annexed to—but not included in—the budget, the federal government has a considerable interest in their finances and performance. Their financial relationship to the federal government is described in the 1980 budget (Special Analysis, p. 164):

"Since they are private, their activities are not included in the budget totals. They are all subject, however, to some form of Federal supervision and by law or by custom consult with the Treasury Department in planning the marketing of their debt.

"Government sponsorship has endowed these enterprises with certain characteristics that differentiate them in credit markets from completely private institutions. They have been given special preferences, and certain tax exemptions and the special eligibility of offering their securities as investments of federally regulated institutions. These advantages give their security obligations a preferred position in the securities market, enabling them to borrow at rates only slightly higher than those of the Treasury."

Although the securities issued by these corporations disclaim any liability of the United States, they are similar to the "moral obligation" (or revenue) bonds issued by public authorities in many states. They are listed in the New York Times and other publications under the heading, "Government and Agency Bonds." Despite the legal disclaimer, the federal government probably would not be able to remain on the sidelines if any of the enterprises fail. The involvement of the United States is potentially greater than that of stockholders of private corporations whose exposure is limited to the value of their stock. The private ownership test might be an irrelevant standard by which to measure the public character of federally-sponsored enterprises. In its 1976 report on off-budget financing, the House Budget Committee explicitly rejected private ownership as the sole criterion for establishing the budgetary status of these enterprises. It noted that in most cases investment markets do not consider the Government-sponsored enterprises to be completely private nor, in most cases, would a member of the general public draw this distinction. Each of the Government-sponsored enterprises is subject to some greater or lesser measure of Federal direction, and some implicit subsidy may be presumed to arise whenever borrowing from the public is undertaken. (H. Rept. No. 94-1740, p. 7)

In accord with this finding, the Budget Committee recommended that Congress not create any new enterprises with off-budget status "pending resolution of the question of appropriate criteria for existing agencies."

The sponsored enterprises will account for an estimated $19 billion in outlays in fiscal 1980. It should be noted, however, that neither Congress nor the President exercises direct budgetary control over these loan activities, so that actual outlays can vary significantly from the original estimate.

One can anticipate that stringent constitutional restrictions on deficits or expenditures would invite the creation of additional "quasi-governmental" enterprises outside the budget. This clearly has been the experience in state governments, a number of which have turned to public corporations and "moral obligation" bonds in order to evade their own constitutional restrictions. States have financed billions of dollars of capital construction by vesting rersponsibility in private or quasi-public organizations which are not legally deemed to be governmental entities. These evasive practices often are more costly than direct borrowing by the state because revenue bonds generally bear higher interest rates than comparable general obligation bonds. Furthermore, these special institutions often escape not only constitutional limits on borrowing but also the political controls to which regular public organizations are subject.

It would not be difficult to remove tens of billions of dollars from the federal budget by creating "quasi" institutions with authority to raise revenues and to borrow. It would be possible, for example, to create a $100 billion dollar national health insurance system without a single dollar for this purpose appearing in the budget. While there may be legitimate reasons for creating these types of enterprises, overly restrictive constitutional controls can have a warping effect on the structure of the United States Government.

Guaranteed Loans. The third major category of federal financial transactions excluded from the budget total consists of loans for which the United States commits itself to pay all or part of the principal and or interest in case of default by the borrower. Guaranteed loans are excluded from the budget by section 3(a)(2) of the Congressional Budget Act which provides that the term budget authority "does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government." This exclusion is based on the fact that guaranteed loans (unlike direct loans which are in the budget) are a contingent liability in which the obligation of the United States is activated only in case of default. The United States bears no liability if the borrower makes the required debt payments; in case of default, any payment by the United States is included in the Budget.

The budgetary status of guaranteed loans was considered by the President's Commission on Budget Concepts in 1967. In comments prepared for the Commission, Dr. Arthur Okun predicted that the different budgetary treatment of direct and guaranteed loans "would lead to a strong preference in the budgetary process for guarantees over direct loans." Moreover, the staff of the Commission cautioned that—

"* * * continuing pressures on both Congress and the Executive to hold down the level of apparent Federal spending and the budget deficit establish artificial incentive to shift from direct loans to indirect lending whether or not the guarantee or insurance of private loans represents a fully satisfactory substitute."

These expectations have been realized. There has been a huge increase in the volume of loan guarantees. By the end of fiscal 1980, the total of such loans outstanding is projected to exceed $400 billion, an increase of almost $100 billion in the space of just three years. The total of such loans held by the Federal Financing Bank is expected to reach $56 billion, and the amount held by the public is estimated at $239 billion.

Various congressional committees have expressed alarms at the growth in these guarantees. In a 1979 report, the House Appropriations Committee was disturbed by—

"* * * the recent proliferation of legislative proposals involving program guarantees, which while they do not grant budget authority in the technical sense of the term, do thus establish a contingent liability on the taxpayer virtually beyond the subsequent control of Congress.

In a report on the second budget resolution for fiscal year 1977, the Senate Budget Committee voiced concern about "the increasing use of guarantee mechanisms that have the effect of circumventing the discipline of the Congressional budget process," and it indicated its desire for "appropriate recommendation to Congress to establish control over proliferation of such programs."

The 1980 budget takes two steps toward budgetary control of loan guarantees. For the first time, schedules of loan guarantees have been included in the Appendix for each account with which such guarantees are associated. In addition, the Administration has proposed that annual limits be set on outstanding loan guarantees. Even if such limits were established, one can anticipate that constitutional restrictions on direct budget outlays will generate pressure for circumvention by means of guarantees.

The three off-budget devices discussed here will net to more than $50 billion in fiscal 1980. Although they presently are the chief means for conducting financial activities outside the budget, new mechanisms might be devised in response to constitutional restraints.

WHAT IS AN OUTLAY?

If definition of the budget's scope is difficult, determining what constitutes an outlay can be even more troublesome. There is almost no law on the subject, and a jumble of conflicting practices and traditions complicates the quest for defensible criteria. Yet a spending limitation cannot be enforced without rules for deciding what is an outlay. The issue, at first glance, seems straightforward and without complication: an outlay occurs whenever the federal government makes a payment of funds. The issue, however, is not whether a payment constitutes an outlay, but how outlays are computed for budgetary purposes. It is in the counting of outlays that difficulties abound.

Grossing Versus Netting. In the course of each year, the federal government makes a

sizeable number of direct loans (which, as noted earlier, are reported in the budget) and also receives payment from borrowers to whom loans were extended in previous years. The federal practice is to count direct loans in the budget on a net basis, that is the gross amount of new loans minus repayments. This method is consistent with the definition of outlays in the Congressional Budget Act as "expenditures and net lending of funds."

The financial activities of public enterprise revolving funds also are reported in the budget on a net basis. These funds conduct business type operations for which they obtain receipts from the users of their services. The receipts, however, are not computed in the budget as federal revenues, but offset the expenditures of the public enterprises. As a result of this accounting practice, the amount shown in the budget as outlays for public enterprise funds is the excess of their expenditures over revenues. In fiscal 1980, the gross outlays of the public enterprise funds will be about $46 billion, but with $38 billion in receipts from the public, the budget will show only approximately $8 billion in outlays. The treatment of these outlays on a net basis conforms to the 1967 recommendation of the President's Commission on Budget Concepts.

However, in 1977, the Comptroller General recommended that these funds be reported on a gross rather than a net basis. The reasons set forth in his report relate to the ability of Congress to control the budget.

"* * * when new accounts are classified (public enterprise) revolving funds or whenever existing revolving funds grow, budget outlays do not increase as rapidly as they would if accounted for on a gross basis. The changing of an account to a revolving fund gives the appearance that budget expenditures are declining even though the rate of expenditure may remain the same or even increase. Using the revolving fund classification might help to reduce budget totals and escape national priority debate by changing fund structure without changing fund purposes."

In other words, changes in accounting procedures and budgetary definitions can veil the actual budget totals. However, no constitutional restriction can be immunized against one or another form of budgetary legerdemain.

RECEIPTS AS NEGATIVE EXPENDITURES; EXPENDITURES AS NEGATIVE RECEIPTS

Various receipts of the federal government are treated as offsets against outlays rather than as federal revenues. These fall into two categories: receipts which offset particular categories of expenditure (about $1.6 billion in the 1980 budget), and $2.6 billion in undistributed receipts which are applied against the outlay totals in the budget. While there may be legitimate economic reasons for treating some of these receipts as negative expenditures (in the case of offshore income, for example, the United States can be regarded as exchanging one asset—the lease—for another—royalties), this budgetary practice can complicate the task of producing reliable receipt and outlay estimates, free from political bias. In some recent years, the Administration produced unrealistic estimates of the income from offshore oil and gas leases as a means of showing lower deficit and outlay totals in its budget.

One of the most controversial instances in which receipts are treated as negative expenditures occurs when the federal government sells loan assets (direct loans or securities known as participation certificates or certificates of beneficial ownership.) Here, too, the transaction is treated as an exchange of assets and the revenues are computed as offsets to expenditures. In view of the high volume of obligations owned by the federal government, this practice gives the executive branch a great deal of latitude in influencing the level of outlays that appears in the budget. It is possible to show a reduction in outlays merely by selling some of the assets to the public. The Office of Management and Budget has been critical of the manner in which sales of some loan assets are accounted for. It points out (The Budget for Fiscal Year 1980, p. 316) that—

"* * * as a means of financing outlays there is no difference in substance between an agency selling securities labeled "certificates of beneficial ownership", the same agency selling securities labeled "debt", and the Treasury selling securities labeled "debt." Moreover, when certificates of beneficial ownership are sold, the ownership of the specific loans is retained by the Government, interest payments on the loans continue to be made to the Government, and the Government continues to incur the servicing costs of the loans and to assume fully the risk of default on the loans."

If receipts sometimes are counted as negative expenditures, the opposite also has been true: expenditures are sometimes treated as negative receipts rather than as outlays of the federal government. The 1980 budget proposes to make direct payments to certain individuals whose wage increase is held to 7 percent or below. Some of these "wage insurance" payments are treated in the budget as refunds of tax receipts, not as outlays. The effect is to reduce outlays $2.3 billion below the total that would appear in the budget if such payments were computed as expenditures. Several years ago, when the "earned income credit" program—direct payments to low-income workers—was established, the House and Senate Budget Committees wrangled over whether credits in excess of tax liability should be accounted for as offsets to receipts or as outlays. For fiscal year 1978, the committees decided to treat them as negative receipts, but for the 1979 budget, they counted them as outlays, thus demonstrating the lack of hard and fast rules for these types of budgetary transactions.

The grossing versus netting argument and the existence of offsetting receipts and expenditures arise out of the complexity and sprawl of the federal budget. Even if no attempt were made to circumvent budgetary controls, there would be a great number of contentious accounting issues. But with constitutional restrictions in force, there surely will be ample incentive for manmade contrivances to evade the controls.

It should be noted that these issues relating to the definition of outlays would not affect computations of budgetary balance. Any change in the outlay totals would be matched by an adjustment to receipts and vice versa. However, constitutional limitations on expenditures would be significantly impacted by the manner in which outlays are handled in the budget.

Unless it were detailed in the extreme, a constitutional limitation on expenditures could not resolve these definitional and accounting issues. The matter would have to be resolved by statutory elaborations which give meaning to the bare bones constitutional intent. The effect of any limitation will depend, therefore, on statutory interpretation rather than on the constitutional provision. Arguably, therefore, the whole issue ought to be left for statutory determination where it would be decided anyway.

CONTROL OF OUTLAYS

In order to be enforceable, a balanced budget requirement or a spending limitation would have to be accompanied by means of controlling the outlays of the United States Government. At the present time, Congress lacks adequate means to hold outlays within limits. It does not directly decide how much is to be spent in a particular year by each federal agency or program. Its control extends to the appropriation of funds or to other legislation authorizing agencies to enter into obligations. The cash expenditure occurs only when the obligation is paid off, sometimes long after congressional activity has ended. In the ordinary sequence of events, Congress has little direct control over the timing of expenditures.

When an appropriation and the ensuing outlays occur in the same fiscal year, there is no difference between the two measures of budget activity. Such is estimated to be the case, however, for less than 65 percent of the new budget authority requested for fiscal 1980. An estimated $136 billion of the outlays projected in fiscal 1980 will derive from budget authority carried over from previous years.

The Congressional Budget Act requires Congress to set outlay targets in the first concurrent resolution on the budget and ceilings in the second resolution. However, these outlay amounts are not statutory limitations on the allowable expenditures of the federal government in a fiscal year. As discussed earlier, it is feasible for Congress to specify an outlay total in its budget resolution, but for federal spending to exceed that level because of matters beyond its direct control.

When the Budget Act was under consideration, one proposal called for Congress to fix outlay limits in each appropriation bill. The effect would have been to establish legally binding outlay numbers rather than merely "advisory" ones. During its work on the legislation, the Senate Committee on Rules and Administartion addressed the question of whether outlay limitations could provide effective budget control. The Committee concluded (S. Rept. No. 93-688, p. 20) that in view of the difficulty of precisely estimating such outlays, a limitation would not be workable:

"The problem with outlay ceilings is that it is difficult to estimate precisely how much will be spent in a particular fiscal year. Each year's outlays derive from past as well as current actions of Congress. More than $100 billion of the outlays estimated in the President's budget for fiscal 1975 result from budget authority provided in prior years. Congress controls current and future outlays by deciding how much new budget authority to give executive agencies, but once the authority is in the "pipeline," Congress can (under current procedures) control outlays only by imposing deep cuts on the fraction of the budget which is controllable.

"In the 1975 budget, approximately $223 billion, or almost 75 percent of total outlays, is estimated as uncontrollable under existing law. Many of the uncontrollable items are open-ended programs, spending for which cannot be effectively set in the appropriations process. It is exceedingly difficult to estimate these amounts precisely, and in recent years there has been considerable variance between the uncontrollable expenditures estimated in the budget and actual expenditures for that fiscal year. In an average year uncontrollable costs are more than five billion dollars above the original budget estimate."

During the first years of the congressional budget process, actual outlays were $10 billion or more below the original estimates, and even billions below the revised estimates made later in the year. While these shortfalls might seem to suggest that a constitutional limitation can be enforced, there is no reason to expect a shortfall to occur in every year. The same factors which have caused outlays to fall below estimates can have the opposite effect under different economic or political conditions.

Moreover, the shortfalls would have an exceedingly contractionary effect if the Friedman amendment were in effect. Every shortfall would lower the outlay base on which

the next year's allowable expenditures would be calculated, it could cause the budget to shrink even below the relative levels projected earlier. Furthermore, with shortfalls prejudicing the outlay base, the executive branch would have a powerful incentive to spend up to its allowable limit. It would be penalized for prudent and efficient management. The Friedman amendment has an efficiency penalty which can impair financial management in the federal government.

POTENTIAL IMPACTS OF CONSTITUTIONAL RESTRICTIONS

Those who seek constitutional restrictions on the budget or on spending assume that requirements for a balanced budget or limitations on federal expenditures would force changes in federal practices. This section considers some of the intended—and possible unintended—effects of these requirements.

Tax Policy. None of the proposed amendments specifically addresses or purports to limit the tax policies of the United States. Yet one can foresee significant changes in the tax system. Balanced budget requirements would exert upward pressure on taxes; spending limitations would probably have the opposite effect. In the short run, the easiest (and sometimes only) way to secure a balance would be to raise taxes, or at least not lower them to the level that might otherwise be desired. As was discussed earlier, the recent practice of using the growth and inflation "dividends" of the tax system to reduce nominal tax rates might be seriously curbed. On the other hand, if stringent spending limitations were imposed, the federal government would likely accumulate massive surpluses in the absence of periodic tax cuts. But it is by no means certain that spending limitations would stimulate general tax reductions. Inasmuch as these limitations would constrain the ability of the government to provide benefits through direct outlays, pressure might build up for subsidies through the tax system. Rather than general tax reductions, Congress might respond by enacting new and increased "tax expenditures" for favored interests. In economic terms, a subsidy provided by means of preferential tax treatment has the same value as a subsidy provided via a cash outlay but whereas the latter would be constrained by a constitutional limitation, the former would not. Of course, if balanced budgets were mandated, the provision would have a restrictive effect on both general tax reductions and tax expenditures.

Another possible outcome derives from the accounting conventions discussed earlier. To the extent that an outlay can be defined as an offset to receipts, a spending limitation would goad Congress to devise transactions that could escape being tagged as outlays.

Fiscal Policy. Even with an override feature for national emergencies, any requirement that outlays not exceed receipts would have a dampening effect on the federal government's ability to respond to economic crises. Strict enforcement of a budgetary balance would compel a Hoover-like reaction, in which expenditures are reduced to match a drop in government revenues. If this were to happen, the stabilizing capacity of the federal budget would be severely impaired and comparatively mild recessions could blow up into major depressions.

This is not a likely scenario, however, because Congress probably would relax the requirement by exercising its override authority. Even Hoover was forced to abandon his balanced budget ideals: the federal budget ran a small ($462 million) deficit in fiscal 1931 and a much larger one ($2,735 million) in the next fiscal year. The point, however, is that even if a deficit were authorized, it almost definitely would be smaller than would occur in the absence of a constitutional limitation. Especially if extraordinary majorities (two-thirds or three-fourths) of the House and Senate were required to suspend the limitation, opponents might be able to block approval until the deficit is whittled down to acceptable size.

A spending limitation would not have these adverse impacts on the federal government's capacity to stimulate the economy. But both because of the sensitivity of tax receipts to economic performance and the constitutional inhibition against increasing expenditures, the bulk of the stimulus would have to be provided through tax policy. Such actions are likely to have different distributive impacts (which groups and individuals benefit) than economic stimulation provided through spending programs. One can conjecture that the lowest-income groups—often those hardest hit by a recession—would be most disadvantaged by a constitutional policy which biases fiscal policy toward tax relief.

Controllable and Uncontrollable Expenditures. More than three-quarters of fiscal 1980 outlays are classified by OMB as "relatively uncontrollable under existing law." This phrase has been challenged by some who claim that virtually all of the budget is controllable if Congress wishes to change existing law. Nevertheless, the concept provides a useful clue to how Congress and the executive branch might act when faced with a need to reduce outlays in order to uphold a constitutional requirement. Over the short-run, that is, the fiscal year for which such a requirement would be operative, much of the burden would have to be borne by the controllable sector of the budget. In the language of federal budgeters, the uncontrollable would bleed the controllables, a predicament which occurs in the best of times and is inescapable in the worst. How the required cuts are spread among the controllables would depend on the political climate for defense versus domestic programs. In view of the fact that defense accounts for almost 60 percent of controllable outlays, it is likely to be vulnerable to forced reductions, except when international conditions dictate higher spending for that purpose. Federal assistance to state and local governments is a likely target, though the Friedman amendment would protect these recipient governments against cutbacks for a six-year period.

Over the long-term, one can expect budgetary constraints to induce Congress to make marginal adjustments in the entitlement programs which have spiraled during the past decade and add up to 70 percent of all uncontrollables. By marginal adjustments, one has in mind trims in certain features of these programs rather than wholesale eliminations. The savings proposed by Carter for fiscal 1980 in social security are marginal, both in the sense that the initial cost reductions are modest and the basics of the program are undisturbed. But because modest savings tend to balloon over time, even marginal adjustments can have pronounced effects on future budgets.

Regardless of where the cuts would be distributed, constitutional constraints can be expected to bias the budget against proposed new programs. The preferred position of existing programs versus new ones is already entrenched in the budget, but the penalty against major initiatives within the budget will grow. Of course, this bias might be offset by the concentration of program starts outside the budget. New programs, under these circumstances, might be able to make it only if they carry methods of evading budgetary control.

Executive-Legislative Relationships. Although the proposed amendments are silent about relationships between Congress and the executive branch, one cannot escape the feeling that it is Congress which is to be constrained. The drive for anchoring budgetary restrictions in the Constitution is predicated on the belief that Congress cannot be trusted to abide any controls it is free to break. There also is an undertone of argument that Congress is culpable for the runaway spending and massive deficits which have beset recent budgets.

In at least two ways, the constitutional proposals can tilt the balance of budgetary power in favor of the executive branch. First, on the assumption that the resident's budget would consume just about all of the spending room available under a constitutional limitation, Congress would be left with the option of redistributing expenditures rather than adding to total outlays. It might be able to take from defense and give to domestic programs (a transfer which it has made in most years since Vietnam), but it would have little recourse other than to accept the President's dictates.

Congress might try to wriggle out of this predicament by shifting the costs of its decisions to future budgets. In view of the fact that Congress makes budget authority decisions and that much new authority is not spent until future years. Congress could establish programs with low first-year costs but with incremental costs locked into future budgets. If this were to happen, the focus of budgetary debate in Congress would shift from the current to future budgets, with congressmen competing to stake their claims for future increments. The net result would be a worsening of the ability of Congress to control out-year expenditures. A constraint intended to strengthen control over expenditures might have precisely the opposite effect, particularly since all of the proposed amendments take a one-year-at-a-time posture.

The second impact of these restrictions would be to bolster the President's claim of power to impound funds appropriated by Congress. In the past, Presidents claimed an inherent power to impound; under these limitations, they could claim a constitutional power to impound. Lest this prospect appear to be fanciful, one need only recall that in the great impoundment battle between President Nixon and Congress, a claim of authority to impound was grounded on presidential interpretations of statutory limits on expenditures and the statutory limit on the public debt.

The impoundment power might indeed offer the only means by which stern constitutional constraints could be enforced. The inability of Congress to control outlays has already been mentioned. In abiding the new budgetary limits, Congress might be forced to cede impoundment authority to the President or helplessly stand by as he works his will on the budget.

The Future Role of the United States. This section concludes by returning to a theme which was broached earlier: the proposed spending limitations mask their real purpose, a radical transformation in the character, reach, and purpose of the United States Government. The extent to which the trend toward active government would be reversed would depend on (1) the type of limitation written into the Constitution, and (2) the willingness and ability of the Government to do via other means that which it could no longer do via the budget. While one should not underestimate the ingenuity which surely will be applied to evade the controls or to act in nonbudgetary ways, there is no escaping the prospect that a federal government operating under a constitutional strait-jacket would be markedly different than one which is unfettered and can decide what and how to execute its will. The differences might be in the walling off of major segments of government from popular and legislative control through the expansion of "quasi" governments. They might be reflected in an untangling of the relationships that have grown between the federal and state and local governments, along

with a dispersion of power and money from the center to states and municipalities. Change might come through a contraction of America's presence on the world scene or through greater reliance on market mechanisms to provide "social" goods and services and to manage economic affairs. The list of possible mutations certainly is endless, and yet no list could comprehend the full range of intended and unintended possibilities.

One must be concerned, therefore, about constitutional changes so rife with uncertainty, and so silent as to their real purpose. Budgetary discipline might be the least of the consequences wrought by constitutional experimentation. Surely the other possibilities ought to be debated before budgetary change is decided. And the terms of debate ought to be markedly broader than the budget alone: let the other possibilities be aired, and only then will it be possible to make informed judgments as to whether the budget is the appropriate means toward those ends.

BORROWING FOR CAPITAL INVESTMENT

The proposed balanced budget requirements have regenerated interest in a capital budget for the United States Government. A capital—or divided—budget is one in which the government's investment in physical, curable assets would be segregated from the regular ("operating") budget and would not be included (except perhaps for depreciation charges) in the calculation of the budget surplus or deficit. The capital budget is standard accounting practice for most large business firms as well as for many state and local governments which are restricted to borrowing only for permanent improvements. The capital budget concept has been around for many years, but it has never been adopted for the federal government.

Concern over a balanced budget is not the only argument advanced in favor of a capital budget. Perhaps the most compelling reason is that there is a fundamental distinction between a capital and a current expenditure. When the government purchases a capital asset, there is no change in its net worth, since it is merely exchanging one asset for another or concurrently creating assets and liabilities of equal value. However, when the government expends for current goods and services, there is a net decrease in its assets inasmuch as the asset it acquires has no permanent value.

It has been argued that a capital budget would facilitate long-range planning of physical improvements. The federal practice of lumping capital investments with current outlays induces a one-year-at-a-time perspective in which little attention is paid to future priorities and costs. Moreover, a capital budget might help to standardize existing budget practices with respect to "outyear" costs. At the present time, major weapons are "full funded", with new budget authority provided for acquisitions that might stretch over a number of years. Water resource projects, however, are funded on an installment basis, with each budget providing only the amount of new budget authority required for a single fiscal year.

A capital budget could provide a useful guideline for rgulating the use of debt. It could serve as an alternative to a rigid balanced budget concept and provide a yardstick for determining whether a particular level of debt financing is appropriate. If the federal government were to finance capital investments by borrowing—as is common in many states and localities—the public might accept the need to borrow for capital purposes as long as the regular budget is balanced.

Slightly more than 20 percent of the fiscal 1980 budget might qualify as capital expenses. Special Analysis D identifies $115 billion in investment-type programs, $44 billion of which goes for national defense and the remainder for civil programs. The investment programs include the acquisition of physical assets ($57 billion), research and development ($30 billion), and education and training activities ($21 billion). These estimated investment costs far exceed the projcted fiscal 1980 deficit, but some caveats are in order before the $115 billion number is used as a measure of net capital investments.

First, the estimates are approximations, not precise numbers. The federal government presently lacks an accounting system for segregating capital and current expenditures. Second, no adjustment is made for depreciation of federal assets acquired in the past. Even if the $115 billion estimate was firm, it would represent gross expenditures, not net capital investment. The measurement of depreciation could pose serious accounting difficulties especially for weapons systems. Third, a substantial portion of the $115 billion goes for the acquisition of assets or investment by non-federal entities. The federal government subsidizes the construction of merchant ships by private shipyards and highways by state governments. Although the United States Government does not own these assets, it finances their acquisition and the benefits accrue to the American people.

Most economists who have expressed themselves on the subject do not favor a separate capital budget. A major study by Maynard S. Comiez—*A Capital Budget Statement for the U.S. Government* (The Brookings Institution: 1966) concluded that "the case for a federal capital budget involving separate loan financing for capital outlays is not persuasive." (p. 30) The principal argument against a capital budget is that the condition of the economy rather than capital investment should be the main determinant of how much of a surplus or deficit ought to be incurred by the federal government. Countercyclical fiscal policy requires that overall economic conditions rather than immediate capital plans determine the government's borrowing policy. Because the federal government has economic management responsibilities, it should not apply the budget practices appropriate for state and local governments.

A subsidiary concern is that if capital outlays were financed by borrowing, there might be a tendency to favor them at the expense of operating programs. In some hard-pressed states and localities, for example, it sometimes is easier to get funds for a new facility financed in the capital budget than funds for maintenance of an existing facility in the operating budget.

It should be noted that the segregation of capital and current expenses by many states and localities is in many cases an outgrowth of their own constitutional and legal restrictions on borrowing for operating programs. If the federal government were subjected to a similar restriction, the temptation to develop a separate capital budget would be very great, whether the capital borrowing is excepted from the constitutional restriction or for special entities which do the borrowing in behalf of the government.●

HOSPITAL COST CONTAINMENT ACT OF 1979

● Mr. WILLIAMS. Mr. President, I am pleased to join with Senator NELSON and others in introducing the Hospital Cost Containment Act of 1979. This legislation would establish national limits for increased hospital costs. If hospitals fail to meet the goals of the act, mandatory Federal controls would be triggered in 1980.

One of the most crucial tasks of the Congress this session is to curb inflation. No national anti-inflation policy can succeed unless the problem of rising health costs is addressed.

For over two decades Congress has been devoted to improving the health care of Americans through a variety of publicly sponsored programs. As chairman of the Senate Committee on Human Resources, I am proud of the success of these programs. However, the cost of the taxpayer and the impact on health care costs in the private sector has been high.

National expenditures for health care have increased more rapidly than any other item in the economy. In 1968, national health care expenditures were 6.5 percent of the gross national product. Last year they were 8.8 percent. By 1983, they could rise to 10 percent.

Most distressing are the massive increases in national health expenditures which have not resulted in a proportionate improvement in the health of Americans. Many of our Nation's citizens—particularly the elderly and the poor—still cannot afford adequate health care. In these times of fiscal restraint, we cannot provide care to everyone until we demonstrate we can control national health care costs. This is the purpose of the Hospital Cost Containment Act we are introducing today.

Last year the administration and the Congress worked hard on hospital cost containment legislation. We learned much about the complex, interrelated factors which drive hospital costs upward. Ultimately a compromise bill passed the Senate but was not acted upon in the House of Representatives. This same spirit of compromise is reflected in our new bill.

Our bill establishes a national limit for increased hospital costs in 1979, a limit which hospitals would be asked to meet voluntarily. If hospitals fail to meet this goal, mandatory Federal controls would be triggered in 1980. And, in future years, these same mandatory controls would go into effect if the voluntary goals were not met the previous year.

Exceptions are provided in the legislation for individual hospitals meeting the goal when their State fails to meet national standards, small nonmetropolitan hospitals, HMO hospitals, and hospitals in States with effective statutory cost containment programs. I might add that I am proud that my State of New Jersey is one State having an effective statutory program. The bill's new refinements also offer additional protection to hospitals for increases in inflation for which health care costs are not responsible.

The Hospital Cost Containment Act of 1979 reflects the need to exert greater control over hospital costs. It reflects the resolute attitude of the Congress to curb the skyrocketing cost of health care. And while our bill recognizes the successes of the hospital industry's voluntary program, the health care cost problem is so critical that it needs an even more determined effort by both the private and public sectors. We are telling the hospital industry that if they cannot cut

costs sufficiently, the Federal Government will step in.

As chairman of the Senate Committee on Human Resources and a member of the Health and Scientific Research Subcommittee, I plan to work to assure enactment of this legislation at the earliest possible date. I urge each of my colleagues to join me in this important effort.●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD the two notifications I have just received.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., March 5, 1979.
In reply refer to I-10215/78ct.
Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-9 concerning the Department of the Army's proposed Letter of Offer to Kenya for defense articles and services estimated to cost $43.9 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

WALTER B. LIGON,
Acting Director,
Defense Security Assistance Agency.

[Transmittal No. 79-9]

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective Purchaser: Kenya.

(ii) Total Estimated Value: Major defense equipment,* $42.0 million; other, $1.9 million; total, $43.9 million.

(iii) Description of Articles or Services Offered:

Thirty-two (32) Hughes 500MD helicopters, 15 to be equipped to fire the TOW anti-tank missile, 2100 TOW missiles, and related equipment.

(iv) Military Department: Army (UAE).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: March 5, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., March 2, 1979.
In reply refer to: I-11380/78ct.
Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-11 concerning the Department of the Air Force's proposed Letter of Offer to Thailand for defense articles and services estimated to cost $99.8 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

WALTER B. LIGON,
Acting Director,
Defense Security Assistance Agency.

[Transmittal No. 79-11]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Thailand.

(ii) Total Estimated Value: Major defense equipment,* $83.6 million; other, $16.2 million; total, $99.8 million.

(iii) Description of Articles or Services Offered:

Fifteen (15) F-5E and Three (3) F-5F aircraft with support equipment, spares and training.

(iv) Military Department: Air Force.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: March 2, 1979.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on February 28, 1979.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., February 28, 1979.
In reply refer to: I-11418/78ct.
Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA Director,
Defense Security Assistance Agency.●

SOUTH DAKOTA: SELF-RELIANCE, WORK

● Mr. PRESSLER. Mr. President, residents of Brown County, S. Dak., like all areas of my State, are special people. They are good. And they are hard working. They epitomize values all of us cherish and try to practice.

The Dakota Farmer, a fine farm magazine out of Aberdeen, S. Dak., has a spirited article in its February issue by Ray Pomplun of Brown County that I want to share with my colleagues.

The story, "Heroes Without Halos," is a fascinating bit of insight into what, in my opinion, makes South Dakotans so special and why we have folks who can—and do—"stretch their arms" and share fundamental concerns and, in the process, enjoy living to the fullest.

In some ways, the article expresses my own feelings about life in Dakota. And the farmers demonstrating on the Mall today feel the same loss of our rural heritage.

Mr. President, I submit for printing in the RECORD Ray Pomplun's article, "Heroes Without Halos":

HEROES WITHOUT HALOS

(By Ray Pomplun)

In listing prominent happenings in my life, they never formed a complete picture since I've either forgotten or never fully understood events influencing my early thinking. Were those forging my ideas as great as I thought or did they impress me because they were always there? Memories resemble pages of a picture album: the trivial and important show, but often the former makes the more lasting impression. And we're reminded of the old axiom, "It's the little things that count."

I grew up on the plains of northeastern South Dakota where soil is black and winters hard. Temperatures fall to 40° below in winter and snow drifts roof-high. In July, eggs will fry on the town's sidewalk and hot smothering winds turn a man's face to leather.

If I refer solely to my parents, it's because I knew them best. To me they were giants but others just as tall walked with them. Their perseverance, courage, zeal and faith made South Dakota what it is today. In man's long history, Americans are but a moment removed from the farm, village or frontier, but our state is so young the sweat and blood of our heritage is not yet dry. We've just finished burying our pioneers.

In 1884, father's parents loaded their children and few belongings in a wagon and headed west from the lush farmlands of south central Minnesota. The oldest boy was eight and to him and the rest of the brood, the move was an adventure. The parents must have wondered what the future held, but their pioneering spirit urged them on. Seven years before they arrived, their destination Brown County, SD, sweltered under a summer sun without a white man's home on its face. Buffalo had been slaughtered, but their bleaching bones still covered the prairies. Dad would wonder in later years why they left Minnesota for the barren Dakota

* As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

* As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

plains. But if you asked a mountain climber why he wished to conquer Everest, chances are he'd answer, "Because it's there." When colonists stood on our Atlantic shores, they wondered what lay beyond the trees. And this urge to find the better life lured pioneers across the Great Plains, through waterless wastes of the Great Basin and over two mountain ranges.

Since America's mid-section was noted for nothing except severe winters, intense summer heat, drought and Indians, previous emigrants hastened on without a pause. But in the two decades following the Civil War, people swarmed to this desolate expanse and stayed. Emigrants from Europe's northern countries came to the Daktoas because the Homestead Act offered a chance to rise above their past peasanthood. In these 20 years more United States' soil went under the plow than in two and one-half centuries since the Mayflower landed.

This land to which the Pompluns came was as flat as a floor. From Aberdeen to the North Pole it was said, nothing stopped the wind except barbed wire fences, and looking west, the Rocky Mountains offered the only formidable windbreak. In writing to his wife back East one man commented, "You can see as far as you please and every foot can be plowed." Many of these determined "sodbusters" broke their first ground with an axe. Life was hard. Relentless winds were so oppressive more than one lonely housewife went mad. And the entire region from the Canadian border to the Rio Grande, with the Mississippi River and Rocky Mountains as east-west boundaries, seemed to dare a man to tame it. Not all who came, stayed. Burned by drought, beaten by hail, withered by hot winds and frozen by blizzards many returned to their homes in the East or pulled stakes for the far West.

Every institution carried across the Mississippi River was either changed or altered substantially. Up to this time rural American civilization stood on three legs—water, timber and land. When that mighty river was crossed the first two were eliminated, leaving only the land. One western Dakota farmer before leaving his claim for better places, hung this sign on his sagging shanty door: "Two hundred fifty miles to the nearest post office 100 miles to wood, 20 miles to water and six inches to hell."

Only a few who came to Brown County, SD, at the turn of the century or before are still with us. Most rest in small town cemeteries close to the soil where they spent their lives. They didn't merely survive, but converted this bleak monotonous expanse into a most productive farmland. Sleek range cattle replaced buffalo and mile upon mile of wheat, oats, barley and corn fields stand where prairie grass once heaved and shimmered in the hot summer's sun. This is the northern end of America's bread-basket and the most productive farm ground in the world.

To a child, his parents are old and even as an adult I couldn't imagine mine having ever been young. During those austere years in the 1930's when I remember them best, it wasn't a time to celebrate. Drought, dust and depression sobered the heartiest, but Mother and Dad found the means to send their three children through college. It's been 37 years since Dad retired and although he passed away over 15 years ago, Mother still lives from what they produced those hard years working on the land. The 30 odd trees Dad planted as saplings shade the little old-fashioned bungalow and the many flowers she tends and watches each summer day are Mother's only crop.

In recent years things changed. Farmers are now more prosperous, work isn't as hard, and my generation which is today's oldtimers, can look back and tell our grand kids "Farming isn't what it used to be." But the pace and fabric of rural life remains much the same as decades ago. Conversation still centers on the weather, high school football games, hunting seasons, Memorial Day parades, civic meetings, harvest and the long five-month winter.

Self reliance and individualism are still the principle virtues of South Dakota's people. They take care of themselves and any neighbor in trouble. An economist recently commented, "This frame of mind is poor preparation for the modern world", and he was right. But attempting to censure those who cling to the way of life which made this country, is showing one's ignorance. Remarks of most South Dakotans regarding the urban welfare problem, food stamps or relief are unprintable. They can't conceive of people being unable to solve their own problems through hard work.

Cities have been my home for three decades, but like other urban dwellers, I've often returned on vacation to the country and friends of my youth. Now, I've returned to stay. I learned early in life, rural and small-town America has a fullness and promise not attainable in big cities. I shared this luxury as a youth so why shouldn't I turn away from an existence of drawing board monotony? Despite our technology and conveniences in modern-day life we're dissatisfied: we long for the basic pleasures—pure air and a little dirt to dig in. Employment takes urbanites to the "concrete jungle", but when day is done they have flocked to the suburbs in such numbers they're again hemmed in by development housing and stereotype living.

I want to be where I can stretch my arms without hitting someone. Where people are individuals not statistics, and their personalities, joys and pains are known to each other. Here in this part of Dakota, concerns are fundamental. Skies are read as much as the afternoon newspaper. Birth is an important event and death is a community sorrow. Here, a person is important and his footprints will be remembered. Perhaps it's a throwback to the days of pioneering, of covered wagons and homesteads, of simple moral values and religious convictions. These are, thank God, still characteristics of many on Dakota's prairies.●

IMPACT OF INFLATION UPON OLDER AMERICANS

● Mr. CHILES. Mr. President, inflation affects all Americans in one form or another. But it oftentimes has a more devastating impact upon older Americans, because many are struggling on limited incomes.

During the past year—from January 1978 to January 1979—prices have risen by 9.3 percent. However, some items, which have a greater effect upon the elderly, increased at a more accelerated pace. Food and housing costs, for example, rose at a double-digit rate—10 percent and 12.4 percent, respectively—during the past year. These two items alone represent about 60 percent of the typical aged couple's budget.

Inflation today represents the number one problem for millions of older Americans.

This point has been made repeatedly to the Committee on Aging, of which I am chairman.

In the months ahead, the committee plans to devote special attention to the impact of inflation upon the elderly, as well as proposals to protect them from the harmful effect of rising prices, in our study concerning the economics of aging.

This takes on added importance, because elderly persons who retired on a seemingly comfortable income several years ago are discovering that it simply does not stretch as far today.

Several feature articles in a recent edition of U.S. News & World Report make this point very effectively and powerfully.

The articles also emphasize that planning for retirement is not only for older Americans but also for younger Americans.

Mr. President, I commend the U.S. News & World Report special section—entitled "Will Inflation Tarnish Your Golden Years?"—to Members of the Senate and request that it be printed in the RECORD.

The article follows:

WILL INFLATION TARNISH YOUR GOLDEN YEARS?

More than at any time in American history, people are looking forward with zest to their retirement years.

Better health care, ease of travel and the wide interests open to a more educated older population—all hold the promise of a longer, happier, richer, retirement for the more than 1.5 million workers leaving their jobs each year.

But there is this irony: Although people today want much more from life in the golden years, many of them don't prepare sufficiently to make those dreams a reality.

"Most people still don't think seriously about retirement until they're on the verge of leaving work," notes gerontologist Woodrow Hunter of the University of Michigan. "The time to start preparing for retirement is when you're in your 30s and 40s."

As the 26 million people living on pensions have already learned, careful retirement planning is all the more important with today's soaring inflation.

The big problem, says economist James Schulz of Brandeis University, is that workers rely too much on benefits they hope to get from Social Security and private pensions. Even those who get both forms of benefits—and only a minority of workers have private pensions—generally receive about half of their preretirement income.

"In a very short time, people can go from a comfortable life to the ranks of the near poor," warns Schulz.

Economist Thomas Borzilleri of the American Association of Retired Persons says that "about 70 percent of the retired population is barely getting by." He urges people not to be duped by the old notion that retirement is much cheaper than the working life. His advice: Aim for a retirement income that is nearly 80 percent of working income—not the 60 percent guideline often mentioned in the past.

A higher income is particularly important if people intend to travel and stay active during their retirement years. Says Jack Ossofsky, executive director of the National Council on the Aging: "Retirement is cheaper only if your're content to spend the rest of your life in a rocking chair."

Better financial planning is only part of the groundwork for a good retirement. Where to live, how to spend leisure time, how to cope with new physical and emotional stresses—these questions, too, should be asked earlier in a worker's career. More employers are helping people do just that by offering formal preretirement courses.

Also helping to improve the lot of retirees is their growing political power. People age 65 and older now make up more than 11 percent of the population. By the year 2030, when most of today's "baby boom" generation will be into their retirement years, 1 in 6 Americans will be 65 or over.

A significant change came last year when an overwhelming majority of Congress voted to increase the mandatory retirement age from 65 to 70. Although most experts expect the trend toward early retirement to continue, they see the new law as a way to allow hard-pressed workers to earn more before leaving their jobs.

GRAYING BUDGET

Other steps to help older Americans are expected in years to come, despite all the debate about the "graying of the budget"—the fear that the country will become burdened by massive spending programs for senior citizens.

"There is plenty of time for the country to adjust to the aging of the population," insists economist Borzilleri of AARP, "and the fact that there will be fewer children will free funds that used to go to education."

Also predicted: a much fuller role for older Americans in U.S. society, as discrimination against the elderly decreases and more senior citizens find better opportunities for part-time jobs and volunteer work.

Gerontologist Bernice Neugarten of the University of Chicago sees an important place in the future for the "young old"—a growing population of vigorous, educated and financially secure retirees who will be demanding more of a say in national life. She sees this group as an "enormous resource" that the country has just begun to tap.

Those who become part of that vital group will largely be the people who have taken the time to prepare for it. To help in that process, a team of U.S. News & World Report editors has examined the major issues facing people looking ahead to retirement—finances, housing, work, leisure, stress—and how to plan, in time, for a meaningful and comfortable retirement.

IT IS NEVER TOO EARLY TO PLAN

In planning for retirement, everyone—young and old alike—shares this concern: It takes more money to live every year after the paycheck stops.

Whether retirement is fast approaching or still decades away, arranging for income for the years after leaving a job is critical.

Otherwise, hopes of travel, entertainment and new hobbies are likely to be replaced by the reality of a shrinking income. That's the fate of many retired people. Households headed by persons 65 or older typically received less than half the median household income of $13,572 in 1977, according to the latest Census Bureau figures.

LATE PLANNERS

"The biggest mistake people make is to start financial planning only three to five years before retirement, and by that time a lot of things are set in concrete," says Henry J. Moore, vice president for financial planning at the brokerage firm of Merrill Lynch.

Experts recommend starting a regular savings or investment program as early as possible, especially for people who plan to quit work before the age of 65. Leaving the job early means lower Social Security payments, perhaps cuts in pension benefits—plus more years of retirement to provide for.

Building up a nest egg is important, experts warn, because it is risky to count on retirement income from a part-time job. People are likely to overestimate their physical capacities or face unexpected medical problems. Plus, job-related expenses often eat away at the extra income.

Women especially need to give close attention to providing for income in their old age. On the average, they live longer than men and therefore need income longer. They are less likely than men to qualify for pensions, and their Social Security benefits are likely to be meager because of lower earnings and fewer work years.

The key question for most people: How much money will I need? As a rule of thumb, financial planners say pensioners need at least 60 percent of their preretirement income, and some recommend 80 percent. Retirees' expenses often are lower than they were during working years because job-related costs such as commuting, clothing, professional dues and restaurant meals drop sharply. Also, home mortgages may be paid off, and income taxes usually are lower.

Retirees also may receive discounts on public transportation, prescriptions, restaurant meals, entertainment and college tuition. Senior citizens' clubs, civic groups and government social-service agencies have information on these price breaks.

Uncle Sam provides some relief, too. A taxpayer age 65 or older can claim double the normal personal exemption. Older people also are entitled to a special 15 percent tax credit.

Despite these pluses, even a low-cost budget for a retired couple will run more than $5,000, according to latest estimates by the Bureau of Labor Statistics. An intermediate budget is put at $7,200 and a high one at $10,700.

Experts caution, though, that the sums needed can outpace preretirement expenses if plans include, say, extensive travel or the launching of a new business. Health care can be more expensive, too.

Inflation adds to the uncertainty. Take a couple who starts retirement with an annual budget of $10,000. At 7 percent inflation, the pair needs $10,700 the next year just to stay even. At the end of a decade, it takes $19,672 to match the buying power of that first-year income of $10,000.

Longer life spans mean that inflation hits even harder. A man retiring at 65 can expect, on the average, to live almost to age 79, a woman to 83. Many experts suggest adding a five-year cushion in figuring income needs. That means making plans to cope with 20 to 25 years of inflation.

Providing the income foundation for most retirees are Social Security benefits, which are tax-free. Nearly 22 million workers and their dependents, plus another 7.5 million survivors of workers, get monthly retirement benefits. The problem is that many people expect too much of Social Security.

"It was never meant to make us financially independent, only to prevent mass destitution," says Betty Syms, retirement-plans administrator for the Delaware Management Company.

The most a worker retiring right now at age 65 can expect is $503.40 a month, reports the Social Security Administration. A spouse's full benefits amount to half that much, for a combined maximum of $755.10. These amounts, of course, will rise for people retiring in future years.

For workers retiring early at age 62, monthly benefits are lower. On the other hand, working past age 65 increases the monthly payments that a worker will eventually receive.

INFLATION ADJUSTMENT

One big plus for retirees is that Social Security payments climb with inflation. If the cost of living rises from one year to the next by 6 percent, benefits automatically increase by roughly the same amount.

Local Social Security offices can tell individuals whether they are eligible for payments and estimate the amounts. The agency advises applying for benefits at least two months before retirement begins to be sure checks are mailed out on time. Applications for medicare, too, should be made several months before a person turns 65.

About half the private work force is covered by company or union-sponsored pension plans. For an employee with 30 years of service with a firm, most good pension plans provide 50 to 60 percent of preretirement income when coupled with Social Security benefits. The precise amount depends upon a person's work record and the firm's plan. However, few plans increase a retiree's payments to compensate for the rising cost of living.

Because pension setups vary so widely, experts advise workers to ask these questions of employers—

What happens to benefits if retirement comes before age 65—or later than that?

Do stated benefits include Social Security payments?

How long must an employee work for the firm before qualifying for any benefits? How long must he or she work to get full benefits?

How are payments made—in a lump sum, monthly, or annually?

How are benefits calculated? Is the amount defined, or does it depend on the investment earnings of the company's pension contributions?

What happens to payments in the case of disability or breaks in a worker's service, such as maternity leaves or layoffs?

Are benefits lost if the worker dies before retirement, or may the spouse collect all or part of them?

SECURITY FOR SPOUSES

One way to give better financial protection to a spouse is to select a joint-and-survivor arrangement in pension payments. Under this plan, annuity payments to the couple are lower than if paid to the worker alone. But if the worker dies, the surviving spouse continues to receive income as long as he or she lives. Financial experts say that the joint arrangement is advisable when there are few assets beyond the pension plan to provide for the spouse.

For the self-employed and others not covered by company pensions, there is plenty of opportunity to set up individual savings programs. More than 2.5 million individuals—still only a small percentage of the people eligible—have set up individual retirement accounts, known as IRA's. Under this arrangement, a person can put aside 15 percent of his or her annual earnings, up to a maximum of $1,500. The contributions are tax-deductible.

I addition, earnings that build up in the account are tax-deferred until the individual begins withdrawing the money at any time between ages 59½ and 70½. By then, the person is likely to be in a lower tax bracket. Workers can include nonworking spouses in an IRA, with an annual contribution limit of $875 each or $1,750 combined.

Even those who receive company pensions can take advantage of an IRA tax shelter by taking their pensions in lump sums and placing them in IRA accounts. That way, there is no tax obligation until funds are withdrawn.

More than half a million self-employed persons take advantage of similar setups, called Keogh plans. Under this arrangement, individuals can put aside 15 percent of their income each year, up to a maximum of $7,500, again with no tax obligation until retirement.

Variations on the Keogh are available for special circumstances. One example: A mini-Keogh, designed for those who earn extra money through free-lancing or moonlighting, allows people to set aside up to $750 in outside earnings each year, as long as their self-employed incomes are less than $5,000 and their adjusted gross incomes are under $15,000.

Those who want guaranteed incomes in retirement can set up Keogh-plus plans, which allow them to set aside more than 15 percent of their annual incomes toward such benefits.

It is important to proceed carefully in setting up an individual retirement plan, however. What makes it tricky is the wide

choice in the way the money is set aside. Banks, savings and loans, insurance companies, investment firms and mutual funds all offer plans. Federal retirement bonds also are available. Each of these arrangements has its pluses and minuses.

Most plans have the potential for growing dramatically as interest builds up, particularly when tax advantages are taken into account. The $1,500 put annually into an IRA can add up to hefty amounts, as the chart on this page shows.

Because pension plans and Social Security often fall short, many counselors recommend savings and investments that will enable retirees to protect their lifestyles from inflation. However, Social Security Administration studies show that only a small percentage of people entering retirement have financial assets that amount to much.

Both a savings account for emergencies and life insurance are essential in anyone's financial picture, experts say. But neither alone provides the inflation hedge that advisers recommend for a retirement program.

A CAUTION ON ANNUITIES

Tax-deferred annuities, usually bought through insurance firms, also require careful shopping. They have the advantage of being tax-free until income is drawn in retirement, and an individual also knows precisely what income they will provide. But many annuities do not offer enough returns to compensate for inflation.

Counting on income from more-exotic investments, such as antiques, gold, stamps and art, can be risky. Buyers can be hard to find in a hurry if the investor needs cash, and it takes considerable skill to invest wisely.

Real estate, too, can be difficult to turn into cash quickly. However, in recent years home values in most places have risen faster than the inflation rate, giving many families hefty profits when it comes time to sell. A new tax provision also allows people 55 and older to exclude from taxable income profits up to a maximum of $100,000 from home sales.

Even so, more-liquid investments, such as corporate stocks and bonds and government securities, are often the heart of investment programs. No two individuals will proceed the same way, but experts say that as a general rule, the younger a person, or the more assets he holds, the more risk he can take. As a person nears retirement, the strategy should switch more to producing and protecting income.

People in their 30s and 40s might focus on growth-type stocks and mutual funds, says A. Scott Logan, a vice president of Massachusetts Financial Services. "I like a mix at all ages," he adds, "with a changing balance between safe, fixed-return bonds and U.S. Treasury offerings and riskier, but growth-oriented, stocks."

The younger person, for example, might sink 80 percent of his investment capital into stocks and only 20 percent into bonds. For people age 45 to 55, the balance would tip to 60–40. Then, for those whose retirement is near, the emphasis would shift to steady income. Logan, for example, sees perhaps 80 percent of a portfolio for an older worker in bonds and 20 percent in high-grade stocks.

"Establishing an income portfolio for retirement would be comparatively simple if yield were the only consideration," say experts with Standard & Poor's, the advisory company. "But a serious effort must be made to hedge against the erosive effects of inflation."

That firm's sample portfolio for persons in or near retirement, for example, is split almost evenly between common stocks with above-average yields and growth potential and high-grade, medium-term corporate bonds.

United Business Service suggests that people nearing retirement consider common stocks with good current yields and a pattern of rising dividends.

The important thing, say advisers, is for workers to get a clear idea of their financial well-being before retirement. It is often possible, with professional advice, to shuffle assets and investments and come up with more income. Says Logan: "A lot of individuals and small-business owners try to save a penny on the expense of professional help and end up losing a dollar."

RETIREES' ADVICE: STAY OUT OF THE EASY CHAIR

Many retired people, even those who used to long for more leisure, are finding that a lifelong work habit can be tough to break.

For them, a happy retirement means at least a part-time job or the opportunity for useful volunteer work. Others, who had hoped to quit the work force, discovered that they must stay on the job to make ends meet.

Taken together, an estimated 3 million persons above age 65 are in paid jobs, and 4.5 million others serve in volunteer posts. An additional 4 million say that they would like to work if they could find an opening.

"We're rapidly approaching the time when most workers will automatically enter second careers at retirement, simply to remain active or supplement their pensions," predicts Jarold Kieffer of the Academy for Educational Development and director of a new study on careers for older Americans. "We made retirement so attractive in the last 20 years that millions of workers left the labor force. Now we're beginning to pay the price for putting these people on the sidelines."

Many factors are cited by labor experts as being behind the interest in having careers during retirement. Among the most important:

Inflation has cut deeply into retirement incomes, despite cost-of-living hikes built into Social Security benefits and some pension plans.

The sudden change in lifestyle brought about by retirement is frustrating for many who are used to a set routine.

People are living longer, expanding the retirement period workers have to anticipate. At the same time, the increase in younger workers entering the labor force is slowing. Experts predict that more older workers will be needed to fill employment gaps in coming years.

LEGISLATIVE MOVES

Congress last year responded to these pressures by pushing the mandatory retirement age from 65 to 70, a move that could keep 250,000 more older workers on the job each year, according to Labor Department estimates. Some economists, however, believe a much larger number will continue working.

Also boosted in 1978 was the amount of outside income that can be earned before Social Security benefits are cut. Retired workers over age 65 can now earn up to $4,500, compared with $4,000 previously, without losing any benefits. Retirees under 65 can earn up to $3,480, and there is no limit on those 72 and older. The adjoining chart shows how Social Security payments drop if earnings exceed those limits.

Those continuing to work past 65 generally fare much better financially than retirees. A census study shows that full-time male workers between 65 and 69 had a median income of $14,536 in 1977. The average male receiving Social Security gets just $3,454.

The types of work available to older Americans vary widely. Some of the most common include retailing, child care, security work, office chores, consulting, teaching and income-producing hobbies.

Kieffer of the Academy for Education Development notes that scores of "unmet community needs"—such as transportation, tutoring, home health care and recreation—urgently need a helping hand from retiree volunteers.

PINCH-HITTER

One popular approach among retired workers is to serve their old organizations on a scaled-down basis. Lillian Hervey Jackson of Columbus, Ohio, who retired in 1977 after 39 years with the Young Women's Christian Association, now pinch-hits at local YWCA chapters that need a trained administrator for temporary duty. She also conducts free training workshops around the country at local Y's.

"I probably would have kept on working if I hadn't been faced with mandatory retirement," she says, "and now I realize the pressure I was under in my job. Retirement has spoiled me. I like the idea of not having to go to work every day."

Also taking advantage of longtime skills is Russell Brooke, 68, of Atlanta. Retired in 1972, the former government worker puts in one week a month as a labor arbitrator and makes $10,000 a year.

In California, Jack Gollihur, a lawyer who retired in 1975 at age 62 after a long career with Douglas Aircraft, has found a satisfying spot at a savings and loan association in Long Beach. He works 4 hours a day, 3 days a week, counseling senior account holders on everything from personal finance to medical care. Gollihur says: "What I wanted to hang on to was my active mind. I'm as busy now as I was in the full-time professional world, but in a variety of ways."

Many firms are eager to hire retirees for temporary or part-time work because they get experienced employees without paying full-time wages and fringe benefits.

Theodore H. Silbert, 74, chairman of Sterling National Bank & Trust Company of New York, is one who shares that enthusiasm. "When a younger officer has problems, he goes to the senior citizen for advice, because the past is a pretty good guide to the future," he says. "Forced retirement to an able-bodied citizen is another name for dismissal and unemployment. Most of these older employees want to capitalize on lifetime contacts. It keeps them healthy and strong."

Another road pursued by many retirees is self-employment—often a business or hobby at home that lets them set their own pace. Some 37 percent of males and 16 percent of women over 65 who work are self-employed.

One key reason for self-employment: Some retirees find the job market is tougher than they had expected. For one thing, age discrimination still exists in many places despite federal laws forbidding it.

Facing that problem was 70-year-old Harry Lapow of New York City, who was suddenly sidelined by his employer 10 years ago after long service as an industrial designer. "I was 60," he recalls. "I thought I could get a job anywhere. Well, it wasn't so."

After some consulting and freelance work, Lapow turned to his photography hobby several years ago, and now has established a growing reputation.

"I don't have to answer to anybody, and there are real creative rewards in my work," he says. "I'm against retirement. I don't think one should submit to what society has determined is the time to stop functioning."

IMPACT OF OUTSIDE EARNINGS ON SOCIAL SECURITY BENEFITS

Between the ages of 65 and 72, a retired person can earn $4,500 a year from a job before losing some Social Security benefits.

Beyond the $4,500 cutoff point, $1 in benefits is lost for every $2 of earned income.

Here are three examples of how the regulations are applied in individual cases:

1. A married couple retires at age 65 and qualifies for maximum Social Security benefits—$6,024 for him, $3,012 for her. He would have to earn $16,548 in outside income before losing his benefits entirely, and she, $10,524. A loss of benefits by one spouse does not affect benefits of the other.

2. A widowed housekeeper begins collecting survivor benefits of $4,308 a year at the age of 60. Until age 65, only $3,480 may be earned before benefits are reduced. She would have to take a job paying $12,096 annually before her Social Security checks ceased completely.

3. A 73-year-old man who earns $20,000 a year still collects his entire Social Security benefit. At the age of 72, all restrictions on earnings end. In 1982, the limits will be lifted for persons aged 70 or older.

Remember: Income limits are only on earnings. Unearned income—pensions, dividends, interest on savings, other investments—is not counted. Ceilings on earned income will be raised each year beginning in 1980.

BEFORE THE ENGRAVED WATCH, PRACTICAL HELP

Many companies now aid employees who are about to step down, offering advice on everything from cake decorating to real estate.

Like so many older workers, Charlie Bianchi wants to play golf when he retires. What sets him apart is that his boss is paying for his golf lessons.

Bianchi, 55, a foreman for Pitney Bowes, Inc., in Stamford, Conn., is one of a growing number of workers whose employers help them prepare financially and psychologically for retirement. A survey by the Conference Board, a business-research group, finds that 88 percent of the employers interviewed were providing such aid in 1977. Many of these programs are modest, simply offering employes in their early 60s a full explanation of future benefits. Fifteen percent, however, offer personal counseling, and some have elaborate programs.

The Pitney Bowes program includes seminars for older workers and cash grants to finance training for employes who wish to develop retirement hobbies or prepare for second careers. Says William Hayes, retirement-planning manager for Pitney Bowes: "What we're trying to get across is that you don't retire from something, but you retire to something."

The firm offers scholarships of up to $300 a year for training of any employe age 50 or older and another $300 for the employe's spouse. Workers have studied everything from cake decorating to accounting. International Business Machines Corporation offers a similar opportunity for its employes.

"It's a good deal," says Bianchi, whose wife also took golf lessons at the expense of Pitney Bowes. "I'm just a hacker, but I know that when I retire I would like to play more golf."

Planning on retirement at age 62, Bianchi also is considering a real-estate course at company expense, "so I'll have something to fall back on."

Other employers help older workers ease into retirement by making available a shorter workweek or extra vacation days. In the steel industry, for example, senior workers can take an extended 13-week vacation every five years. Union officials say this helps people explore ways to cope with long periods of leisure.

THE REGO WAY

One of the most unusual preretirement programs was developed by Rego Company, a small Chicago manufacturer. Rego confers the title of senator on an employe nearing retirement. The rewards include exemption from punching time clocks, free lunches, paid time off for personal business and retirement preparation, plus free physical exams.

The fastest-growing preretirement program involves a series of special seminars for older workers, often including their spouses. Some firms offer these seminars as much as 15 years before retirement so that the workers will have adequate time to make changes in their financial planning.

These seminars, ranging in length from one to 10 sessions, are conducted by many of the nation's leading companies, including Koppers, Dow Chemical, American Telephone & Telegraph, PPG Industries, Hughes Aircraft and General Electric.

GE was a pioneer in developing such seminars. Shirley M. Brown, manager of benefits and services at the company's plant in Lynn, Mass., says she has been running a one-day seminar for older workers and their spouses each year since 1958.

Brown relies on outside experts from the Social Security Administration, the Internal Revenue Service, unemployment office and Blue Cross to explain to the workers what financial benefits they can expect in retirement. Company officials then describe General Electric's own pension benefits.

In recent years, companies have been able to purchase a package of materials that are designed specifically to be used in preretirement seminars. One such package developed by Action for Independent Maturity (AIM), a branch of the American Association for Retired Persons, includes an instructor's kit, filmstrips and literature for the participants. The basic cost of the AIM package is $350.

Pitney Bowes uses the AIM program, which covers such topics as financial planning, legal matters, housing and location, potential health problems and psychological issues, including loneliness and marital strain. Explains AIM spokesman Albert Peterson: "We try to break down people's misconception that retirement is simply a matter of having enough money."

Similar programs have been developed by other nonprofit and profit-making groups. Hayes of Pitney Bowes reports that he has been contacted by outfits selling programs for as much as $600 for each participant.

"It's a growth industry," Peterson says. He estimates that AIM's program is being given by at least 600 companies, 200 community colleges and a number of religious groups.

ON COMPANY TIME

Unions also get involved in preparing their members for retirement. The Machinists, for example, have developed a series of six two-hour seminars that are offered to members, sometimes during working hours with company consent.

Not all companies favor preretirement programs. One firm told the Conference Board that employes who elect early retirement usually do not need advice. U.S. Steel Corporation's attorneys have discouraged retirement counseling, fearing the company could be held liable if the advice given to employes leads to bad decisions.

Some workers, too, are reluctant to attend seminars. "They're afraid of it," Hayes says.

But most employers say the majority of their retiring employes are grateful for the help. Says GE's Brown, "The response has been excellent."

AN EXPERT TELLS HOW TO ADJUST TO THOSE LATER YEARS

(Interview With Dr. Robert N. Butler, Director, National Institute on Aging)

Q Dr. Butler, what are the most common problems faced by people who retire?

A People may become depressed and disturbed and troubled by the change in the rhythm of their life. Many no longer have a daily schedule to meet and have to make adjustments.

If people have a rich life, with a variety of activities to turn to, they can adapt very well to retirement. Those people who have a very thin portfolio of activities, or whose career has been all-consuming, may not do very well. They may have serious problems with depression.

Q What can be done to help those who have trouble adapting to retirement?

A They can be encouraged to enter into activities in which they help other people. They also can be urged to join social organizations, to become active physically and to develop or sustain friendships. People need to be physically fit, personally fit, which means keeping their minds active, and socially fit—maintaining relationships with others.

When I used to be in private medical practice, I was struck by the number of people who developed what I call naturally occurring mutual-assistance pacts through which they aided each other. If you're retired and you become sick and it's very bad weather, a friend can go out and do the shopping while you stay home. Such social networks can make a great difference in maintaining morale.

Q Can a second career help someone who is having difficulty adjusting?

A Yes. Any type of useful activity in which one really feels a sense of accomplishment or of doing something worthwhile can make retirement more meaningful. Just imagine if you literally closed up shop and were not doing anything that gave you any sense of purpose or substance. That can be very devastating.

Q Do some personality types do better than others in retirement?

A From what data we have, the so-called independent person who has been autonomous and aggressive does worse in his stay in, say, a nursing home than someone who has tended to be more passive, relaxed and dependent. The independent person does well, of course, in the community.

Personality characteristics thought of as adaptive throughout life, such as competitiveness, may turn out to be maladaptive in old age because the social structure and the conditions are so different. So qualities like cooperation and congeniality need to be developed.

Q Do women or men adjust better to retirement?

A Women do better. Many already have a job as a homemaker, which they rarely retire from. Men are more helpless. Its very rare for men to carry their weight in home activities. Its usually the woman who bears the main burden of the preparation of food, cleaning the house, doing the laundry.

Q Can unexpected problems develop in retirement when husbands and wives are home all day with each other?

A Absolutely. In our early studies in the '50s, we found to our shock that fully a third of the marriages showed signs of deterioration after retirement. I think there's more divorce now among older people, probably because it's culturally acceptable.

People who just couldn't stand each other suddenly face each other 24 hours a day. The husband tries to tell his wife how to run the house. She would prefer that he go out and find something to do. Many wives complain about how their husbands get clingy and make it difficult for them to continue with outside activities, such as volunteering in a hospital. The men want and expect their wives' full attention.

But resourceful people can work these problems out. They come to realize that they just can't really spend that much time together. It isn't healthy.

Q Can children be of much help to parents who are retiring?

A The best thing they can do is indicate their willingness to help, but not in any sense take over and become bossy. If the parent has serious health problems, then he may indeed need the assistance of adult children.

But if all is going reasonably well, it's disadvantageous for the adult children to be too intrusive. It's very important that the older person feel in control of his life and make his own decisions until such point in time as it's not possible.

Q Are most older people better off, then, on their own rather than moving in with the children?

A. Only about 20 percent of people over 65 live with their children, and in many of these cases it is the children who have moved in with the parents. Most older people do not want to move in on their children. They do not want to "be a burden." As long as they are financially and physically able, they tend to live on their own.

Q. What kinds of problems arise when parents and their children live together?

A. I would suspect that in 80 percent of the cases where parents move in with the children there's some conflict—there are problems defining who's to do what and what the rules are going to be.

If a mother-in-law is involved, then there may be some competition with the daughter-in-law over the kitchen, over who's running the house. The older woman may be quite disturbed by the way her daughter-in-law is rearing the children.

But I don't want to leave the impression that there is invariably conflict when older people live with their adult children. What happens is often a function of very practical matters. If there is adequate physical space in the home, that can help. It works well if the older person has an apartment within the house.

If the older person winds up in the basement or in an attic room, or if an adolescent is displaced from his room to give the retiree a place, that automatically creates conflicts.

A. Lot of sensitivities are involved. If the adult children can be conscious of them and if they can have family meetings where they deal with some of these issues out in the open, it can at least help.

Q. What should a couple consider before pulling up stakes and moving to a retirement community?

A. Don't just go there on a vacation. Everything always looks wonderful that way. Try to visit for an extended period, simulating what it would be like if you were, indeed, retired. Don't sell your home before you've done this.

I've seen all too many people come back after trying out the place in the sun—and they find they can't stand it. They try to recapture the situation they've had before, but can't because of the escalating real-estate values and other things. So my advice is test it out very well first before you jump.

Q. What problems cause retirees the most anxiety?

A. Generally speaking, upon retirement your income is cut by 50 percent. So probably the No. 1 cause of distress for most retired Americans is their income. The second is probably their health. The third is their housing, and fourth is their sense of social status.

Next comes what I call the existential issues: "What kind of a life am I leading? What are my relationships, and the state of those relationships, with my spouse, with my children, with my friends, with my neighbors?"

Then you get into "life review" questions: "What have I done in my life? What are the kinds of things I regret?" Some people become full of reminiscences. But it's not an aimless wandering of mind. They're really trying to come to grips with basic questions. And that can be very distressing. It can lead to depression, to anger, to stormy regret, to recriminations.

It can also lead to reconciliations. Brothers who have not talked in 40 years might feel it necessary to come back together again to resolve an issue that may have separated them.

Q. How can people prepare themselves for the physical changes and limitations that come with the aging process?

A. First, they can find a doctor. Most of us have doctors who are older than we are. Consequently, by the time we get older, our doctors have retired or died. There are some data that show that only about 1 out of every 10 older persons actually has his or her own doctor. That leaves them extremely vulnerable.

You can watch your diet very carefully. Particularly if you're a woman, make certain you've got a lot of milk and protein because of a condition called osteoporosis. In the United States, there are 195,000 hip fractures a year, and in part this is related to the thinning of bones that occurs with age.

Nutrition is incredibly important in the later years. Many people who are alone will not eat adequately. This reduces their physical fitness and makes them more vulnerable to disease.

If one remains physically active, that makes a tremendous difference. It even makes a difference psychologically. We know that people who remain inactive and sit around a lot can become quite depressed.

Q. What happens to older people when they begin to experience the frequent deaths of friends and loved ones that occur in later life?

A. It's very painful. Loss is a consistent aspect of the later years of life, and grief is associated with it. We did a recent study to try to determine how much of an impact bereavement has.

We concluded that there are 25,000 excess deaths every year of people over 65—beyond what you would predict from an actuarial point of view—who've lost someone during the preceding year. And that doesn't count those who become ill and get stressed by the loss of loved ones. The more relationships we develop, the more support we have when we lose somebody close.

Q. How much prejudice against the elderly still exists in the United States?

A. It's very common. "Hey there, lady, get movin'," the bus driver might say to the woman getting on the bus because she seems too slow. The adult child is irritated because grandmother seems to take too long to get from one room to another.

In everyday language, terms that no racial or ethnic group would ever accept are tossed about: "old buzzard," "old fogy," "old biddy." Our language is replete with cruel epithets and terms.

Then there is the disinterest of doctors and medical stuents in older people. And lawyers, when they size up the fact that an older person is the plaintiff, will keep pushing for continuances because that way maybe "the old buzzard will croak" before the case comes to court.

There are so many institutionalized and subtle, as well as personal, prejudices that bear upon age that they're almost beyond counting.

Q. What about job discrimination?

A. It goes on, although it can't be admitted now because of the law barring mandatory retirement before age 70. Younger people find it hard to believe, and then as they get older and they're more aware, they become conscious of the extent to which it's felt.

People are becoming more sensitive to age discrimination, but it's still a long way from being eliminated.●

YEAR OF THE CHILD

● Mr. WEICKER. Mr. President, the Connecticut Association for Children with Learning Disabilities (CACLD) has spent the last 15 years working on behalf of learning disabled children throughout Connecticut and in Fairfield County in particular.

There are now over 5,000 learning disabled children being served in the public schools in Fairfield County. There are more waiting to be found, identified and appropriately served. It is clear that their parents desperately need information and support to help them understand and cope with this "hidden handicap."

Mr. President, in order that information on the important activities of the Association receive widespread dissemination, I request that the CALCD schedule of special events for the "Year of the Child" be printed in the RECORD.

The material follows:

CALCD PLANS YEAR OF THE CHILD EVENTS

In conjunction with the International Year of The Child, Mrs. Bruce Hawley, president of the Connecticut Association For Children With Learning Disabilities, announces a schedule of events to heighten public awareness about the needs of learning disabled children.

March 8: Members of the Legislature's Education Committee have been invited to present a "Legislative Forum" to discuss and evaluate legislation affecting the learning disabled child. The meeting will be held in Norwalk.

March 10: CACLD will participate in Connecticut's first Early Childhood Special Education exposition to be held at Southern Connecticut State College in New Haven.

March 30 and 31: CACLD will sponsor parent/professional workshops on "Learning To Read-Reading To Learn". These workshops will be free and are being made possible by a grant from the Foundation For Children With Learning Disabilities. The workshops will be led by Helen Grush, Assistant Professor at Lesley College Graduate School of Education, and will be held at Cooperative Educational Services (CES) 11 Allen Road in Norwalk. Registration will be limited to parents and professionals dealing with LD students in grades 1–6.

April 5: Doreen Kronick, internationally known author and lecturer on learning disabilities will be making her first appearance in southern Connecticut at a professional workshop and parent's forum being co-sponsored by CACLD and the Hall-Brooke Foundation in Westport. Her topic will be "The Psycho-Social Implications of Learning Disabilities".

October 27 has been set as the date of the 9th annual CACLD conference at the University of Bridgeport. The theme will be "The Year Of The LD Child—Stop The World I Want To Get On!"

"Other events including programs on the LD young adult, vocational education and the impact on the family are in the planning stages," said Mrs. Hawley. "The International Year Of The Child has inspired us to work even more vigorously on behalf of the learning disabled child," she concluded.

The Connecticut Association For Children With Learning Disabilities is a non-profit organization dedicated to improving the quality of life for people handicapped by a learning disability. LD children may have normal or even superior intelligence and a strong desire to learn but may have problems in reading, writing and arithmetic. If diagnosed early and given enough of the right kinds of services they can be helped to lead meaningful and productive lives. Some may go on to college.

Residents of Southern Connecticut may obtain information on CACLD by contacting their office at 20 North Main Street, South Norwalk, CT. 06854.●

WHY FARMERS PROTEST: DEPRESSION-LEVEL PRICES

● Mr. PRESSLER. Mr. President, the Sunday, February 11, 1979, edition of the Wichita Eagle and Beacon carried an editorial which deals with some of the

reasons our country's farmers have been protesting.

The editorial, must reading for anyone attempting to find the reasons for some of our problems in agriculture, says in part:

Few non-farmers realize that being a farmer today involves being in almost continuous debt. The expensive tractors, combines and implements sometimes are mistaken as signs of affluence. In fact, they are but a visible symbol of the kind of indebtedness that the high risk of modern farming mandates.

Mr. President, the editorial concludes by saying:

The country can't afford to leave the producers of its food back in the first half of this century much longer. It must act swiftly to bring the farmer into the 1970s with the rest of the population, where he rightfully belongs.

I ask that the entire editorial, "Why the Farmers Protest," be printed in the RECORD.

The article follows:

WHY THE FARMERS PROTEST

If the frustrated farmers of the United States are to have a chance at preserving their way of life, more Americans are going to have to understand what it means today to be a farmer. The farm is not what is used to be: the quaint, quiet place where worries were few and the rewards of the good life were realized daily.

Somewhere along the line, the farm has been left out of the scheme of progress. Farm commodity prices still fluctuate from Depression-level lows to an occasional glimpse of prosperity. Meanwhile, literally every other cost that must be paid by the farming family has moved only in one direction: Up. Never back down.

That means that the farm has had to take up the slack, to adopt the technologically best methods of production, to cultivate more land, to produce more and more in an effort to keep up with the pricing pace. But while farming has responded admirably to the challenge of production, it has been kept at the mercy of a fickle supply-and-demand system that too often dances to the tune of the government piper.

The farmer's control of the price he gets for his food grains remains minimal, with commodity speculators and governmental intervention having much more impact on per-bushel prices than anything he does. It is not unreasonable for the farmer, in that situation, to expect the government to pay something in return for its controls on his product. Even at that, the farmer seldom is able to influence the policy decisions on farm support and crop deficiency payments that help him survive from year to year.

So there is the frustration of having very little control over one's own livelihood. That frustration is coupled with the tremendous dose of risk that every farmer must accept when he refinances for another growing season.

Few non-farmers realize that being a farmer today involves being in almost continuous debt. The expensive tractors, combines and implements sometimes are mistaken as signs of affluence. In fact, they are but a visible symbol of the kind of indebtedness that the high risk of modern farming mandates. The monthly payment books that cover each piece of equipment, to say nothing of the files of promissory notes on seed, fertilizer and fuel, more nearly tell the story of the farmer's real financial status.

The consuming public must understand that although literally hundreds of thousands of dollars may pass through a farmer's hands in the course of producing a crop, precious few of those dollars stick there. Consumers also must understand that the farmer's share of the final cost of the foods they buy is but a fraction of what they pay; and that the farmer is the only link in the food chain who faces the prospect of collecting Depression-level prices for his services during off years.

These are but a few of the factors that have brought the farmer to the point where he is today—hog-tied and finding little he can do about it—except shout his frustration.

There are other complicating variables, too, that always have been there: drought and hail and insect infestation. Those things haven't changed much, but a lot of other aspects of farming in America have. And unless the nation is ready to accept the prices and policies that big-corporation farming will decree, it needs to wake up and start understanding the changes that have brought the farmers into the streets in protest.

The country can't afford to leave the producers of its food back in the first half of this century much longer. It must act swiftly to bring the farmer into the 1970s with the rest of the population, where he rightfully belongs.●

SECRETS OF KABKAN

● Mr. GOLDWATER. Mr. President, there is an excellent article appearing in Newsweek magazine of March 12 entitled, "Secrets of Kabkan." I am asking that this be printed in the RECORD at this point in my remarks so that my colleagues can gain a better idea of just what the loss of Iran has meant to us, particularly as it concerns the two sites we had in that country to keep track of what the Russians were up to, not just in space, or in space developments on the ground, but in many other areas. It causes me great consternation to hear the President say that we can verify some Soviet activities by means other than these stations. This is not true, and wish the President would not say this. It is one thing to look down with cameras, but I am sure the Russians are experts in the science of camouflage. It is something else to be able to gather intelligence on particular Soviet activities which can only be done by the type of base that we have lost in Iran. This should cause great concern among my colleagues who may be in favor of the SALT treaty but who would not vote for it if they were not sure of complete verification of everything that we could tell about Russian activities as they relate to SALT.

The article follows:

SECRETS OF KABKAN

On a remote mountain overlooking Iran's northeastern frontier with the Soviet Union, the U.S. Government was embroiled last week in a bizarre confrontation with supporters of the Ayatollah Khomeini. The issue was severance pay for a group of Iranian employees at Kabkan, a secret CIA outpost built to eavesdrop electronically on missile tests inside the Soviet Union. The disgruntled workers held 22 American staffers as hostages until the U.S. Embassy in Teheran rushed in $200,000 to pay them off.

The Americans were evacuated, the base was shut down and the Carter Administration insisted that Kabkan's electronic secrets had been preserved. But the base, only 650 miles from the Soviet missile range at Leninsk, was lost for good, along with a second U.S. listening post on the Caspian Sea at Behshahr. The closing of the bases raised new questions about Washington's ability to verify Soviet compliance with a second-stage strategic arms limitation treaty (SALT II).

The fall of the Shah may have compromised other American secrets. Iran has an array of advanced U.S. weapons, including 77 top-of-the-line F-14 jet fighters. The F-14s are guarded closely by the Iranian Air Force, but the U.S. had to assume that the planes and their Phoenix air-to-air missiles may yet fall into unfriendly hands. The Pentagon conceded last week that secret manuals for the F-14 and its missiles already may have been compromised.

It was the loss of the bases at Kabhan and Behshahr, however, that mattered the most. They were ideally located to track Soviet missiles from the moment of lift-off during flight tests, recording valuable information on the capabilities of the rockets. The bases were replaceable—but only to a degree. The U.S. could monitor from Turkey to Pakistan—if their less-than-friendly governments agreed—but bases in those nations are farther from Leninsk.

Air Patrol: Soviet missiles also can be tracked, less efficiently in some respects, by satellites and ships, or by planes patrolling over the Black Sea. "It would be more expensive to do it that way, but it would be quite feasible," said Paul Warnke, President Carter's former chief negotiator on arms control. A less optimistic Congressional expert retorted: "What are you going to do, keep a 24-hour patrol flying there?"

Both hawks and doves on arms control insisted that the Iranian bases would not have played a crucial role in monitoring the Soviet compliance with SALT II. Some analysts hinted that, through radio interceptions, the bases were acquiring other kinds of information on Soviet strategic capabilities. "I would not want to be misunderstood as saying that the loss of these bases was unimportant," said Warnke. "It was important for reasons having nothing to do with verifying SALT."

Last week, State Department spokesman Hodding Carter repeated Administration assurances that it "will not submit [to the Senate] a SALT treaty which is not verifiable. We will be able to conclude a SALT treaty which is verifiable despite recent developments" in Iran. But the still-unconcluded treaty is already in trouble in the Senate. If the legislators are persuaded that the loss of the Iranian bases in any way impairs U.S. ability to assess Moscow's strategic power and intentions, the treaty will face an even harder fight for ratification.●

THE SUGAR STABILIZATION ACT OF 1979

● Mr. ZORINSKY. Mr. President, I have asked Senator CHURCH to add me as a cosponsor of S. 462, the Sugar Stabilization Act of 1979. The list of cosponsors includes my colleagues from both sugar cane and beet producing States. I am disappointed, however, that the bill as yet has no cosponsors from sugar-consuming States, because it is designed to benefit both producers and users.

The price supporting provisions of S. 462 are tied to the implementation of the International Sugar Agreement (ISA). This compact between more than 70 sugar producing and consuming nations proposes a free trade price corridor. Reserve stocks will be accumulated during years of surpluses to protect producers from prices below 15 cents a pound. Con-

versely, the reserves will be released in short-supply years to protect consumers from prices above 19 cents a pound.

The ISA offers a limited defense against the wild price fluctuations of the international sugar market. However, the domestic price support mechanism is even more critical to the interests of all Americans.

No one can accurately predict the myriad factors which affect the supply of vital commodities. Drought, floods, civil or military disturbances, and many other natural or manmade disasters can disrupt the production and commerce of necessary commodities. It would be foolhardy to assume that because a ready supply of cheap sugar exists today, that it will be available tomorrow at affordable prices. I need not remind you, Mr. President, that only a few years ago, energy supplies seemed boundless and cheap.

Our country has a reliable domestic source of sugar. We would be shortsighted, indeed, to allow that source to dwindle and falter. Rather, we should nuture and support it, for we cannot afford even the specter of a sugar OPEC.

The American sugar industry is failing. Every year another company disappears, overcome by the pressures of increasing costs and continually depressed markets. In my own State of Nebraska, the Great Western Sugar Co., one of the Nation's major beet processing firms, has announced that no grower contracts for the 1980 season will be offered in Dawson and Lincoln Counties. The combination of high freight rates and low sugar prices makes it impossible for the company to continue its purchase of sugar beets in this area.

The loss of this market will be a severe blow to the economy of the central Nebraska communities. Agricultural production in much of central and western Nebraska is limited to a few crops. The disappearance of a market outlet for sugar beets will further strain an economy already depressed by low grain prices. Farmers and local businessmen will suffer.

But even more significant is what the sugar company's action portends for the future of the American sugar industry. No sugar company ever reenters the market after closing down. Rather, companies first reduce production when faced with high costs and low returns and finally shut down altogether. In the past year, Mr. President, several major processing plants in the Western United States have halted operations.

We cannot allow this vital industry to die. It is too important to our country's farmers. It is too necessary to the small communities and businesses built around sugar cane and beet growing areas. And it is too crucial to our country's consumers.

I urge my colleagues to take the necessary steps to save the American sugar industry. Let us act swiftly to pass the Sugar Stabilization Act.●

DEMAND FOR WATER TO BECOME CRUCIAL

● Mr. PRESSLER. Mr. President, a dynamic city in western South Dakota—Rapid City—is facing some real "growing pains" problems. I want to do all that I can to help solve these dilemmas, always keeping in mind the fine line between governmental assistance and governmental suffocation.

A recent news article in the Rapid City Daily Journal points up the need for the start of careful study of a source of additional water supply for municipal purposes for Rapid City in light of the prediction that population will jump to 100,000 people by 1995, and 110,000 just over two decades from now, in the year 2000.

Mr. President, I am asking the Corps of Engineers to undertake a thorough and specific study of the Rapid City, S. Dak., area in light of these population projections. It is my hope that the corps can augment its western South Dakota study to include more information on the Rapid City area to more adequately serve this vital area's needs.

Mr. President, I ask that the article from the Rapid City Journal be printed in the RECORD. I commend it to the attention of my colleagues and pledge my best efforts to this crucial project.

The article follows:

DEMAND FOR WATER HERE MAY MEET OR EXCEED SOURCES

Demands for water will meet or exceed presently available sources when the population of the greater Rapid City area reaches 100,000, says the water resources committee of the Rapid City Area Chamber of Commerce.

A report released Friday predicts the area's population will reach 100,000 in the year 1995 and 110,000 in the year 2000.

The committee defined the greater Rapid City area as including the city, Ellsworth Air Force Base, Black Hawk, Piedmont, Box Elder and "immediate adjacent areas which can reasonably expect to be annexed by the City of Rapid City."

It used various population studies in its projection and assumed per capita water consumption, based on a 1975 study by the Corps of Engineers, of 200 gallons per day.

Principal recommendations of the committee were that the chamber urge the corps to evaluate prospective dam sites for potential municipal water supply and sponsor a comprehensive urban-hydrology study or studies of the area as soon as possible.

The hydrology studies, it said, should address the major inter-related categories of water supply, urban run-off and the ground water system.

The committee recommended the chamber urge area legislators to support legislation designed to set up a committee to negotiate with Wyoming and potential industrial water users for delivery of water through the proposed West River aqueduct.

Committee members noted that the proposed aqueduct represents an alternative for transporting 66,000 acre feet the city has in future-use water rights to Missouri reservoir water.

Other recommendations were that the chamber encourage the continued acquisition of Rapid Creek water rights from "willing" sellers and urge the city to adopt a water plan providing an adequate source of water for peak days rather than a plan anticipating water shortages during peak demands of the greater Rapid City area.

In concluding that the hydrology studies were necessary, the committee used an engineer's projection that peak demand would exceed 60 million gallons a day by the year 2000.

Leonard Swanson, city director of public works and committee member, said that with expansion of the city water plant, the city water system could have a capacity of 60,000 gallons a day.

The committee, however, found insufficient data on water sources to indicate that quantity or that for peak-month demands would be available.

Ground water, it said, should be investigated with emphasis on water levels, including recharge and losses, flow of creeks and springs, and detailed responses of the system in the immediate area to present and future stresses such as increased pumping.

Committee chairman Allen G. Nelson presented the report at a meeting of the chamber's legislative committee.●

S. 555—INDEPENDENT LOCAL NEWSPAPER ACT OF 1979

● Mr. SCHMITT. Mr. President, I am pleased to join with the distinguished Senator from North Carolina, Senator MORGAN, in cosponsoring the Independent Local Newspaper Act of 1979, which he introduced yesterday.

The public is slowly awakening to the fact that the independent local newspaper is becoming an endangered species. This applies to daily as well as weekly newspapers, which are being bought up at an ever-increasing pace by newspaper chains, communications conglomerates, and public corporations. Each year for the past several years, 40 to 60 daily newspapers have left the ranks of the independents and are merged into chains whose corporate headquarters are hundreds or thousands of miles away. At the present rate, in another few years, there will be virtually no independents left remaining. At this time, there are just over 600 independent dailies, but each week, another one or two are bought by the chains.

This bill allows the owners of an independent local newspaper to establish an advance estate tax payments trust to be funded by corporate earnings with not more than 50 percent of pretax income of the newspaper in any year. The contributions to and income of the trust may be invested solely in obligations of the United States. Excess funding of the trust is expressly prohibited. The funds accumulated in the trust may be used only to pay the estate taxes of the owners of the newspaper.

In addition, the bill provides for an extension of the time for payment of estate tax where the estate includes the interests in an independent local newspaper. Such extensions would be subject to payment of interest as now provided under the tax laws.

These provisions will permit the owners of independent newspapers to prepare far in advance for their estate taxes, and will thus permit more small, family-owned newspapers to be passed from generation to generation, as they have been since the days of our country's founding.

The Congress should do everything it can to encourage the continued existence of strong and healthy independent newspapers.

I agree with the words of Thomas Jefferson in this regard. He wrote:

> Were it left to me to decide whether we should have a government without newspapers or newspapers without government, I should not hesitate a moment to prefer the latter.

Freedom of expression is fundamental to our national life. It is the strongest bastion that exists to guard against encroachment upon the personal freedoms of our people. As Napoleon observed:

Four hostile newspapers are more to be feared than a thousand bayonets.

I am hopeful that we will always have a good many papers that are hostile and critical to the activities of the Government. This appears to be the best means available to keep it on the straight and level.

We need as many organs of expression in this Nation as possible, representing the full spectrum of opinion on the issues, and I am, therefore, pleased to cosponsor and enthusiastically support this legislation.●

FAIR HOUSING AMENDMENTS ACT OF 1979

● Mr. BAYH. Mr. President, on March 1, 1979, Senator MATHIAS and I along with other colleagues of ours introduced S. 506, the Fair Housing Amendments Act of 1979, a bill designed primarily to give the Department of Housing and Urban Development (HUD) the authority to enforce the prohibitions against discriminatory housing practices passed by the Congress in 1968. As most Senators know, HUD now only has the power to seek a conciliation agreement between an "aggrieved person"—a person adversely affected by a discriminatory housing practice—and a respondent—a person allegedly engaging in such a practice. S. 506 would add to this authority by giving HUD a number of avenues to enforce the law once a charge is filed.

At any time after a preliminary inquiry into a charge HUD may do the following:

First, enter into conciliation with the parties;

Second, refer the charge to appropriate State or local officials;

Third, refer the charge to another appropriate Federal agency;

Fourth, make a further investigation under title VIII;

Fifth, refer the matter to the Attorney General for appropriate action under section 813 of title VIII or other applicable law; or

Sixth, notify the aggrieved person and respondent that adequate grounds to proceed are not present.

In addition to these powers, Mr. President, the Attorney General and aggrieved persons would retain their present rights under title VIII of bringing pattern and practice or private enforcement suits respectively. However, the main aim of S. 506 is to provide HUD with such a flexible enforcement mechanism that HUD will always have an efficacious response to diverse discriminatory housing practice allegations. In short, enactment of this bill will make title VIII as effective a tool in ending discrimination in housing as the 1965 Voting Rights Act has been in ending voting discrimination.

Mr. President, I request that a letter from the Secretary of Housing and Urban Development in support of S. 506 be printed in the RECORD.

The letter follows:

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., March 6, 1979.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

Subject: Fair Housing Amendments Act of 1979.

DEAR SENATOR BAYH: I have received the February 15, 1979 letter from you and your colleagues, transmitting a copy of your proposed bill, the "Fair Housing Amendments Act of 1979", the amended version of H.R. 3504 and S. 571 introduced during the 95th Congress, and asking my support. I enthusiastically endorse your efforts to provide enhanced enforcement powers in the area of fair housing and generally support the bill.

As you have recognized, and as the President observed in his January 25 Message to the Congress, the Federal Fair Housing Act "remains largely an empty promise because of the lack of an adequate enforcement mechanism." The President has pledged to work with the Congress for prompt and favorable consideration of legislation to provide enforcement powers for this Department. It is my judgment that support for the enforcement machinery set out in your bill will be the most effective means possible of implementing that goal.

Authority in this Department to conduct hearings and to order appropriate administrative relief for the victims of housing discrimination is, in my view, the most compelling need related to Fair Housing. The additional litigation authority which would be provided the Attorney General is a matter of almost equal importance. Given these tools, the Department of Housing and Urban Development, in close cooperation with the Department of Justice, can take effective steps to assure final realization of the purpose of the 1968 Fair Housing Act. As I stated in my testimony in support of H.R. 3504, your proposal "might well be captioned 'A Bill to Fulfill the Original Promise of the Federal Fair Housing Act to Provide, Within Constitutional Limitations, for Fair Housing Throughout the United States.'"

The Administration's decision to support the improved enforcement powers in the proposal reflects our considered judgment that they are well designed to accomplish the goals we have all worked so long and hard to achieve. We will be prepared to discuss these and additional desirable features of the bill and may suggest certain revisions to other provisions in our testimony on the bill.

I hope you will call upon me for any assistance that this Department can provide in seeking prompt consideration and adoption of legislation necessary to implement more effectively the 1968 Fair Housing Act.

The Office of Management and Budget has advised that the enactment of the enhanced enforcement powers for Title VIII and, with modifications as appropriate, the other provisions, would be in accord with the President's program.

Sincerely yours,
PATRICIA ROBERTS HARRIS.●

A LETTER FROM STUDENTS AT McCORMICK JUNIOR HIGH SCHOOL IN CHEYENNE, WYO.

● Mr. WALLOP. Mr. President, I wish to submit for the RECORD a letter from 23 students at McCormick Junior High School in Cheyenne, Wyo.

These young people are showing the kind of generous sentiment which once made this country great. Any American citizen anywhere in the world deserves no less than the fullest protection which the entirety of our forces can provide.

Mr. President, we have forgotten this, and have sunk in the world's esteem and worse yet in our own.

I am proud that young people in my State think this way about the duties which every American citizen owes to every other. I ask the White House to turn its attention from its highly paid task forces, and listen to the voice of responsibility coming out of a junior high school in Wyoming.

The letter follows:

McCORMICK JUNIOR HIGH SCHOOL,
Cheyenne, Wyo., February 14, 1979.

DEAR SENATOR WALLOP: Recent developments, namely the storming of the American Embassy in Tehran, the brutal murder of the American ambassador in Afghanistan, the wanton destruction of private property of the Shah's mother in our own country, and the effort to obtain funds to assist Iranian students here, have disturbed us tremendously.

Because of the discrepancy between the treatments of our own citizens in the Middle East and of the Iranian guests in the United States, it is our desire and demand that our United States citizens in Iran be extended the protection of our armed forces for any and all necessary evacuation from that country. Furthermore, we believe it to be of paramount importance that those Iranians and Afghanistanis in the United States on temporary visas be deported.●

RULES OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

● Mr. RANDOLPH. Mr. President, the Committee on Environment and Public Works has adopted its rules for the first session of the 96th Congress and I submit them for printing in the RECORD:

RULES OF PROCEDURE OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Rule 1. *Regular Meeting Days.*—The regular meeting day of the Committee shall be the first and third Thursday of each month at 10:00 A.M., except that if there be no business before the Committee, the regular meeting shall be omitted.

Rule 2. *Committee Meetings.*—Subject to section 133(a) of the Legislative Reorganization Act of 1946, as amended, Committee meetings for the conduct of business, for the purpose of holding hearings, or for any other purpose, shall be called by the Chairman, after consultation with the ranking Minority Member. Subcommittee meetings shall be called by the Chairman of the respective subcommittee, after consultation with the ranking Minority Member. Notice of a meeting and the agenda of business to be discussed by the Committee will be provided to all Members not less than twenty-four hours in advance of such meeting. Additions to the agenda after that time may be made with the concurrence of the ranking Minority Member. Such 24-hour notice may be waived in an emergency by the Chairman, with the concurrence of the ranking Minority Member.

Rule 3. *Open Committee Meetings and Legislative Mark-up Sessions.*—Meetings of the Committee, including hearings and legislative mark-ups, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the Committee determines by record vote of a majority of the members of the Committee present that the matters to be discussed or the testimony to be taken at such portion or portions—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committee staff personnel or internal staff management or procedure; or

(3) constitute any other grounds for closure under paragraph 7(b) of rule XXV of the Standing Rules of the Senate (as amended by Senate Resolution 9, 94th Congress).

Rule 4. *Presiding Officer.*—(a) The Chairman shall preside at all meetings and hearings of the Committee except that in his absence the ranking Majority Member who is present at the meeting shall preside;

(b) Subcommittee Chairmen shall preside at all meetings and hearings of their respective Subcommittees, except that in the absence of the Subcommittee Chairman, the ranking Majority Member of the Subcommittee who is present at the meeting shall preside;

(c) Notwithstanding the rule prescribed by subsections (a) and (b), any Member of the Committee may preside over the conduct of a hearing.

Rule 5. *Quorums.*—(a) Except as provided in subsections (b) and (d), five Members, two of whom shall be Members of the Minority party, shall constitute a quorum for the conduct of business, except for the purpose of reporting any measure or matter.

(b) Quorums for the conduct of business by the Subcommittees shall be a simple majority of the Membership of the Subcommittees with at least one Minority Member present.

(c) Once a quorum as prescribed in subsections (a) and (b) has been established for the conduct of business, the Committee may continue to conduct business.

(d) Notwithstanding the rule prescribed in subsection (a), one Member shall constitute a quorum for the purpose of conducting a hearing.

Rule 6. *Proxy Voting.*—(a) Proxy voting shall be allowed on all measures, amendments, resolutions, or any other issue before the Committee or any Subcommittees. Any Member who is unable to attend the meeting may submit his vote on any such issue, in writing or through personal instructions; however, proxies shall not be voted for the purpose of reporting any measure or matter except when the absent Committee Member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. A proxy given in writing shall be valid until revoked, while a proxy given orally or by personal instructions is valid only on the day given.

(b) At the discretion of the Chairman, after consultation with the Ranking Minority Member, Members who are unable to be present and whose vote has not been cast by proxy may have their positions recorded on any vote on the same business day so long as the vote will not change the outcome.

Rule 7. *Public Announcement of Vote.*—Whenever the Committee by rollcall vote reports any measure or matter, or acts upon any measure or amendments thereto, the report of the Committee on such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each Member of the Committee.

Rule 8. *Announcement of Hearing.*—The Committee, or any Subcommittee thereof, shall make public announcement and provide notice to Members of the date, place, time and subject matter of any hearings to be conducted on any measure or matter, at least one week in advance of such hearing, unless the Committee Chairman, or Subcommittee Chairman, with the concurrence of the ranking Minority Member, determines that there is good cause to begin such hearing at an earlier date, in which event not less than twenty-four hours notice shall be given.

Rule 9. *Statements of Witnesses at Hearings.*—(a) Each witness who is scheduled to testify at any hearing of the Committee, or any Subcommittee thereof, shall file a written statement of his proposed testimony not later than noon of the last business day preceding the day on which he is scheduled to appear. At the time of his appearance, he shall supply for the use of the Committee or Subcommittee, 25 copies of his prepared testimony or such greater number as may be requested in the letter of invitation. Except for witnesses from the Federal government, this rule may be waived with regard to field hearings.

(b) The presiding officer at a hearing may have a witness not read his written testimony and to confine his oral presentation to a summary of his statement.

Rule 10. *Regularly Established Subcommittees.*—The Committee shall have six regularly established Subcommittees as follows:

Subcommittee on Environmental Pollution;
Subcommittee on Water Resources;
Subcommittee on Transportation;
Subcommittee on Regional and Community Development;
Subcommittee on Resource Protection; and
Subcommittee on Nuclear Regulation.

Rule 11. *Subcommittee Membership.*—Following consultation with the Majority Members and the Ranking Minority Member of the Committee, the Chairman shall announce selections for membership of the Subcommittees referred to in Rule 10.

Rule 12. *Environmental Impact Statements.*—No project or legislation proposed by the Administration shall be approved or other action taken on such project or legislation unless the Committee has received a final environmental impact statement relative to it, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1970, and the written comments of the Administrator of the Environmental Protection Agency, in accordance with section 309 of the Clean Air Act. This rule is not intended to broaden, narrow, or otherwise modify the class of projects or legislative proposals for which environmental impact statements are required under section 102(2)(C).

Rule 13. Whenever the Committee authorizes a project, under Public Law 89-298, Rivers and Harbors Act of 1965, Public Law 83-566, Watershed Protection and Flood Prevention Act, or Public Law 86-249, Public Buildings Act of 1959, as amended, the Chairman shall submit for printing in the Congressional Record, and the Committee shall publish periodically as a committee print, a report that describes the project and the reasons for its approval, together with any dissenting or individual views.

Rule 14. *Naming of Public Facilities.*—No building, structure or facility authorized by the Committee, shall be named for any living person, except former Presidents or former Vice Presidents of the United States, or former Members of Congress over 70 years of age.

Rule 15. *Committee Resolutions.*—(a) The Chairman, after consultation with the ranking Minority Member, is authorized to certify and pass on Committee resolutions for review of flood control and river and harbor reports and resolutions for studies of public building projects, and forward the resolutions to the appropriate Federal agency.

(b) Proponents of Committee resolutions shall submit appropriate evidence showing need for review or reports on river and harbor and flood control projects.

Rule 16. *Broadcasting of Hearings.*—Public hearings of the Committee, or any Subcommittee thereof, may be televised or broadcast, or recorded for television or broadcast, upon notification in advance to the Chairman through the Chief Clerk. During public hearings, photographers and other reporters using mechanical recording or filming devices shall position and use their equipment in such fashion as will not interfere with the seating, vision, or hearing of Committee Members or Staff on the dais, nor with the orderly process of the hearing.

Rule 17. *Amendment of Rules.*—The rules may be added to, modified, amended or suspended by a majority of the Committee Membership.●

RULES OF PROCEDURE OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, pursuant to Section 133B of the Legislative Reorganization Act of 1946, as amended, I submit the Committee on Labor and Human Resources rules of procedure to be printed in the RECORD:

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

RULES OF PROCEDURE (AS AMENDED, MARCH 23, 1978)

Rule 1.—Unless the Senate is meeting at the time, or it is otherwise ordered, the Committee shall meet regularly at 10:30 a.m. on the fourth Thursday of each month in room 4232, Dirksen Senate Office Building. The Chairman may, upon proper notice, call such additional meetings as he may deem necessary.

Rule 2.—The Chairman of the Committee or of a subcommittee, or if the Chairman is not present, the ranking Majority member present, shall preside at all meetings.

Rule 3.—Meetings of the Committee or a subcommittee, including meetings to conduct hearings, shall be open to the public except as otherwise specifically provided in subsections (b) and (d) of Rule 25.7 of the Standing Rules of the Senate.

Rule 4.—(*a*) Subject to paragraph (b), one-third of the membership of the Committee, actually present, shall constitute a quorum for the purpose of transacting business. Any quorum of the Committee which is composed of less than a majority of the members of the Committee shall include at least one member of the Majority and one member of the Minority.

(*b*) A majority of the members of a subcommittee, actually present, shall constitute a quorum for the purpose of transacting business: provided, no measure or matter shall be ordered reported unless such majority shall include at least one member of the Minority who is a member of the subcommittee. If, at any subcommittee meeting, a measure or matter cannot be ordered reported because of the absence of such a Minority member, the measure or matter shall lay over for a day. If the presence of a member of the Minority is not then obtained, a majority of the members of the subcommittee, actually present, may order such measure or matter reported.

(*c*) No measure or matter shall be ordered reported from the Committee or a subcommittee unless a majority of the Committee or subcommittee is actually present at the time such action is taken.

Rule 5.—With the approval of the Chairman of the Committee or subcommittee, one member thereof may conduct public hearings other than taking sworn testimony.

Rule 6.—Proxy voting shall be allowed on all measures and matters before the Committee or a subcommittee if the absent member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. While proxies may be voted on a motion to report a measure or matter from the Committee, such a motion shall also require the

concurrence of a majority of the members who are actually present at the time such action is taken.

Rule 7.—There shall be prepared and kept complete transcript or electronic recording adequate to fully record the proceedings of each Committee or subcommittee meeting or conference whether or not such meetings or any part thereof is closed pursuant to the specific provisions of subsections (b) and (d) of Rules 25.7 of the Standing Rules of the Senate, unless a majority of said members vote to forgo such a record. Such records shall contain the vote cast by each member of the Committee or subcommittee on any question on which a "yea and nay" vote is demanded, and shall be available for inspection by any Committee member. The Clerk of the Committee, or the Clerk's designee, shall have the responsibility to make appropriate arrangements to implement this Rule.

Rule 8.—The Committee, and each subcommittee, shall undertake, consistent with the provisions of section 133A of the Legislative Reorganization Act of 1946, as amended, to issue announcement of any hearing it intends to hold at least one week prior to the commencement of such hearing.

Rule 9.—The Committee or a subcommittee shall, so far as practicable, require all witnesses heard before it to file written statements of their proposed testimony at least 24 hours before a hearing, unless the Chairman and the ranking Minority member determine that there is good cause for failure to so file, and to limit their oral presentation to brief summaries of their arguments. The presiding officer at any hearing is authorized to limit the time of each witness appearing before the Committee or a subcommittee. The Committee or a subcommittee shall, as far as practicable, utilize testimony previously taken on bills and measures similar to those before it for consideration.

Rule 10.—Should a subcommittee fail to report back to the full Committee on any measure within a reasonable time, the Chairman may withdraw the measure from such subcommittee and report that fact to the full Committee for further disposition.

Rule 11.—No subcommittee may schedule a meeting or hearing at a time designated for a hearing or meeting of the full Committee. No more than one subcommittee executive meeting may be held at the same time.

Rule 12.—It shall be the duty of the Chairman in accordance with section 133(c) of the Legislative Reorganization Act of 1946, as amended, to report or cause to be reported to the Senate, any measure or recommendation approved by the Committee and to take or cause to be taken, necessary steps to bring the matter to a vote in the Senate.

Rule 13.—Whenever a meeting of the Committee or subcommitte is closed pursuant to the provisions of subsection (b) or (d) of Rule 25.7 of the Standing Rules of the Senate, no person other than members of the Committee, members of the staff of the Committee, and designated such closed session, except by special dispensation of the Committee or subcommittee or the Chairman thereof.

Rule 14.—The Chairman of the Committee or a subcommittee shall be empowered to adjourn any meeting of the Committee or a subcommittee if a quorum is not present within fifteen minutes of the time scheduled for such meeting.

Rule 15.—Whenever a bill or joint resolution reapealing or amending any statute or part thereof shall be before the Committee or a subcommittee for final consideration, the Clerk shall place before each member of the Committee or subcommittee a print of the statute or the part or section thereof to be amended or replaced showing by stricken-through type, the part or parts to be omitted, and in italics, the matter proposed to be added.

Rule 16.—An appropriate opportunity shall be given the Minority to examine the proposed text of Committee reports prior to their filing or publication. In the event there are supplemental, minority, or additional views, an appropriate opportunity shall be given the Majority to examine the proposed text prior to filing or publication.

Rule 17.—(*a*) The Committee, or any subcommittee, may issue subpoenas, or hold hearings to take sworn testimony or hear subpoenaed witnesses, only if such investigative activity has been authorized by majority vote of the Committee.

(*b*) For the purpose of holding a hearing to take sworn testimony or hear subpoenaed witnesses, three members of the Committee or subcommittee shall constitute a quorum: provided, with the concurrence of the Chairman and ranking minority member of the Committee or subcommittee, a single member may hear subpoenaed witnesses or take sworn testimony.

(*c*) The Committee may, by a majority vote, delegate the authority to issue subpoenas to the Chairman of the Committee or a subcommittee, or to any member designated by such Chairman. Prior to the issuance of each subpoena, the ranking minority member of the Committee or subcommittee, and any other member so requesting, shall be notified regarding the identity of the nature of the information sought and its reperson to whom it will be issued and the nature of the information sought and its relationship to the authorized investigative activity, except where the Chairman of the Committee or subcommittee, in consultation with the ranking minority member, determines that such notice would unduly impede the investigation. All information obtained pursuant to such investigative activity shall be made available as promptly as possible to each member of the Committee requesting same, or to any assistant to a member of the Committee designated by such member in writing, but the use of any such information is subject to restrictions imposed by the Rules of the Senate. Such information, to the extent that it is relevant to the investigation shall, if requested by a member, be summarized in writing as soon as practicable. Upon the request of any member, the Chairman of the Committee or subcommittee shall call an executive session to discuss such investigative activity or the issuance of any subpoena in connection therewith.

(*d*) Any witness summoned to testify at a hearing, or any witness giving sworn testimony, may be accompanied by counsel of his own choosing who shall be permitted, while the witness is testifying, to advise him of his legal rights.

(*e*) No confidential testimony taken or confiential material presented in an executive hearing, or any report of the proceedings of such an executive hearing, shall be made public, either in whole or in part or by way of summary, unless authorized by a majority of the members of the Committee or subcommittee.

Rule 18.—Presidential nominees shall submit a statement of their background and financial interests, including the financial interests of their spouse and children living in their household, on a form approved by the Committee which shall be sworn to as to its completeness and accuracy. The Committee form shall be in two parts—

(I) information relating to employment, education and background of the nominee relating to the position to which the individual is nominated, and which is to be made public; and

(II) information relating to financial and other background of the nominee, to be made public when the Committee determines that such information bears directly on the nominee's quaifications to hold the position to which the individual is nominated.

Information relating to background and financial interests (Part I and II) shall not be required of (a) candidates for appointment and promotion in the Public Health Service Corps; and (b) nominees for less than full-time appointments to councils, commissions or boards when the Committee determines that some or all of the information is not relevant to the nature of the position. Information relating to other background and financial interests (Part II) shall not be required of any nominee when the Committee determines that it is not relevant to the nature of the position.

Committee action on a nomination, including hearings or meetings to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits the form required by this rule unless the Chairman, with the concurrence of the ranking minority member, waives this waiting period.

Rule 19.—Subject to statutory requirements imposed on the Committee with respect to procedure, the rules of the Committee may be changed, modified, amended or suspended at any time: provided, not less than a majority of the entire membership so determine at a regular meeting with due notice, or at a meeting specifically called for that purpose.

Rule 20.—In addition to the foregoing, the proceedings of the Committee shall be governed by the Standing Rules of the Senate and the provisions of the Legislative Reorganization Act of 1946, as amended.

SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders have been recognized under the standing order, Mr. EXON be recognized for not to exceed 15 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, are there any other orders for the recognition of Senators on Monday?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent that I may be allotted 15 minutes on Monday.

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

Mr. ROBERT C. BYRD. That is following Mr. EXON.

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday there then be, following the orders for the recognition of Senators, a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 5 minutes each.

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

AUTHORITY FOR CERTAIN ACTION DURING RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess over until 12 o'clock noon on Monday, the Vice President of the United

States, the President pro tempore of the Senate, and the Acting President pro tempore be authorized to sign all duly enrolled bills and joint resolutions.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that during the same period, the Secretary of the Senate be authorized to receive messages from the President of the United States and/or the House of Representatives and that they may be appropriately referred.

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

ORDER FOR COMMITTEES TO HAVE UNTIL 5 P.M. TOMORROW TO FILE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that committees may have until 5 p.m. tomorrow to file committee reports.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will come in at 12 noon on Monday. After the two leaders or their designees have been recognized under the standing order, there will be two orders for the recognition of Senators, following which there will be a period for the transaction of routine morning business not to exceed 15 minutes with statements therein limited to 5 minutes each, at the conclusion of which the Senate will resume its consideration of the Taiwan Enabling Act.

Pending amendments or motions in relation to the act will be called up on Monday. Rollcall votes will undoubtedly occur thereon. In accordance with the agreement, the final action on the Taiwan Enabling Act will occur at no later than 5 p.m. on Tuesday next.

RECESS UNTIL MONDAY, MARCH 12, 1979

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 12 noon on Monday.

The motion was agreed to; and at 6:51 p.m., the Senate recessed until Monday, March 12, 1979, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate March 8, 1979:

THE JUDICIARY

George P. Kazen, of Texas, to be U.S. district judge for the southern district of Texas, vice a new position created by Public Law 95-486, approved October 20, 1978.

William Ray Overton, of Arkansas, to be U.S. district judge for the eastern district of Arkansas, vice a new position created by Public Law 95-486, approved October 20, 1978.

NATIONAL CREDIT UNION ADMINISTRATION

Lawrence Connell, Jr., of the District of Columbia, to be a member of the National Credit Union Administration Board for the term of 6 years (new position).

NATIONAL RAILROAD PASSENGER CORPORATION

M. Athalie Range, of Florida, to be a member of the Board of Directors of the National Railroad Passenger Corporation for a term expiring July 18, 1981, vice Mary J. Head, term expired.

DEPARTMENT OF COMMERCE

Mary P. Bass, of New York, to be Inspector General, Department of Commerce (new position).

DEPARTMENT OF TRANSPORTATION

Frank Saburo Sato, of Virginia, to be Inspector General, Department of Transportation (new position).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Eldon D. Taylor, of Virginia, to be Inspector General, National Aeronautics and Space Administration (new position).

SMALL BUSINESS ADMINISTRATION

Paul Robert Boucher, of Virginia, to be Inspector General, Small Business Administration (new position).

CONFIRMATION

Executive nomination confirmed by the Senate March 8, 1979:

DEPARTMENT OF AGRICULTURE

Dale Ernest Hathaway, of the District of Columbia, to be Under Secretary of Agriculture for International Affairs and Commodity Programs.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—*Thursday, March 8, 1979*

The House met at 11 a.m.

Rabbi Dov Edelstein, Moses Montefiore Synagogue, Appleton, Wis., offered the following prayer:

Ever living God: In these trying times of confusion and perplexity, we are looking to Thee for guidance and sustenance. We pray and grasp for peace and for harmonious relations among all Thy children; yet, there are detractors who despise these lofty aims and hinder their realization among mankind. Give us, O Lord, strength and encouragement that we may not falter.

Bestow Thy guidance and inspiration upon the elect representatives of this American Nation that they discharge their heavy responsibilities with prudence, courage, and humility. May they navigate the ship of our Nation in the turbulent waters to secure and tranquil havens. Do Thou crown with success the efforts of the President of the United States at establishing lasting peace among the nations in the Middle East.

Imbue, O Lord, the hearts of all Thy children with the precious gift of peace as an everlasting blessing for us, and for Thy eternal glory. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

RABBI DOV EDELSTEIN

(Mr. ROTH asked and was given permission to address the House for 1 minute.)

Mr. ROTH. Mr. Speaker, I am honored today to be able to recognize Rabbi Dov Edelstein, who delivered our opening prayer this morning.

Rabbi Edelstein has served for 9 years at the Moses Montefiore Synagogue in my hometown—Appleton, Wis. He is well known in Appleton as an exemplary citizen with an outstanding reputation for community service.

The Rabbi is a native of Romania, and was ordained to the rabbinate in Hungary in 1944. He is also a former inmate of the Nazi concentration camp at Auschwitz. Following the war, he was one of the 50,000 Jews interned by the British in camps on Cyprus prior to the establishment of the State of Israel.

From 1947 to 1962, he lived in Israel and taught Hebrew at several institutions and also taught the language to immigrants. In 1962 he entered the United States and settled in Weirton, W. Va., the sight of his first congregation, coming from there to Appleton 9 years ago.

Rabbi Edelstein holds a graduate degree in American history and is the author of a major study of the relationship of the Wisconsin press toward President Abraham Lincoln during the Civil War.

It is certainly a pleasure and an honor to welcome him here today.

OVERSIGHT HEARINGS INTO OCCUPATIONAL SAFETY AND HEALTH OF THE FEDERAL EMPLOYEE TO COMMENCE

(Mr. GAYDOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GAYDOS. Mr. Speaker, I wish to