# HOUSE OF REPRESENTATIVES—*Tuesday, October 2, 1979*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious Lord, we pray Your blessing upon our Nation and all the people that dwell therein. Give to us the appreciation for the opportunity to live in a free land and in the diversity of our people. Help us to grow in our awareness of our traditions and to value those ideals that promote peace and good will.

This we pray, O Lord, for in You do we trust. 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.

## MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a joint resolution of the House of the following title:

H.J. Res. 402. Joint resolution making continuing appropriations for the Federal Trade Commission for the fiscal year 1980, and for other purposes.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1075. An act to revise and reform Federal law applicable to drugs for human use, and for other purposes, and

S. 1300. An act to amend the Federal Aviation Act of 1958 in order to promote competition in international air transportation, provide greater opportunities for United States air carriers, establish goals for developing United States international aviation negotiating policy, and for other purposes.

## ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to announce that pursuant to the authority granted him on Friday, September 28, he did on Saturday, September 29, sign the following enrolled bills:

H.R. 5369. An act to provide for a temporary increase in the public debt limit, and to amend the rules of the House of Representatives to make possible the establishment of the public debt limit in the future as a part of the congressional budget process.

S. 233. An act to amend the International Travel Act of 1961 to authorize additional appropriations, and for other purposes.

S. 737. An act to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference within the ability to engage in commerce.

## PRESIDENT'S ADDRESS A WEAK RESPONSE TO SOVIET COMBAT TROOPS IN CUBA

The SPEAKER. Under a previous order of the House, the gentleman from Maryland (Mr. BAUMAN) is recognized for 30 minutes.

Mr. BAUMAN. Mr. Speaker, last night I had occasion to speak in the beautiful little Eastern Shore community of Chestertown, Md. I purposely limited my remarks so that the dinner could conclude and I could listen to the President address the Nation at 9 o'clock. I listened very carefully to every word the President of the United States had to tell us about the Cuban crisis, as it was called only a few days ago. I must offer this Member's opinion, that this was a pitiful response by a weak President to a major international problem that faces this country.

I suspect that President Monroe and his Doctrine are both spinning in their grave this morning. I do not think the President of the United States apparently has read any history in regard to our relationship with the Soviet Union or with their puppet state which is Cuba.

In 1962 President Kennedy in a forthright display of American ability to respond to the Soviet threat literally told the Soviets that they must remove the nuclear warheads and missiles that were being placed there as a threat to the United States. And, indeed in a brief matter of time the Soviets backed down.

In 1970, as Mr. Kissinger has recently indicated in his memoirs being printed in Time magazine, President Nixon and the Secretary of State both responded forthrightly to the threat of the placement of a nuclear submarine base at Cienfuegos in Cuba. And again after a period of time, rather brief, the Soviets backed down.

In 1979 we have a President of the United States telling the Soviets that they must withdraw these combat-ready troops, that the status quo will not be acceptable, and last night the President of the United States backed down.

I searched my mind this morning for a similar historic parallel to the President's repeated statements last night that the Soviets had assured him that there was no threat in the presence of these troops.

I remember very well studying Neville Chamberlain's words after negotiating with Adolf Hitler at Munich that he had been assured by Herr Hitler that this, after the Sudeten issue was settled, would be the last of his territorial conquests in Europe. Of course, it was only a few weeks and months until all of the world was plunged into war. Admittedly, we are not at that point in our current history, nor is this the most serious of threats. But I was astounded by the President's claim that we are in fact, as we deal with this crisis, the strongest we have ever been militarily, that we have in the last 2 years been even in many respects strengthened by his defense policy—this being a President who canceled the B-1 bomber, who has waffled back and forth on the neutron bomb, who has fought against the nuclear carrier, who has repeatedly, in fact until only a few weeks ago, said he would not allow a great increase, as many of us feel we need, in defense spending.

Exactly what is it that we face, at least in this Member's view, in this Soviet-Cuban issue?

Perhaps 3,000 combat ready Soviet troops in Cuba are not all that much a threat in the context of the overall world situation. But we have also seen Soviet nuclear submarines delivered to Cuba in recent months, and there are many who will tell us from briefings that they have had the ready transport capability to place these Soviet troops in other Latin American countries exists even now.

No mention was made by the President of Communist revolutions in Africa that are being supported by Cuba as a client state of the Soviet Union supplied with Soviet arms. No mention was made of the major role played by Cuba recently in the overthrow of the Nicaraguan Government in cooperation with the Republic of Panama. No mention was made that Cuban insurgent training is going on, perhaps very well provided by the same Russian troops, for launching revolutions in El Salvador, Honduras, and Guatemala so that every Central American country may become in fact a Cuban satellite country—a Soviet satellite country.

No; this is the same President who told us only months ago that he might want to lift trade sanctions against Cuba; that the time may have come to establish a Cuban embassy here, perhaps with full diplomatic relations. This is the same President who told us that this was going to be a new era in Latin American affairs when he gave away the Panama Canal and signed those odious treaties.

And what did we get for it? The other night as Vice President MONDALE stood at Albrook Air Force Base handing over the canal to a Marxist government under a dictatorship in Panama, he was booed by those who were supposed to be so grateful, and told by shouts and chants in the crowd to "Get out now, Yankee." That is all the thanks we got.

Let me just briefly before I conclude my remarks, refer to what the President suggested was a proper response to the Soviets. And, mind you, all of this is based on the idea that we can trust the Soviet's assurances that these troops are no more than a mere training brigade; assurances from a government that has used lies, cheating, force, and violence as

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.
● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.



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its traditional weapons in conducting its foreign policy.

□ 1010

First of all the President said he would monitor the status of the Soviet forces by increased reconnaisance. This was the President who cancelled overflights over Cuba when he became President and apparently set us back in our reconnaissance activities so we did not know until only a few weeks ago the dimensions of what was going on.

Second, the President said he would make sure no Soviet unit in Cuba could threaten this country or any other nation in the hemisphere. He did so by saying that other nations could be confident the United States will act in response to any requests for assistance in meeting such a threat from Soviet or Cuban forces. Yet, what has happened to governments like Nicaragua who asked for our help? The President would not even take a phone call from the President of Nicaragua, a duly elected president, however unacceptable he may have been. In fact, the State Department was encouraging and helping Cuba in overthrowing the Government of Nicaragua. Is that the kind of assistance he is going to render to Latin American nations?

Third, the President said he was going to create a new permanent Caribbean Joint Task Force at Key West. What a joke. I guess that would be good duty for the people who would be sent to Key West, but we already have proper monitoring facilities at many places in the United States including Florida and, in fact, at Guantanamo, and we have, we hope, the response capability to send troops if it is necessary. Key West is just so much window dressing.

Fourth, the President said he would expand military maneuvers in the area and maintain the U.S. force at Guantanamo. So what? Is that going to in any way intimidate the expanding Soviet presence? Certainly, I cannot quarrel with that kind of maneuver but it is only that, a maneuver.

Fifth, the President said he would step up economic assistance in the Caribbean region to help those nations resist social turmoil. We have already seen an example of that. We may soon see a $100 million request possibly in a supplemental appropriation in a few weeks to help the new Communist Government of Nicaragua. U.S. foreign aid to help communism. Is that what we are going to have in Latin America?

No; in listening to the radio, I heard, already, the Russians quoting the President of the United States as they did on Moscow radio this morning, as authority for the fact that they are no threat, that this is nothing but a training brigade.

Of course, if President Carter said it we must be able to believe it because you can believe him.

I think, quite frankly, the President is mistaken. The SALT agreement is intimately tied to what is happening in Cuba. It is another testing of the United States by the Soviet Union, and once again we have been found wanting. I do not know how these United States can reverse the trend toward weakness in foreign policy and in military policy until we have a President and a Congress that recognizes the Soviets mean precisely what they say.

I would have said to the Soviets—I do not think it would have been a belligerent act had I been in the White House—that the SALT II treaty will be set aside, it will not even be considered by the Senate, that I am withdrawing it, until such time as the Soviet Union realizes the United States means what it says when it claims to be the leader of the Free World.

Last night our President not only did not mean that, he abdicated that leadership.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. EDWARDS of Alabama) to revise and extend their remarks and include extraneous material:)

Mr. KEMP, for 10 minutes, today.

Mr. BAUMAN, for 30 minutes, today.

(The following Members (at the request of Mr. MOAKLEY) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 15 minutes, today.

Mr. WEAVER, for 10 minutes, today.

Mr. DICKS, for 5 minutes, today.

## EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. EDWARDS of Alabama) and to include extraneous matter:)

Mr. KEMP in five instances.

Mr. VANDER JAGT.

(The following Members (at the request of Mr. MOAKLEY) and to include extraneous matter:)

Mr. ANDERSON of California in 10 instances.

Mr. GONZALEZ in 10 instances.

Mrs. BYRON in 10 instances.

Mr. ROSENTHAL in 10 instances.

Mrs. BOUQUARD in five instances.

Mr. HAMILTON in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Ms. HOLTZMAN in 10 instances.

Mr. JONES of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. CAVANAUGH in five instances.

Mr. MCDONALD in five instances.

Mr. PEPPER.

Mr. BEDELL.

Mr. HOLLAND.

Mr. SEIBERLING in 10 instances.

## SENATE BILLS REFERRED

Bills of the Senate of the following title were taken from the Speaker's table and, under the rule, referred as follows:

S. 1075. An act to revise and reform Federal law applicable to drugs for human use, and for other purposes; to the Committee on Interstate and Foreign Commerce; and

S. 1300. An act to amend the Federal Aviation Act of 1958 in order to promote competition in international air transportation, provide greater opportunities for U.S. air carriers, establish goals for developing U.S. international aviation negotiating policy, and for other purposes; to the Committee on Public Works and Transportation.

## SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 233. An act to amend the International Travel Act of 1961 to authorize additional appropriations, and for other purposes; and

S. 737. An act to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

## ENROLLED BILL SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 5369. An act to provide for a temporary increase in the public debt limit, and to amend the Rules of the House of Representatives to make possible the establishment of the public debt limit in the future as a part of the congressional budget process.

## BILLS AND JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on the following dates present to the President, for his approval, bills and a joint resolution of the House of the following titles:

On September 28, 1979:

H.R. 4393. An act making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1980, and for other purposes;

H.R. 5380. An act to continue in effect any authority provided under the Department of Justice Appropriation Authorization Act, fiscal year 1979, for a certain period; and

H.J. Res. 406. Joint resolution to extend by 120 days the expiration date of the Defense Production Act of 1950.

On September 29, 1979:

H.R. 3920. An act to amend the Unemployment Compensation Amendments of 1976 with respect to the National Commission on Unemployment Compensation, and for other purposes;

H.R. 3996. An act to amend the Rail Passenger Service Act to extend the authorization of appropriations for Amtrak for 2 additional years, and for other purposes; and

H.R. 5369. An act to provide for a temporary increase in the public debt limit, and to amend the Rules of the House of Representatives to make possible the establishment of the public debt limit in the future as a part of the congressional budget process.

## ADJOURNMENT

Mr. MOAKLEY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 14 minutes a.m.), under its previous order, the House adjourned until Friday, October 5, 1979, at 10 a.m.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2547. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Ambassador-designate Thomas W. M. Smith, and his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

2548. A letter from the Privacy Act Officer, Agricultural Marketing Service, Department of Agriculture, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

2549. A letter from the Secretary of the Interior, transmitting a report on a violation of the Anti-Deficiency Act, pursuant to section 3679(i)(2) of the Revised Statutes, as amended; to the Committee on Appropriations.

2550. A letter from the Deputy Assistant Secretary of the Interior for Indian Affairs, transmitting a proposed plan for the use and distribution of the Yankton Sioux judgment funds in docket No. 332-C-1 before the Indian Claims Commission, pursuant to sections 2(a) and 4 of Public Law 93-134; to the Committee on Interior and Insular Affairs.

2551. A letter from the Deputy Assistant Secretary of Defense (Administration), transmitting a report on negotiated contracts for experimental, developmental, test or research work, or for industrial mobilization in the interest of the national defense, covering the period October 1978 through March 1979, pursuant to 10 U.S.C. 2304(e); to the Committee on Armed Services.

2552. A letter from the Secretary of Health, Education, and Welfare, transmitting notice that the report on the status of health professions personnel in the United States required by section 708(d) of the Public Health Service Act as amended, will be delayed until November 15, 1979; to the Committee on Interstate and Foreign Commerce.

2553. A letter from the Secretary of Health, Education, and Welfare, transmitting notice that the report assessing the national area health education center program required by section 802(b) of the Health Professions Educational Assistance Act of 1976 will be delayed until November 15, 1979; to the Committee on Interstate and Foreign Commerce.

2554. A letter from the Executive Secretary to the Department of Health, Education, and Welfare, transmitting proposed final regulations to establish standards relating to audits, records, financial responsibility, administrative capability, institutional refunds and misrepresentation of the Higher Education Act of 1965, pursuant to section 431(d)(1) of the General Education Provisions Act, as amended; to the Committee on Education and Labor.

2555. A letter from the Assistant Attorney General for Administration, transmitting notice of a proposed new records system for the Department, pursuant to 5 U.S.C. 552a (o); to the Committee on Government Operations.

2556. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in the cases of certain aliens under the authority contained in section 13 (b) of the act of September 11, 1957, pursuant to section 13(c) of the act; to the Committee on the Judiciary.

2557. A letter from the Secretary of the Treasury, transmitting his annual report on the antirecession fiscal assistance program for calendar year 1978 pursuant to section 213 of the Public Works Employment Act of 1976, as amended; to the Committee on Government Operations.

2558. A letter from the Administrator, Energy Information Administration, Department of Energy, transmitting a quarterly report for the period April through June 1979 on imports of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal; reserves and production of crude oil, natural gas, and coal; refinery activities and inventories; together with data on exploratory activity, exports, nuclear energy, and electric power, pursuant to section 11(c)(2) of Public Law 93-319, as amended; to the Committee on Interstate and Foreign Commerce.

2559. A letter from the Secretary, Interstate Commerce Commission, transmitting notice that the Commission is unable to render a final decision in docket No. 37146, transit on wheat between reshipping point and destination, within the initially specified 7-month period, pursuant to 49 U.S.C. 10707(d) to the Committee on Interstate and Foreign Commerce.

2560. A letter from the Director of Legislative Affairs, Department of the Navy, transmitting notice of the Navy's intention to lease a certain naval vessel to the Government of the Dominican Republic, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

2561. A letter from the Director of Legislative Affairs, Department of the Navy, transmitting notice of the Navy's intention to sell certain naval vessels to the Government of Colombia, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

2562. A letter from the Director of Legislative Affairs, Department of the Navy, transmitting notice of the Navy's intention to sell a certain naval vessel to the Government of Haiti, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

2563. A letter from the Director of Legislative Affairs, Department of the Navy, transmitting notice of the Navy's intention to lease a certain naval vessel to the Government of Turkey, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

2564. A letter from the Director of Legislative Affairs, Department of the Navy, transmitting notice of the Navy's intention to sell certain naval vessels to the Government of Turkey, pursuant to 10 U.S.C. 7307; to the Committee on Armed Services.

2565. A letter from the Mayor of the District of Columbia, transmitting a draft of proposed legislation to amend the District of Columbia Self-Government and Governmental Reorganization Act with respect to the borrowing authority of the District of Columbia; to the Committee on the District of Columbia.

2566. A letter from the executive director, U.S. Olympic Committee, transmitting a report on activities and the audit of accounts for calendar year 1978, pursuant to section 113(a) of Public Law 95-482; to the Committee on the Judiciary.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mrs. SCHROEDER: Committee on Post Office and Civil Service. H.R. 5176. A bill to establish an independent personnel system for employees of the General Accounting Office with amendments (Rept. No. 96-494). Referred to the Committee of the Whole House on the State of the Union.

## ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 997: Mr. DODD.

## PETITIONS, ETC.

Under clause 1 of rule XXII,

202. The SPEAKER presented a petition of New Detroit, Inc., Detroit, Mich.; relative to supporting the Fair Housing Amendments Act of 1979, which was referred to the Committee on the Judiciary.

## AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3916

By Mr. RANGEL:

—Page 5, insert after line 7 the following:

(e)(1) Section 410(a) of such Act is amended (A) by striking out "and" at the end of paragraph (5), (B) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and (C) by adding after paragraph (6) the following:

"(7) make grants, in accordance with subsection (c)(5), to units of general purpose local government—

"(A) for the preparation of local plans for the provision and coordination of drug abuse prevention, treatment, and rehabilitation services; and

"(B) to implement such plans and to evaluate the services provided pursuant to such plans.".

(2) Section 410(c) of such Act is amended by adding at the end the following:

"(5)(A) The Secretary may approve the application of a unit of general purpose local government for a grant under subsection (a)(7) only if the Secretary finds that such unit of government—

"(i) has a population of at least 175,000, as determined on the basis of the most satisfactory, current data available to the Secretary,

"(ii) has a high concentration of drug abuse and other drug-related problems among its population, and

"(iii) has the capacity to improve planning for and coordination of drug abuse prevention, treatment, and rehabilitation services for its population.

"(B) Any unit of general purpose local government desiring to receive a grant under subsection (a)(7) shall submit to the Secretary a local plan for planning, coordinating, and evaluating projects for the development of more effective drug abuse prevention, treatment, and rehabilitation services. Each such local plan shall—

"(i) designate or establish a single municipal agency as the sole agency for the preparation and administration of the plan or for supervising the preparation and administration of the plan;

"(ii) contain satisfactory evidence that the municipal agency designated or established pursuant to clause (i) will have authority to prepare and administer, or supervise the preparation and administration of, such plan in accordance with this subparagraph;

"(iii) set forth, in accordance with criteria established by the Secretary, a detailed sur-

vey of the local needs for prevention and treatment of drug abuse and drug dependence and a plan for coordination of services to meet these needs; and

"(iv) provide that the municipal agency will make such reports, in such form and containing such information as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

"(C) No grant provided under subsection (a)(7) may exceed $300,000.".

Page 5, line 8, strike out "(e)" and insert in lieu thereof "(f)".

Page 6, line 3, strike out "(f)" and insert in lieu thereof "(g)".

# SENATE—*Tuesday, October 2, 1979*

*(Legislative day of Thursday, June 21, 1979)*

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

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

Let us pray.

Almighty God from whom all blessings flow, kindle in us the refining fires of Thy holy spirit. May the celebration of a new year, the National Day of Prayer and the visit of the Pontiff summon us all to a deeper spirituality. Show us who we are, what we ought to be and what we ought to do.

Take away our spiritual deadness, our insensitivity to others, our blindness to the light of truth, our deafness to Thy still small voice.

Grant us grace enough to meet Thy terms for spiritual renewal. Give us love for hate, trust for fear, faith for doubt. May this Nation be born again by Thy spirit not to the life which once we knew, but to the new life we never yet have known—the life over which Thou art Sovereign, the law of which is love, the way of life the way of the Cross.

In Thy holy name we pray. 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., October 2, 1979.*

*To the Senate:*

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

WARREN G. MAGNUSON,
*President pro tempore.*

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

## THE JOURNAL

Mr. STEWART. 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.

Mr. STEWART. I yield the floor.

## ORDER OF PROCEDURE

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

Mr. BAKER. Mr. President, I observe that the Senator from North Carolina is not yet here. While we await his imminent arrival, I suggest the absence of a quorum.

Mr. President, when the Senator from North Carolina arrives, it is my intention to ask unanimous consent to yield my time under the special order this morning to him to augment the period available to him for his remarks today.

Rather than proceed at this time, in the absence of anything else to do at this moment, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the time be charged against the Senator from North Carolina or the Senator from Tennessee?

Mr. BAKER. Mr. President, I ask unanimous consent that the time required for the call of the roll to ascertain the presence of a quorum be charged against my special order time this morning.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. 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.

Mr. BAKER. Mr. President, I ask unanimous consent that the time remaining to me under the special order provided for in my favor this morning be yielded to the distinguished Senator from North Carolina.

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

Mr. HELMS. Mr. President, I thank the distinguished minority leader and I thank the Chair for recognizing me.

## THE SOVIET MILITARY BUILDUP IN CUBA

Mr. HELMS. Mr. President, last night millions of Americans waited expectantly for some sign of leadership from the White House.

They found none.

Instead, President Carter told us that he has some sort of pledge from high Soviet officials that the combat brigade will not be used in a combat role.

This is a replay of tragic scenarios of the past. In October 1962, the same Anatoly Dobrynin who today claims that the brigade is not a combat brigade at all but only a training unit assured top Kennedy administration officials Robert Kennedy and Chester Bowles that the only missiles in Cuba were "antiaircraft missiles."

On October 17, 1962, the same Andrei Gromyko who created a flap the other day by his vehement denial of any combat role for Soviet troops in Cuba sat opposite President Kennedy in the White House and solemnly pledged that there were no offensive missiles in Cuba.

Both lied then. Both are lying now.

Who can say that the pledges that President Carter urges us to accept as an act of faith are any more valid today than they were then?

Mr. President, there is a telling significance in the fact that the President of the United States chose to address the Nation on the subject of the Soviet military buildup in Cuba on the same day that the United States has struck the U.S. flag in Panama.

The coincidence is not just nostalgic symbolism. Even though the Panama Canal will not be fully turned over to Panama until 1999, if the schedule in the treaties is followed, the fact that the United States, a powerful nation, chose to withdraw the exercise of its sovereignty in an area vital to its interests sent a strong signal to powerful and weak nations alike. The message was clear that the United States is no longer equipped psychologically to defend its essential priorities.

Not surprisingly, the Soviet Union is among those nations that got the message. It is indeed no coincidence that the Soviet Union chose to move boldly into the vital sphere of our defense perimeter—both directly through an increase in Soviet armaments in Cuba and indirectly through the subversion of friendly governments by Cuba. Not until the Senate of the United States voted to surrender the Panama Canal did the Soviets take action. It was last winter that high Soviet military officials visited Cuba in a succession of extraordinary visits. It was last November that the presence of sophisticated MiG-23's was detected in Cuba. It was in August that the presence of a Soviet combat-ready brigade in Cuba was confirmed.

Similarly, according to U.S. intelligence documents already published in the CONGRESSIONAL RECORD, it was not

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

until last fall that Cuba reevaluated its support of the Sandinistas in Nicaragua—then at a relatively low level—and began intensive training and logistical support of the Sandinista rebellion, frequently through the intermediary assistance of Panama. First, came training; then arms; then strategy formation; and finally logistical support, while the United States merely looked on.

This is not the place nor the time to argue the merits or demerits of the former Government of Nicaragua, or to discuss the Castro-directed psychological warfare and terrorism which shattered the social fabric of that country. Suffice it to say that without Castro and Torrijos, Nicaragua would not now be saddled with the structure of Socialist totalitarianism conceivably worse than anything that may have preceded it. From the point of view of U.S. interests, few will assert that the new regime in Nicaragua will ever be alined with the traditional American definitions of freedom and independence.

What is significant, therefore, is that in spite of the fundamental ideological opposition between U.S. freedom and Socialist totalitarianism, the Carter administration now clearly has chosen to accept a government that is fundamentally anti-American, and help it to consolidate its control over the hapless people of Nicaragua. The statements of the Secretary of State before the Foreign Policy Association in New York last week are profoundly shameful.

The point is that Panama, Nicaragua, and Cuba are all of the same piece. Our attitudes in every case suggest that the United States is unable to define its vital interests. The fact that they are all interconnected, that one leads to the other, that all show a tendency to explain away probable threat and danger to our survival shows an ominous pattern of events. It is ominous because it may lead the Soviets to misread the will of the United States to survive as a free and independent nation.

THE FIRST CUBAN MISSILE CRISIS

It was just exactly that kind of misreading that tempted the Soviet Union to install medium- and intermediate-range missiles in Cuba in 1962. The failure of the Bay of Pigs, our hesitancy during the construction of the Berlin Wall, the poor impression which the young Jack Kennedy made upon Khrushchev in the ill-fated Vienna meeting, all led Khrushchev to misjudge the response of the United States to immediate danger. In fact, the current Cuban situation seems to be an eerie replay of the events of 1962. Among the parallels are the following:

First. The tendency of the intelligence community to explain away Soviet actions which do not fit their own interpretation of Soviet policy.

Second. The consequent failure of the administration to take a positive stand in the face of mounting evidence of Soviet activity.

Third. The repeated Soviet denials that offensive strategic weapons were being installed in Cuba.

Fourth. The failure to detect either the number of combat mode of Soviet troops in Cuba.

Fifth. The failure to secure onsite inspection to get positive evidence that long-range missiles had actually been removed.

As early as January 2, 1961, Khrushchev was saying:

> They are trying to present the case as though rocket bases of the Soviet Union are being set up or are already established in Cuba. It is well known that this is a foul slander.

Does that sound familiar? He went on to say:

> There are no Soviet military bases in Cuba; in the same way there are no such bases in other countries.

In April of 1961, after the Bay of Pigs, Khrushchev sent a letter to Kennedy, in which Khrushchev stated:

> We do not have any bases in Cuba, and we do not intend to establish any.

On August 24, 1962 a U–2 flight over Cuba established the presence of two surface-to-air missile sites. The administration brushed these off as "defensive." It never occurred to them that they were nowhere near any known military installations that needed to be defended, but were in fact emplaced to defend the sites for offensive weapons.

By that time, Senator Kenneth Keating was beginning the first of 10 speeches warning of long-range missiles in Cuba. On September 4, 1962, the same Soviet Ambassador Anatoly Dobrynin, who today gives assurances to Secretary of State Vance, called upon the Attorney General, Robert Kennedy, and flatly denied that the Soviet Union had sent missiles of any kind to Cuba.

On September 11, 1962, a statement issued from the Kremlin said:

> There is no need for the Soviet Union to shift its weapons for the repulsion of aggression for a retaliatory blow to any other country, for instance, Cuba.

On September 12, Secretary of State Dean Rusk told a House Committee that the United States would never tolerate Cuba's becoming an "offensive" military base, and described the Soviet buildup in Cuba as "defensive." At his September 13 press conference, President Kennedy said that—

> Unilateral military intervention on the part of the United States cannot currently be either required or justified.

On October 13, Ambassador Dobrynin assured Chester Bowles that there were no missiles in Cuba.

On October 14, the first of many U–2 flights over Cuba discovered the presence of the long-range, offensive missiles.

On October 16, Khrushchev, apparently unaware of the photographs being examined in Washington, D.C., called in U.S. Ambassador Foy Kohler and assured him that Soviet intentions in Cuba were defensive in character.

On October 18, 1962, the same Soviet Foreign Minister Andrei Gromyko who challenged the veracity and motives of President Carter's statements about the presence of a Soviet combat brigade in Cuba, met with President Kennedy in the White House and complained of what Gromyko called the anti-Cuba campaign in the United States. He said that his instructions were to make it clear that the Soviet Union gave assistance to Cuba for the sole purpose of strengthening Cuba's capacity to defend herself. He asserted that the training of Cuban troops was by no means an offensive measure. President Kennedy, although by now he knew the proof, did not raise the missile issue directly. Instead, he went back to the repeated assurances of Khrushchev and Dobrynin that there were no missiles in Cuba. Gromyko once more reasserted the same assurances, which the President of the United States, John F. Kennedy, knew to be falsehoods.

Does all that sound familiar in the context of today, Mr. President?

Let me continue:

On October 22, President Kennedy addressed the Nation in his now historic address, asserting that "within the past week, unmistakeable evidence has established the fact that a series of offensive-missile sites is now in preparation on that imprisoned island. The purpose of these bases can be none other than to provide a nuclear-strike capability against the Western Hemisphere."

Mr. President, those were words that the people of this country understood; those were words that the leaders of the Soviet Union understood.

But on October 23, Dobrynin once again asserted to Robert Kennedy, President Kennedy's emissary in this matter, that there were no missiles in Cuba capable of reaching the United States.

On the same day, October 23, in New York, Soviet Ambassador to the United Nations, Valerian Zorin, rejected what he called "false accusations" that the Soviet Union had "set up offensive armaments in Cuba."

On October 24, in Moscow, Khrushchev unexpectedly called in an American businessman, William Knox, to carry back a message to the American Government. After a long harangue, Khrushchev pointed his finger at Knox, and said:

> If I point a pistol at you like this in order to attack you, the pistol is an offensive weapon. But if I aim to keep you from shooting me, it is defensive, no?

The answer was "no." The blockade was imposed. The OAS gave its unanimous sanction. World opinion followed a strong leader, President John F. Kennedy. And the Soviets backed down, but Castro did not. The missile sites were dismantled, but Castro refused to allow on-site inspection, not even by the United Nations.

Containers which could have been used to carry missiles were removed in plain sight, with television cameras in operation, of personnel of the U.S. fleet and aircraft reconnaissance, who saw all of this. Castro finally agreed even to the removal of some Ilyushin light bombers, which had been given as a gift from the Soviet Union. The crisis was over.

THE 1963 SENATE REPORT

But here comes a question that we must confront, Mr. President, and confront now. Were the missiles really in those missile-carrying containers?

Today we do not have positive evidence that those missiles were, in fact, removed, despite the assurances of the intelligence community. The 1963 Report

of the Preparedness Investigating Subcommittee of the Armed Services Committee makes very interesting reading today in the context of what is going on. This subcommittee report was issued after extensive hearings and interviews with prominent members of the intelligence community. It represents an objective weighing in the balance of the pros and cons which were swirling around the issue at that time. Several of the major findings of the report deserve close attention at this time.

Let me quote a few of them:

3. While a reasonably competent job was done in acquiring and collecting intelligence information and data, in retrospect it appears that several substantial errors were made by the intelligence agencies in the evaluation of the information and data which was accumulated.

4. Faulty evaluation and the predisposition of the intelligence community to the philosophical conviction that it would be incompatible with Soviet policy to introduce strategic missiles into Cuba resulted in intelligence judgments which later proved to be erroneous.

And then the report of the subcommittee of the Armed Services Committee specified:

Among these were:

(a) It was not until after a confirming picture was obtained on October 25, 1962, that it was established by the intelligence community that organized Soviet ground combat units were present in Cuba. The importance of this should be obvious.

Mr. President, these are not the words of the Senator from North Carolina in 1979. These are the words of the subcommittee of the Armed Services Committee a decade ago or more:

(b) The number of Soviet troops in Cuba was substantially underestimated throughout the crisis. On October 22—

And this was October 22, 1962, not 1979.

On October 22, our intelligence people estimated that there were 8,000 to 10,000 Soviets in Cuba. They now say that, at the height of the build-up, there were at least 22,000 Soviet personnel on the island.

(c) It was not until the photographic evidence was obtained on October 14 that the intelligence community concluded that strategic missiles had been introduced into Cuba. In reaching their pre-October 14 negative judgment the intelligence analysts were strongly influenced by their judgment as to Soviet policy and indications that strategic missiles were being installed were not given proper weight by the intelligence community. . . .

7. To a man the intelligence chiefs stated that it is their opinion that all strategic missiles and bombers have been removed from Cuba. However, they readily admit that, in terms of absolutes, it is quite possible that offensive weapons remain on the island concealed in caves or otherwise. They also admitted that absolute assurance on this question can come only from penetrating and continuing on-site inspection by reliable observers and that, based on skepticism, if nothing more, there is reason for grave concern about the matter.

8. There are literally thousands of caves and underground caverns in the island of Cuba and many of these are suitable for the storage and concealment of strategic missiles and other offensive weapons. Refugee and exile reports continue to insist that they are being so utilized. Military-connected activities have been noted with reference to a number of them but it is the view of the intelligence analysts that the military usage of the caves is for the storage of those weapons which we know are now in Cuba and not for the storage of those weapons which we know are not in Cuba and not for the storage of offensive weapon systems. Admittedly, however, this view is based to a substantial degree on the negative proposition that there is no hard evidence confirming the presence of strategic missiles in Cuba at this time.

9. Even though the intelligence community believes that all have been withdrawn, it is of the greatest urgency to determine whether or not strategic missiles are now concealed in Cuba. The criticality of this is illustrated by the fact that, assuming maximum readiness at preselected sites, with all equipment prelocated, the Soviet mobile medium range (1,100 miles) missiles could be made operational in a matter of hours.

Mr. President, because the entire 1963 Senate report is practically unobtainable today, and is so important to an understanding of today's events, I ask unanimous consent that the report be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

THE LESSONS OF 1963

Mr. HELMS. Mr. President, we have noted in the conclusions of the distinguished subcommittee some points especially relevant to today. First, there is the predisposition of the intelligence community to interpret data to fit their own preconceived ideas about Soviet strategy. Second, there is the difficulty of detecting combat troops as such. It is significant that our intelligence in 1963 failed so badly on this point that President Kennedy had no information on the number of combat troops until the crisis was over, and thus he was not able to include the removal of troops in his bargaining with the Soviets. The failure to insist upon the removal of combat troops is responsible for the problem which President Carter faces today. Third, it was clear in 1963, as it remains clear today, that no hard evidence has ever been produced that the missiles have been removed. The failure to insist upon on-site inspection not only established the precedent that missiles could be hidden in caves, but left us without any way of finding out whether newer missiles may have been reintroduced into caves. The Carter administration's action in 1977 suspending U-2 flights over Cuba continued all the biases of the intelligence community criticized in 1963 by the subcommittee; it also prevented us from having current information about Soviet combat troop buildup, and about the possible introduction of newer strategic systems.

All of these failures, Mr. President, have compounded into the problem we face today: The evident perception of the Soviets that the United States is withdrawing from its regions of influence, even from its defense perimeter. That is why the same Andrei Gromyko, who lied to President Kennedy in 1962, has lied again to President Carter in 1979. The lie is an attempt to conceal the same fact, namely, the construction of an advance military base in the Western Hemisphere suitable for the projection of Soviet military, diplomatic, and economic power. The Soviets have judged that the time is ripe at last for the spread of subversion and socialism, and for the ineluctible pressure of military aggression directly against the United States.

LETTER TO ADMIRAL TURNER

Mr. President, on September 17, I wrote to Admiral Turner, the Director of the Central Intelligence Agency, raising several questions of fact. To date I have received no reply.

I asked Admiral Turner to supply me with unequivocal assurance that all Soviet MRBM's/IRBM's had been removed from Cuba following the 1962 confrontation and that no modern weapons had been introduced. Admiral Turner has given me no such assurance. Judging from the 1963 Senate report, I must conclude that he has given me no such assurance because he cannot give such assurance. Given the record of intelligence bias and failures outlined in the report, it is highly doubtful that the United States possesses the information necessary to give such assurance, or to evaluate it properly. If Soviet MRBM/IRBM missiles have remained in Cuba since 1962, then the Soviets have an additional option in strategic planning, a missile suitable for a second strike into the industrial heartland of the United States. Or if the the missiles have been upgraded, their options could be even more complex. Soviet intentions must be judged in the light of their overall strategy.

I also asked Admiral Turner whether the crews and/or pilots of the MiG-23's in Cuba are dually qualified in both the MiG-23 and the Backfire bomber. I have received information from reliable sources which leads me to believe that this is true. If Backfire capable crews and pilots are stationed in Cuba, then the Soviets have the strategic option of using the Backfire from Cuban bases.

Inasmuch as the Backfire is excluded from SALT II as such on the grounds that it is not a strategic system, this development could have very important ramifications. The range of the Backfire is such that it could not fly from Soviet bases to the United States carrying nuclear weapons and return to the Soviet Union. But it could deliver nuclear weapons to the United States and land in Cuba; or it could start from Cuba and return to the Soviet Union. I hope that Admiral Turner will be able to reassure the American people on this point.

Similarly, I also asked Admiral Turner whether the MiG-23's based in Cuba are capable of delivering nuclear weapons. The Carter administration has taken the position that they are not equipped for carrying nuclear weapons. But experts in the field have told me that the time interval required to make them nuclear capable is very short—a matter of minutes, really; and furthermore that when they are made nuclear capable, there are virtually no external distinguishing marks to indicate the change.

It would seem to me to be a basic rule of defense planning to consider any airplane whose nuclear capacity is unverifiable or marginally unverifiable as having that capability whether we can be sure or not. That is why I also asked

the admiral whether there have been any observations or reports of MiG-23 pilots practicing nuclear weapons delivery tactics. If so, it would tend to corroborate suspicions about Soviet intentions in placing MiG-23's on the island. The admiral has not replied.

Finally, Mr. President, I raised with Admiral Turner the question of whether the Soviets have established submarine facilities in Cuba that are capable of providing for both nuclear and conventional submarines. If the Soviets had a submarine base in Cuba, providing support for nuclear submarines that could roam the east coast or the Gulf coast with impunity, or at least with fewer logistical problems, then Soviet strategic options would indeed be enhanced against our major population centers and industrial capacity. I asked the admiral whether there have been any submarines in any Cuban port since 1962 that are capable of firing ballistic missiles with nuclear warheads. The admiral has not yet replied.

Mr. President, I ask unanimous consent that my letter to Admiral Turner be printed at this point in the RECORD.

SEPTEMBER 17, 1979.

Hon. STANSFIELD TURNER,
*Director, Central Intelligence Agency, Washington, D.C.*

DEAR ADMIRAL TURNER: During recent months, I have received numerous reports from normally reliable sources indicating considerable Soviet activity in Cuba. A typical example of this is the information I received in early July that there were Soviet combat troops in Cuba. As you will recall, the Administration denied the validity of this information at that time. Regrettably, my concerns involving the presence of these troops have now been proven valid. Predicated on additional information, I have equal concerns in the following areas:

a. The United States has never firmly established that all the Soviet ballistic missiles were, in fact, removed from Cuba following the "Cuban Missile Crisis" in 1962. I request that you provide me with an unequivocal assurance that all Sovet MRBMs/IRBMs were removed from Cuba following the 1962 confrontation. I further request you provide assurances that no MRBMs/IRBMs, such as the SS-20, have been introduced into Cuba subsequent to that time. In essence, I desire unequivocal assurances that there are no offensive nuclear forces in Cuba now, not since 1962, that are capable of inflicting danger on the United States.

b. The crews and/or pilots of the Mig-23s provided Cuba are dually qualified in both the Mig-23 and the "Backfire" bomber. I request assurances that there are no qualified "Backfire" personnel or "Backfire" ground handling gear in Cuba.

c. Submarine facilities, including but not limited to tenders, have been established/introduced into Cuba that are capable of providing for both nuclear and conventional submarines. Are there any facilities in Cuba that may provide required logistical support to submarines capable of firing nuclear ballistic weapons?

d. Are there now, or have there been, any submarines in any Cuban port since 1962 that are capable of firing ballistic missiles with nuclear warheads?

e. Are we absolutely certain that the Mig-23s based in Cuba are not nuclear delivery capable? If they are not capable, what time interval is required to make them nuclear delivery capable? Have there been any training flights, observed or reported, indicating the pilots were practicing nuclear weapons delivery tactics?

Until I receive your formal answers to my questions stated above, my evaluations can only be predicated on the normally reliable sources providing me the information upon which my concerns are based. Due to the importance of the debates involving the U.S.S.R. now going on in the Senate, I request your response at the earliest possible time.

Sincerely,

JESSE HELMS.

PRESENT SOVIET INTENTIONS

Mr. President, there are those who profess to see no relation between the presence of combat troops in Cuba and SALT II. I suggest that the presence of combat troops in Cuba is only one phase of an attempt to make Cuba an advance military base for Soviet strategic intentions. I do not know whether the troops are there to guard nuclear weapons, as some have suggested; I do know that such a purpose would be logical. Just as the installation of defensive SA-2 missiles was the clue—a missed clue—to the installation of offensive missiles in 1962, it would be reasonable to assume that Soviet combat troops are in Cuba to defend offensive nuclear systems. Nor would removal of the troops, or a change in their status be more than a temporary palliative. If nuclear systems exist in Cuba, or are planned to be introduced, then the threat has not been reduced.

Nor do I know whether the combat troops are there to export revolution to other parts of Central America. We know that Castro intends to export revolution to Central America. He boasted last week about his success in Nicaragua, and his plans for other Central American countries. By such means, the Soviets attack the United States, narrow its sphere of influence, and restrict its defensive choices.

We must note that Cuba is not happening in isolation. In the past few months, 12,000 Soviet troops have poured into the southernmost islands of the Kuriles, taking up a position only a few miles from Japan. Last August, two nuclear submarines visited Aden, followed, at least according to some reports, by an extraordinary double maneuver which brought 2 Soviet divisions to Aden and Ethiopia in the space of 72 hours, demonstrating a new Soviet logistical capability that could strike at the heart of the West's oil lifeline. Although reports of the maneuvers have been disputed, they have been hotly affirmed by others. All in all, it adds up to a pattern of bolder Soviet activity on a scale not before attempted.

So the Cuban issue is closely connected with SALT II, and with Soviet intentions around the world. If the Soviet combat troops in Cuba are a sign of Cuba's new role in Soviet nuclear strategy, then it has a very intimate connection with SALT II. If it is merely a sign of new Soviet aggressiveness in the face of the vacuum of American leadership, then it tells us a lot about where the Soviets think they are going with SALT II. In any case, the Khrushchev-Kennedy agreement was not simply about the narrow issue of missiles in Cuba; it was about the "urgent transformation of Cuba into an important strategic base," to quote President Kennedy's historic speech. The transformation of Cuba into such a base even today should mean to us that the Khrushchev-Kennedy agreement is null and void.

PRESIDENT CARTER'S STATEMENT

President Carter's statement last night was a reaffirmation of America's weakness. The President did not address the issue of removing the Soviet combat troops in Cuba. He did not get the Soviets to agree to remove them; he did not even get the Soviets to admit that the troops in question have a combat mode. When facing the familiar fusillade of Soviet lies, the President did not even stand them down. He made only the unilateral statement that he understood the Soviets to mean something other than they were saying. We have seen the Kennedy-Khrushchev confrontation in reverse.

The actions announced by the President demonstrate the futility of options which do not go to the heart of the problem. Sending 1,500 Marines to Guantanamo looks ridiculous on the day that the Vice President is presiding over the striking of the American flag on American territory. The establishment of a Caribbean joint task force at Key West is a transparent cosmetic device; the commander in chief, Atlantic, already has headquarters in Norfolk, and the staff to do planning for the Caribbean. Key West is in Cinclant territory, and the small planning group announced by the President will have no troops. The notion that economic assistance will somehow prevent nations from "going Communist" is one of the most discredited concepts in the ashbins of history.

What could the President have done? He could have applied pressures on Cuba and on the Soviets to remove the troops. Among such pressures would be:

First. The postponement of SALT II. If Cuba is to be a forward strategic base threatening the United States and the Caribbean, then our views of Soviet intentions in SALT must be drastically revised. The presence of combat troops is symbolic of the strategic status of Cuba.

Second. The installation of Pershing 2 missiles in Europe as a counterforce against the Soviet SS-20s which threaten NATO and which provide an umbrella for possible Soviet invasion of Western Europe.

Third. The removal of U.S. technicians who maintain the computerized production lines of the Kama River plant, now known to be producing tanks and armored personnel carriers. The tanks in Cuba revealed by the President may well have come from this very plant.

Fourth. The withholding of U.S. stocks of grain from export to the Soviet Union. Such an action might require U.S. stockpiling, or a crash program in gasohol, both of which would require subsidies in the market. But such subsidies overrule market conditions when the security of the United States is at stake.

Fifth. A crash program to develop and deploy the cruise missile as a counter against Soviet fractionating of warheads on the SS–18.

The greatest danger to American security is not the 2,000 or 3,000 Soviet troops in Cuba, but the bleeding away of our will to survive and our will to resist. The failure to change the status quo in Cuba is tantamount to an admission that the Soviets now hold strategic superiority so great that the United States cannot resist the Soviet will. Under such conditions, SALT II is impossible, and peace and security are improbable. Unless we act wisely, we cannot preserve the world.

EXHIBIT 1

LETTER OF TRANSMITTAL

U.S. SENATE, PREPAREDNESS INVESTIGATING SUBCOMMITTEE, COMMITTEE ON ARMED SERVICES,
*May 9, 1963.*

Hon. RICHARD B. RUSSELL,
*Chairman, Committee on Armed Services, U.S. Senate.*

MY DEAR MR. CHAIRMAN: There is transmitted herewith an interim report by the Preparedness Investigating Subcommittee, appointed under Senate Resolution 75 of the 88th Congress, on the Cuban military buildup.

In its inquiry to this time the subcommittee has received testimony in executive session from the Director of Central Intelligence, the Director of the Defense Intelligence Agency, and the Chiefs of the Army, Navy, and Air Force intelligence sections. The interim report transmitted herewith is addressed primarily to a review of military developments and intelligence activities and operations in connection with Cuba from early 1962 to the present insofar as the facts have been developed and are now known to the subcommittee.

The subcommittee intends to pursue further its inquiry into the Cuban situation and it is anticipated that one or more subsequent reports on this subject will be issued in the future.

It was necessary that this interim report to the full Committee on Armed Services be classified "Secret." However, the subcommittee submitted the report for review for security purposes, in order that it could be printed and released to the public. It has been so reviewed and the necessary security matters have been deleted.

Respectfully,

JOHN STENNIS,
*Chairman, Preparedness Investigating Subcommittee.*

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INTERIM REPORT ON CUBAN MILITARY BUILDUP

I. INTRODUCTORY STATEMENT

The dramatic events which occurred last October with respect to Cuba are now history. Following photographic confirmation of the fact that strategic and offensive weapons had, in fact, been introduced into Cuba and President Kennedy's confrontation with Premier Khruschchev, such strategic and offensive weapons were ostensibly withdrawn.

However, the public concern and debate about the Cuban situation has not subsided. There have been and are insistent reports that the Soviets still maintain strategic missiles in Cuba which are concealed in caves and other underground facilities and that Soviet troops are based in the island in numbers far in excess of those accepted by our intelligence community. Reports also abound with respect to the use of Cuba as a base for subversive, agitational, and revolutionary activities directed at other Latin American countries.

The prevalence of these reports and allegations prompted the Preparedness Investigating Subcommittee to launch an investigation to the entire subject matter in an effort to determine the facts. Although the investigation still continues, the subcommittee deems it appropriate to issue an interim report at this time. This report will be limited to a review of military developments and intelligence activities and operations in connection with Cuba from early 1962 to the current time insofar as the facts are now known to us. A discussion of the use of Cuba as a base for subversive activities will be included in a subsequent report.

Broadly speaking, the term "intelligence community" includes the Central Intelligence Agency, the Defense Intelligence Agency, the intelligence sections of the Army, Navy, and Air Force, the Joint Chiefs of Staff, the Department of State, the National Security Agency, the Atomic Energy Commission, and the Federal Bureau of Investigation. It is used in this report, however, in a somewhat more limited sense. Where the term appears in this report it primarily refers to and includes the Central Intelligence Agency, The Defense Intelligence Agency, and the intelligence sections of the Army, Navy, and Air Force. Other agencies are, of course, impliedly included in our use of the term to the extent that they participated in or contributed to any of the activities or operations discussed.

Up to this time, the subcommittee has received testimony in executive hearings from Mr. John A. McCone, Director of Central Intelligence; Lt. Gen. Joseph F. Carroll, Director of Defense Intelligence Agency; Maj. Gen. Alva R. Fitch, Assistant Chief of Staff for Intelligence, U.S. Army; Rear Adm. Vernon L. Lowrance, Director of Naval Intelligence; and Maj. Gen. Robert A. Breitweiser, Assistant Chief of Staff for Intelligence, U.S. Air Force.

The subcommittee has also received and has on file a number of written reports from the Central Intelligence Agency, the Department of State, the Department of Defense, and the Chairman of the Joint Chiefs of Staff. We have also considered reports issued by the Special Consultative Committee on Security of the Council of the Organization of American States and the Cuban Revolutionary Council.

In addition, the subcommittee staff has made an extensive investigation and has thus far interviewed more than 70 witnesses who do not hold official positions, including many Cuban refugees and exiles. Staff investigators spent approximately 45 man-days in the Miami area alone.

Information has also been received from individual Senators and Members of the House of Representatives.

This interim report is based primarily on the testimony received from the intelligence chiefs who appeared before the subcommittee. It does, however, include some information from other sources.

Since our inquiry is not yet completed, this report does not contain any overall or comprehensive conclusions and recommendations. Major findings based on the testimony and evidence thus far received, relative to intelligence activities during the military buildup have been incorporated. Our general recommendation at this time is that an alert vigilance be maintained over all activities taking place in Cuba.

II. SUMMARY OF MAJOR FINDINGS

1. While hindsight shows that the performance of the Central Intelligence Agency and the military intelligence agencies can be criticized in some areas, in other areas they performed creditably. Offensive weapons systems were identified before becoming operational and their locations and performance characteristics spelled out in a limited period of time despite adverse weather and an almost completely closed society.

2. Although photographic reconnaissance has limitations, it was this capability which ultimately produced incontrovertible proof of the presence of strategic missiles and offensive weapons in Cuba. Credit is due to those involved in this mission.

3. While a reasonably competent job was done in acquiring and collecting intelligence information and data, in retrospect it appears that several substantial errors were made by the intelligence agencies in the evaluation of the information and data which was accumulated.

4. Faulty evaluation and the predisposition of the intelligence community to the philosophical conviction that it would be incompatible with the Soviet policy to introduce strategic missiles into Cuba resulted in intelligence judgments and evaluations which later proved to be erroneous. Among these were:

(*a*) It was not until after a confirming picture was obtained on October 25, 1962, that it was established by the intelligence community that organized Soviet ground combat units were present in Cuba. The importance of this should be obvious.

(*b*) The number of Soviet troops in Cuba was substantially underestimated throughout the crisis. On October 22, our intelligence people estimated that there were 8,000 to 10,000 Soviets in Cuba. They now say that, at the height of the buildup, there were at least 22,000 Soviet personnel on the island.

(*c*) It was not until the photographic evidence was obtained on October 14 that the intelligence community concluded that strategic missiles had been introduced into Cuba. In reaching their pre-October 14 negative judgment the intelligence analysts were strongly influenced by their judgment as to Soviet policy and indications that strategic missiles were being installed were not given proper weight by the intelligence community. A contributing factor to this was the tendency on the part of the intelligence people to discredit and downgrade the reports of Cuban refugees and exiles.

5. The subcommittee has uncovered no evidence to substantiate charges and speculation about a photography "gap" having existed from September 5 to October 14. The evidence before the subcommittee leads to the conclusion that such charges are unfounded.

6. The news reports of an alleged conflict between the Central Intelligence Agency and Strategic Air Command with reference to the operation of U–2 high-altitude reconnaissance flights prior to October 14 were also closely inquired into and found to be without merit. No evidence was presented to support the charge that the operation of the U–2 flights were transferred from the Central Intelligence Agency to Strategic Air Command because of a deadlock or friction between the agencies.

7. To a man the intelligence chiefs stated that it is their opinion that all strategic missiles and bombers have been removed from Cuba. However, they readily admit that, in terms of absolutes, it is quite possible that offensive weapons remain on the island concealed in caves or otherwise. They also admitted that absolute assurance on this question can come only from penetrating and continuing on-site inspection by reliable observers and that, based on skepticism, if nothing more, there is reason for grave concern about the matter.

8 There are literally thousands of caves and underground caverns in the island of Cuba and many of these are suitable for the storage and concealment of strategic missiles and other offensive weapons. Refugee and exile reports continue to insist that they are being so utilized. Military-con-

nected activities have been noted with reference to a number of them but it is the view of the intelligence analysts that the military usage of the caves is for the storage of those weapons which we know are now in Cuba and not for the storage of offensive weapon systems. Admittedly, however, this view is based to a substantial degree on the negative proposition that there is no hard evidence confirming the presence of strategic missiles in Cuba at this time.

9. Even though the intelligence community believes that all have been withdrawn, it is of the greatest urgency to determine whether or not strategic missiles are now concealed in Cuba. The criticality of this is illustrated by the fact that, assuming maximum readiness at preselected sites, with all equipment prelocated, the Soviet mobile medium range (1,100 miles) missiles could be made operational in a matter of hours.

10. The intelligence community estimated that approximately 5,000 Soviet personnel were withdrawn from Cuba following the October confrontation, leaving according to intelligence sources, about 17,500 Soviets in Cuba. A net total of 4,000 to 5,000 additional have been withdrawn since the first of the year, our intelligence people say. However, because of what is described by intelligence as "technical reasons," the 17,500 intelligence estimate of those remaining is unchanged at the writing of this report. At the least, this indicates to the subcommittee that there is a low level of confidence in the original estimate. There is also some doubt in our minds as to the adequacy of the information as to the number of Soviets newly arriving. All of the intelligence people agree that there is no evidence that any of the combat troops associated with the four mobile armored groups have been withdrawn.

11. Some other sources—primarily refugee and exile groups—estimate that as many as 40,000 Soviets are now in Cuba. Bearing in mind the lack of hard evidence on the question and the substantial underestimation of last fall, we conclude that no one in official United States circles can tell, with any real degree of confidence, how many Russians are now in Cuba and we are of the opinion that the official 17,500 estimate is perhaps a minimum figure.

12. In any event, it is conceded that the combined Soviet and Cuban forces now in the island are quite powerful defensively and could offer severe opposition to any attack. They are admittedly capable of suppressing any internal rebellion or revolt mounted without external support, and it is clear that an invasion from without, to have a fair chance of success, would require large forces, extensive seaborne landing efforts, and adequate air cover.

13. Based upon their judgment that all strategic missiles and offensive weapons have been removed, the intelligence chiefs do not believe that the Communist forces in Cuba now present a direct aggressive military threat to the United States or Latin America. Strategic weapons may or may not be now in Cuba. We can reach no conclusion on this because of the lack of conclusive evidence.

14. The evidence is overwhelming that Castro is supporting, spurring, aiding and abetting Communist revolutionary and subversive movements throughout the Western Hemisphere and that such activities present a grave and ominous threat to the peace and security of the Americas.

III. SITUATION PRIOR TO MID-JULY, 1962

*A. Cuban forces*

It was estimated by intelligence sources that at the beginning of 1962, the Cuban ground forces consisted of a standing army of 75,000 a ready reserve of 100,000, and a home guard of 100,000. Although the ground combat capability of the Cuban forces had increased since the abortive Bay of Pigs invasion, it was thought that, although the Cuban forces were of varying states of training, they had the capability for effective ground operations at the battalion combat team level. They were not thought to be organized for operations with units larger than reinforced battalions and it was believed that they were maintained primarily for the purpose of internal security operations and to repel any attempted invasion. The intelligence community thought that approximately 500 Soviet-bloc advisory personnel were then in Cuba.

By the beginning of 1962, the Cuban Air Force had benefited by the acquisition of MIG aircraft and the return of a number of people trained in bloc countries. It had some 40 MIG 15's, 17's and 19's as well as about 40 propeller-driven aircraft of training, transport, and utility types.

The Cuban Navy was small and of an essentially coastal patrol type. Several of these craft in the subchaser and motor torpedo boat types had been received from the Soviets. The crews on a number of these craft were mixed Cuban and Soviet, indicating that the Cubans were still under training.

It was agreed by intelligence sources, however, that even prior to July 1962 vast amounts of Soviet military equipment had been introduced into Cuba for the use of the Cuban forces. As a result, it was believed that even then the Cuban Army was one of the best equipped in all Latin America. The arms and equipment furnished the Cubans at this time consisted of a mixture of World War II equipment and more modern weapons. There is a question as to whether the amount of heavy and more complicated weapons introduced into Cuba at this time was not more than ample to supply the needs of the Cuban forces as then constituted.

*B. Intelligence activities and operations*

The intelligence activities with respect to Cuba prior to July 1962 consisted of reconnaissance overflights by U-2 aircraft, peripheral reconnaissance flights over international waters and the collection of reports from refugees, exiles, and other human sources.

For some time prior to 1962, U-2 aircraft operated by the Central Intelligence Agency had been flying at high altitudes over the island of Cuba itself for reconnaissance purposes. Commencing in early 1962, the frequency of the flights was increased.

Also, even before 1962, regular reconnaissance and photographic flights were flown by the military on a regular basis over international waters but not over the island of Cuba itself.

In addition, during the same period, thousands of human source reports were collected and assessed. Included in these reports were many which contained allegations of missile-related activities and of the presence of Soviet ground combat units in Cuba. However, although the reports were checked to the greatest extent possible, the intelligence community obtained no confirmation of such activities.

In recognition of the increasing importance of the Cuban problem, the intelligence community in early 1962 intensified their intelligence activities and stated a greater urgency in their collection requirements with respect to Cuba. The flights over Cuba were increased. The intelligence community was alert to the implications of the communization of Cuba. However, on the basis of the information collected and the assessment of this information, the intelligence conclusion at this time was that the activities were primarily defensively oriented. No Soviet combat units or strategic weapons were discovered.

The intelligence community, although agreeing that the activities in Cuba were then primarily directed toward defense, did conclude in early 1962 that it might probably be expected that the IL-28 (Beagle) light bomber would be supplied to Cuba by the Soviets in the future.

IV. SITUATION FROM MID-JULY TO OCTOBER 22, 1962

*A. Buildup in Soviet forces and equipment*

In late July and early August, our intelligence noted a significant change in the situation in Cuba. A sudden rise in military aid from the Soviet Union became clearly evident. Ship arrivals, both dry cargo and passenger, increased drastically. For example, for the first half of 1962, an average of 15 Soviet dry cargo ships per month arrived in Cuba. The number jumped to 37 in August. Only one Soviet passenger ship had arrived in Cuba during the first 5 months of 1962. Four arrived in July and six in August.

While our intelligence people were aware from this and other information that a major Soviet effort in Cuba was underway, its exact nature and impact was not clear to the intelligence community.

During the July-August period, refugee reports of alleged missile activity in Cuba increased significantly. These reports were checked out as scrupulously as possible, but even though many of them included consistent and similar descriptions of some form of missile activity, there was no confirmation of them.

At the same time, there were human source reports that some of the ships were unloaded at night under rigid security with all non-Soviet personnel being excluded from the dock areas. The practice of unloading at night in small easily guarded ports, remote from large population centers, was known to the intelligence community, although the alleged security conditions ashore could not be confirmed.

Human source reports also alleged that the nature and character of the arriving Soviet personnel had changed significantly. It was reported that some of the arriving personnel during this period were primarily young, trim, physically fit, sun-tanned and disciplined, and that they formed in ranks of fours on the docks and moved out in truck convoys. Refugee, exile and other human source reports suggested that, in contrast to the earlier arrivals, the new arrivals were Soviet combat troops. However, the intelligence community adhered to the view that they were military instructors, advisers, and trainers, plus a number of civilian technicians and advisers associated with improving the Cuban economy. The view was that they did not include significant numbers of Soviet military personnel and that they were not organized into combat units. As late as October 29, in an unclassified information brochure published by the Defense Department entitled "Cuba," the Soviet "personnel" in the island were estimated at 5,000.

*B. Identification of specific weapons and equipment*

1. SA-2 sites.—About August 15, as a result of suspicions generated by human source reports, the Department of Defense focused special attention on suspected areas and requested that they be covered by the "next" high altitude flight. As a result, the next such flight, flown on August 29, established positive identification of SA-2 surface-to-air missile (SAM) sites at two of the suspect locations and at six others in western Cuba. Flights from August 29 through October 7 discovered additional SA-2 sites. The SA-2 system can engage targets at altitudes up to 80,000 feet and has a slant range of about 25 miles.

2. Cruise missiles.—A coastal defense cruise missile installation was identified shortly after the flight of August 29. Three additional cruise missile sites were discovered by October 7. These are anti-shipping missiles estimated to have a maximum range

of about 40 miles. On August 29 KOMAR class patrol boats with 2 missile launchers each were identified in Cuba.

3. MIG-21 fighters.—Although the Soviets had supplied the Cuban Air Force with MIG-15, 17, and 19 aircraft prior to the spring of 1962, the presence of the modern supersonic MIG-21 fighter was first confirmed by a picture obtained on September 5, 1962.

4. IL-28 (Beagle) bombers.—As early as the spring of 1962, the intelligence community was of the view that the Soviets might send the IL-28 (Beagle) light bomber into Cuba. This apprehension was confirmed by a picture taken on September 28 which was later evaluated as showing crates containing IL-28's aboard a Cuba-bound ship. This evaluation was not made until October 9 and was disseminated to the intelligence community on October 10.

5. Medium range and intermediate range missiles.—As has already been indicated, during all of this period there was a great volume of unconfirmed reports and rumors from human sources about strategic missile-related activity in Cuba. None of these reports were confirmed prior to October 14, 1962. It is evident that many of these reports in fact referred to the SA-2 missiles, which, although nowhere near the size of the strategic missiles later identified, still appear large to the untrained observer.

However, after mid-September some reports of missiles being introduced into Cuba were suggestive enough of strategic or offensive weapons to arouse the suspicions of intelligence analysts. This resulted in the conclusion—apparently reached near the end of September 1962—that there was a suspect medium-range ballistic missile (MRBM) site in Pinar del Rio Province. As a result, photographic coverage of the suspect area was proposed and on October 14 a Strategic Air Command U-2 reconnaissance aircraft overflew the area and emerged with hard photographic evidence of the San Cristobal medium-range ballistic missile complex.

Photographic reconnaissance was unable to detect precisely how many ballistic missiles were introduced into Cuba. Prior to the Soviet announcement that 42 missiles would be withdrawn, our photographs had revealed a lesser number. It could not be established, therefore, how many ballistic missiles were, in fact, introduced into Cuba or specifically how many the Soviets planned to introduce.

Additional medium-range ballistic missile sites and intermediate-range ballistic missile (IRBM) sites were located by high altitude reconnaissance missions flown after October 14. Six MRBM sites were located, all of which had achieved a full operational capacity on October 28 when the dismantling of the sites commenced. Three IRBM sites were located and it was anticipated that a fourth would be established. None of the IRBM sites became operational before being dismantled, it being the estimate that they would have become operational by December 15.

The medium-range missile is estimated to have a range of about 1,100 miles and the intermediate range missile is credited with a range of 2,200 miles.

*C. Failure to identify Soviet organized ground combat units*

As has already been noted, notwithstanding some reports that many of the Soviets arriving in Cuba after mid-July were military units, and notwithstanding the evidence of a drastically increased buildup in modern and sophisticated ground weapons, the intelligence community did not identify the presence of Russian organized ground combat forces in Cuba until October 25 when new pictures obtained by low-level photography, coupled with a reanalysis of previous photography, led to the conclusion that there were, in fact, four organized, mobile, and powerful armored Soviet units in Cuba. The aggregate strength of these units is now estimated by intelligence people to be about 5,000 men.

In addition, it is agreed that the number of Soviet personnel in Cuba was substantially underestimated by our intelligence. For example, on October 22, 1962, the date that the President addressed the Nation, the intelligence community estimated the Soviet personnel in Cuba to be 8,000 to 10,000. The current intelligence evaluation is that at the height of the Soviet buildup, there were in Cuba an aggregate of at least 22,000 Soviet troops. This is, of course, a retroactive or reconstructed intelligence estimate. One factor in the underestimation of the number of Soviet personnel in Cuba in October was the assumption that the arriving passenger ships were normally loaded. It is obvious now that these ships were, in fact, troop loaded and that the actual aggregate troop-carrying capacity of the arriving passenger ships was in excess of 20,000. * * * believed that the additional Soviet military personnel arrived in cargo ships. There is some reason to doubt that even the 22,000 figure would account fully for all of the great quantities of weapons and equipment introduced into Cuba since June 1962.

Equally important, since on October 22 the President did not know of the presence in Cuba of a substantial number of Soviet soldiers in heavily armed organized ground combat units, he could not include this factor in his actions vis-a-vis the Soviets and demand at that time their withdrawal from the Western Hemisphere along with the strategic missiles.

*D. Alleged photographic gap*

There has been considerable public discussion about an alleged gap in our photographic reconnaissance over Cuba during the period from September 5 to October 14. We have examined this question as thoroughly as possible and have found the allegations with respect to it to be unfounded. The record of the flights which were scheduled between August 29 and October 14 should be sufficient to clear up the situation and these will be summarized here.

The flight of August 29, which has already been discussed, resulted in the discovery of surface-to-air missile and cruise missile sites.

On September 5, a mission was flown which covered the central and eastern portion of the island. Good coverage was obtained of the central portion but weather conditions prevented any photographic returns with reference to the eastern end of the island.

A flight was planned for September 10 but this was not flown.

On September 17, a mission was flown but, because of weather conditions, it was not wholly successful.

Adverse weather precluded further flights until September 26. Flights were flown on September 26, September 29, October 5, and October 7. These flights completed the coverage of those areas of Cuba which had been spotlighted as requiring early attention.

Weather prevented any additional flights until October 14. On October 12, the Strategic Air Command was given responsibility for operating the U-2 high altitude reconnaissance missions over Cuba, and on October 14, it flew the flight which gave the first hard evidence of the existence of strategic missiles in Cuba.

*E. Transfer of U-2 flights from CIA to SAC*

There have been numerous news reports alleging the existence of a conflict between the Central Intelligence Agency (CIA) and the Strategic Air Command (SAC) with reference to the operation of the U-2 high altitude flights. These reports have contained allegations that a deadlock existed between CIA and SAC and that this was resolved at the policy level by transferring the function of flying the U-2 missions from CIA to SAC. It has also been alleged that this is one of the reasons for the delay in locating the MRBM sites in Cuba.

These allegations have also been closely inquired into and have been found to be without merit. There is no evidence whatsoever to suggest that any conflict between CIA and SAC existed or that there was any delay in photographic coverage of the island because of the fact that the U-2 program was being operated by CIA prior to October 14.

Likewise, there is no evidence whatsoever of any deadlock between the two agencies or any conflict or dispute with respect to the question of by whom the flights should be flown.

The subcommittee inquired thoroughly into the reason for the transfer of the U-2 operation from CIA to SAC. It is to be remembered that the SA-2 sites in the San Cristobal area had been located on August 29. The U-2 flight which was flown on October 14 was programed to overfly this area. In view of the possibility that the flight might provoke hostile reactions from the SA-2's it was concluded that it would be more appropriate for the operation to be conducted by the military rather than by civilians. This decision was entirely reasonable and proper.

It is a fact, of course, that the first U-2 flight flown by SAC was the one which resulted in obtaining a photograph of the MRBM site. This, without explanation, originally gave the subcommittee some concern. However, after inquiring closely into the situation we are convinced that there is no significance to it and that it was just a matter of timing and coincidence.

*F. Intelligence activities and operations generally*

As has been indicated, the U-2 high-altitude reconnaissance flights over Cuba continued at the rate of two a month, weather permitting, until September. The stepped-up schedule for September and early October has already been outlined. All of the U-2 flights prior to October 14 were flown by the CIA.

After the mission which verified the existence of MRBM's in Cuba, there was a concentrated effort to determine the precise nature of the missile buildup and the exact location, number, configuration and state of readiness of the missile systems. Between October 14 and October 22, the Strategic Air Command flew a total of 17 high altitude sorties. Low altitude overflights were not initiated until October 23, the day following the President's message.

During the same period, the peripheral reconnaissance fights over international waters continued, as did the intensified collection efforts using refugees, exiles, and other human sources.

In reviewing the intelligence activities with respect to Cuba, the subcommittee found areas in which criticism is justly due. In other areas, however, our intelligence did quite well. The MRBM's were discovered while they were in the process of being deployed. The IRBM sites were discovered in a very early stage of construction. The IL-28 bombers were discovered while they were still in their crates. The MIG-21's were discovered when only one had been removed from the shipping container. All these weapon systems were identified, and their locations and performance characteristics spelled out before they became operational in a very compressed and limited period of time despite adverse weather conditions and the fact that we were penetrating an almost completely closed society.

The SA-2 sites were discovered commencing August 29, and were credited by the in-

telligence community with becoming operational on a site-by-site basis commencing in mid-September. It is certain that these air defense missiles had attained an operational capability by October 27. On that date a U-2 plane piloted by Maj. Rudolph Anderson, USAF, was shot down by an SA-2 and Major Anderson was killed.

CIA and military intelligence, by use of their highly developed photographic capability, were able to give a unique performance in intelligence operations. They ultimately placed in the hands of the President, his advisers and U.S. diplomatic representatives incontrovertible proof of the presence of Soviet strategic missiles in Cuba in direct contravention of Soviet government assurances. This visual proof unquestionably played a major part in the united action of the Organization of American States and world acceptance of the correctness of our position.

Photographic reconnaissance, however, does have limitations. It is only a part of the total intelligence collection means, although a most important one. It did not reveal the presence of ballistic missiles in Cuba during the period of at least a month between their introduction into the Island and their deployment on sites. The absence of photographic confirmation of human source and other reports, therefore, does not of itself disprove the accuracy of the other sources.

The responsible agencies of the intelligence community appear to have done a creditable job in gathering and collecting quantities of data and information. The deficiency in the performance of the intelligence community appears to have been in the evaluation and assessment of the accumulated data. Moreover there seems to have been a disinclination on the part of the intelligence community to accept and believe the ominous portent of the information which had been gathered.

In addition, the intelligence people apparently invariably adopted the most optimistic estimate possible with respect to the information available. This is in sharp contrast to the customary military practice of emphasizing the worst situation which might be established by the accumulation of evidence.

There also appeared to be a tendency on the part of the intelligence people to discredit and downgrade refugee and exile reports. This was based on the general lack of experience and training of the refugees and exiles as military observers, their frequent inclusion of items not reasonably credible among those things which were within their power of observation as to time, place and comprehension, and on the consideration of the obvious self-interest of the Cuban sources.

Finally, the intelligence community was of the opinion that the Soviets would not introduce strategic missiles into Cuba because they believed that such a development would be incompatible with Soviet policy as interpreted by them. The error inherent in this estimate was clearly demonstrated by subsequent events. The danger that such preconceptions will control the weighing of the facts as events unfold is evident.

The influence of these and other factors resulted in several intelligence judgments and estimates which, in the retrospect, proved to be erroneous. A few of these will be mentioned.

The fact that the intelligence community did not accept the fact that organized Soviet ground combat units were being introduced into Cuba until photographic confirmation of this fact was obtained on October 25, and the related fact that the number of Soviets in Cuba was substantially underestimated throughout the entire crisis have already been discussed.

It has also been noted that the intelligence community did not estimate that strategic missiles would be introduced into Cuba until photographic confirmation was obtained on October 14. It appears that, on this point, the analysts were strongly influenced by their philosophical judgment that it would be contrary to Soviet policy to introduce strategic missiles into Cuba. In retrospect, it appears that the indicators to the contrary were not given proper weight. Among other things the discovery of the surface-to-air missile complex in the San Cristobal area on August 29 could logically have led to the assumption that they were being constructed to protect a strategic missile installation since it was clear that these SA-2's were not being emplaced for the purpose of protecting any existing or known military installation.

V. SITUATION FROM OCTOBER 22, 1962, TO THE TIME OF REMOVAL OF IL-28 BOMBERS

*A. Intelligence activities and operations generally*

On the day following the President's statement, that is, on October 23, 1962, low altitude flights over Cuba were commenced and there was a concerted effort to obtain detailed information both about the entire island and selected targets.

During the period from October 22 to December 6 the Strategic Air Command flew a total of 82 high altitude sorties, and from October 23 through November 15, when the low level flights over the island were discontinued, the Air Force and Navy flew a total of 162 low altitude sorties.

*B. Identification of organized Soviet ground combat units*

As has already been mentioned, photographs obtained on October 25 provided the first confirmation of the presence of Soviet highly mobile armored task groups in Cuba. The information obtained as a result was first distributed to the operational military commands on October 30. Up to that time, it was thought that the Soviet ground equipment arriving in Cuba was to be utilized by the Cuban forces.

*C. Removal of missiles and IL-28 bombers*

To a man the intelligence chiefs believe that, following the October crisis and quarantine, the Soviets removed from Cuba 42 medium range ballistic missiles and related equipment, intermediate range ballistic missile equipment, and 42 IL-28 jet bombers.

A comprehensive and concentrated aerial reconnaissance and fleet observation program endeavored to cover every aspect of the exodus of this equipment. This program involved high and low altitude flights over Cuba, accompanied by intensive sea and aerial surveillance of the departing ships over Cuba and Caribbean waters and continued surveillance across the Atlantic.

The effort was directed at covering the dismantling and abandonment of the missile sites, at covering the roads and highways leading from the sites to the ports, and at covering the port areas to observe the material as it arrived, was assembled on the docks, and loaded aboard ships.

As stated, the intelligence community believes that all strategic missiles and bombers which were in Cuba at the time of the quarantine were removed by the U.S.S.R. However, they acknowledge the existence of continuing reports to the contrary and freely concede that, in terms of absolutes, it is possible that despite our surveillance program, we were misled and deceived.

VI. CURRENT MILITARY SITUATION IN CUBA

*A. Intelligence activities and operations generally*

Since the withdrawal of the strategic missiles and the IL-28 bombers the intelligence community has turned its primary attention to surveillance of the situation as it now exists. High level U-2 photographic flights continue on a regular basis. Since the U-2 was shot down on October 27 there has been no further attempt to interfere with our aerial reconnaissance. The reason for this one incident amidst a pattern of acquiescence in the overflights remains a matter for speculation.

The collection efforts using the technical and the various human sources available, such as refugees, exiles, and others is a continuing process. The close surveillance of merchant shipping arriving and departing Cuba, by naval air and surface ships continues, as does the peripheral surveillance by reconnaissance and the photographic aircraft.

A particular focus of attention has been the prospect that Cuba might become a base for Soviet submarine operations. There have been repeated rumors and speculations that such is already the case. Much of this is related to the Soviet assistance to Cuba in improving and expanding certain commercial fishing facilities. The intelligence community, however, does not believe that in fact Cuba is now, or has been, a base for Soviet submarines.

Admittedly, however, no spectacular operation is necessary to provide temporary advance base type support to submarines, sufficient to greatly extend their time on station away from the bloc nation ports, and to facilitate their operations generally. Reasonably sheltered anchorages or ports with sufficient depth, ready supplies of diesel fuel, fresh water, food supplies, and relaxation facilities ashore for the crews greatly extend the time away from home for any submarine. The presence of a few skilled technicians and a supply of the high usage repair parts would additionally extend operational periods considerably. The use of shore-based long range communication systems and information from surface and shore-based radio and radar nets would greatly facilitate Soviet submarine operations in the Caribbean as well as assist in attempts to evade detection.

*B. Nature and capabilities of forces and equipment now in Cuba*

1. Types and Numbers of Weapons.—As previously mentioned, it was testified that the native Cuban forces are organized only at reinforced battalion level with the effective weapons for such units, including rifles, machineguns, light and heavy mortars and considerable field artillery. For an organization of that type they have a rather large amount of mechanized equipment, tanks, self-propelled artillery and armored personnel carriers. They also have available a considerable amount of antitank guns and light antiaircraft guns suitable for use against low flying aircraft. How much of the large numbers of additional crew-operated weapons of the types mentioned above are now in Cuban hands is apparently not known or estimated.

The Soviet organization has a powerful modern array of weapons in plentiful numbers. There are 24 SA-2 sites of 6 launchers each, in a tight knit perimeter air defense of the entire island of Cuba. These weapons are similar to our NIKE-HERCULES and are very good indeed. Their fire control system is also estimated as of a high order of effectiveness. They have brought in a large amount of ammunition for these units. The SA-2 system which is quite complex is manned by Soviet troops. It would take over a year of intensive training, including quite technical schooling, for the native Cuban troops to replace the Soviets in the SA-2 system. Probably associated with the SA-2 sites for low level air defense, as well as in local defense of other important sites, are some of the large additional numbers of light antiaircraft guns brought in by the Soviet Expeditionary Force. Whether any or all of

these weapons are manned by Soviets is apparently not known.

There are four cruise missile sites, with missiles of a range of about 30 to 40 miles from their ground launchers. The missiles are placed as part of the coastal defense system of Cuba, which is the normal Soviet employment of these weapons. They are manned by Soviet naval crews. As an added feature of these missiles, there are at least 150 of them in Cuba, far more than could be logically associated with the known missile launching sites. It may be speculated that the launchers for these missiles may have been in some of the bloc shipping turned back by the October quarantine and thus failed to reach Cuba.

The Soviet naval contingent in Cuba also operates 12 KOMAR-type high-speed patrol craft as part of the Cuban coastal defenses. These boats are each equipped with a pair of cruise-type missiles. The missiles are estimated to have a range of 10 to 15 miles. These boats are under Soviet control, but Cubans are believed to have been observed aboard them. The KOMAR's are apparently the only Soviet naval craft introduced into Cuba as part of their expedition.

The Soviet Army element of the Soviet expedition in Cuba is armed with almost all of the weapons found in large Soviet troop formations. Many of these weapons, of the type characteristic of elements of mechanized and motorized divisions, reinforced by artillery and other units, are known to be in surprisingly large numbers. As mentioned before, the amounts, if any, handed to the Cubans from the many hundreds of heavy weapons brought in by the ships of the Soviet expedition, are not fully known. These weapons include very large and substantial numbers of heavy tanks and medium tanks; self-propelled assault guns; 57-mm. antitank guns; light, medium, and heavy mortars; field artillery pieces; antiaircraft guns, both 30-mm. and 75-mm.; armored personnel carriers; a number of the truck-mounted multiple launchers for the 130-mm. rocket; and quantities of various types of motor vehicles, radio equipment and engineer equipment. We feel that the official estimates of the number of Soviet troops are questionably low when related to the large numbers of the weapons listed above.

To the above must be added two very modern Soviet Army tactical missiles. The first is the SNAPPER, a wire guided antitank missile similar to our SS-10 and SS-11. The second is the FROG, a rocket with a range of about 25 miles, which can be equipped with a nuclear warhead. It is similar to our HONEST JOHN.

According to our intelligence, the Soviet Air Force in Cuba has approximately 42 MIG-21's, one of their most modern high performance supersonic jet fighters. They are probably equipped with air-to-air missiles. Associated with them is a net of radars and radios necessary for their control and the integration of the entire air defense system, SA-2 and fighter.

2. Strength and Capabilities of Forces.—It was testified that the strength of the Cuban Army apparently remains at the same level as before the crisis, that is, 75,000 in the regular army, 100,000 in the militia, and 100,000 in the form of a home guard.

At this point it must be said that there is no really hard evidence of the number of Soviets who are now in Cuba. While 17,500 is still the official estimate of our intelligence people, despite the reported withdrawal of some 4,000 to 5,000 since the first of the year, the level of confidence in its accuracy varies even within the intelligence community. Other sources present considerably higher estimates—some ranging up to 40,000 and more. Bearing in mind the substantial underestimation of last October, we can only conclude that no one—outside of Soviet and Cuban official circles—knows how many Russian troops are now there. The 17,500 estimate is perhaps a minimum figure.

In any event, it is believed that the Soviet expedition, combined with the Cuban forces, as an entity, is quite powerful in a defensive sense. The air defense system is believed to be of a high order of effectiveness. The coastal defense cruise missiles do not form a tight perimeter defense of the Cuban shoreline, evidently because the quarantine turned back the necessary launchers to complete an interlocking net similar to the SA-2 system. This gap in the island defense may be partially covered by the KOMAR missile craft. The Soviet Army units, trained in mobile aggressive armored warfare, if well coordinated with the static defense ability of the Cuban native forces, could offer severe opposition to any attack. This opposition would be sufficient to make it necessary to mount a large seaborne landing effort along with any desired airborne effort in order to be sure of success.

Based upon their judgment that all strategic missiles and offensive weapon systems have been removed, the intelligence community does not believe that Cuba now represents any major direct military threat to the United States or Latin America in an offensive or aggressive sense. Strategic weapons may or may not be now in Cuba. We can reach no conclusion on this because of lack of conclusive evidence.

It is clear, however, that as a source of weapons and small bands of provocateurs, saboteurs, agents of revolution and chaos it is a distinct and present threat to all of the Latin American nations with shores on the Atlantic Ocean and Caribbean Sea. It might be relatively difficult to engage in the smuggling of tanks, self-propelled guns, and heavy truck-towed artillery. Light mortars, machineguns, rifles, and the ammunition for these weapons, grenades, explosives, radios and bribe money are an entirely different matter. Gunrunning is an ancient art in Central and South America, well-practiced and well-understood in many quarters. Modern facilities make Cuba, as a centrally located base for such Communist operations, a present and grave menace to the peace and security of the Western Hemisphere. The use of Cuba as a base for subversion will be discussed in more detail in a later report.

3. Reports of concealed strategic weapons in Cuba.—Reports from refugees, exiles and other human sources insist that the strategic missiles and bombers were not removed from Cuba but are concealed in caves and otherwise. The intelligence community, although aware of these reports, have been unable to confirm them and adhere to the position that all strategic weapons are withdrawn.

It is fair to say, however, that this is a matter of great concern to the intelligence community. Based on skepticism, if nothing else, there is grave apprehension on this score. It is agreed that ironclad assurance of the complete absence of Soviet strategic missiles in Cuba can come only as a result of thorough, penetrating on-site inspection by reliable observers. The current intelligence estimate that they are not present is based largely on the negative evidence that there is no affirmative proof to the contrary. This, of course, was precisely the status of the matter prior to last October 14.

There is no doubt that there are literally thousands of caves and caverns in Cuba and that it is feasible to use many of these for the storage and concealment of strategic missiles and other offensive weapons. It is also true that military activity has been observed in connection with these caves. Our intelligence people are of the opinion that some of the caves are in fact utilized for the storage of military items and equipment other than strategic missiles, such as ammunition, explosives, etc.

The importance of making every effort to ascertain the truth with respect to this matter cannot be overemphasized. The criticality of it can best be illustrated by the fact that the testimony established that, upon the assumption that all missiles and associated equipment and the necessary personnel were readily available near preselected sites in a state of complete readiness, mobile medium-range missiles could be made operational in a matter of hours. Thus, if these missiles and their associated equipment remain in Cuba, the danger is clear and obvious.

The possible installation of advance submarine bases in Cuba has already been discussed.

4. Withdrawal of Soviet personnel.—Even though the intelligence community believes that a net 4,000 to 5,000 Soviet military personnel have been withdrawn from Cuba since the first of the year, because of what intelligence describes as "technical reasons" the previous intelligence estimate of approximately 17,500 Soviets in Cuba remains unchanged. At the very least this suggests to the subcommittee that there is a low level of confidence in the original estimate. There is also some question in our minds as to the adequacy of the information as to the number of Soviets newly arriving. Admittedly, there could have been undetected arrivals at smaller ports, where it is known that cargo ships have repeated their prior practice of unloading at night under conditions of strict Soviet-imposed security. In any event, as the matter stands at the writing of this report, the intelligence community does not believe it yet has sufficient concrete evidence to estimate any reduction in overall Soviet military capability on the island. There is no evidence that any of the combat troops associated with the four armored groups have been withdrawn.

*C. Summary of threat arising from Soviet presence in Cuba*

Our summary of the threat and potential threat which the Soviet presence in Cuba presents to the Americas is as follows:

1. Cuba is an advanced Soviet base for subversive, revolutionary and agitational activities in the Western Hemisphere and affords the opportunity to export agents, funds, arms, ammunition, and propaganda throughout Latin America.

2. Assuming without deciding that all strategic weapons have been withdrawn, there is the ever-present possibility of the stealthy reintroduction of strategic missiles and other offensive weapons, using the Soviet forces still in Cuba as camouflage and security for the activity.

3. Cuba serves as an advance intelligence base for the U.S.S.R.

4. The potential exists to establish electronic warfare capabilities based on Cuba.

5. The vital Panama Canal could be the target for sneak raids originating from Cuba.

6. Potentially, Cuba is a base from which the Soviets could interdict our vital air and sea lanes. It can now be used for the air, sea, and electronic surveillance of our military activities in the Southeast United States and the Caribbean.

7. Cuba's airfields could serve as recovery air bases for planes launched against the United States from the Soviet Union.

8. Advanced Soviet submarine bases could be established in Cuban ports with very little effort.

9. The continued presence of the Soviets in Cuba could require a further reorientation of the U.S. air defenses.

10. Cuba provides a base for the training of agents from other Latin American countries in subversive, revolutionary, agitational, and sabotage techniques.

11. The very presence of the Soviets in Cuba affects adversely our Nation's image

and prestige. Our friends abroad will understandably doubt our ability to meet and defeat the forces of communism thousands of miles across the ocean if we prove unable to cope with the Communist threat at our very doorstep.

A consideration of all these matters serves to emphasize the gravity of the threat to our national security which Cuba now represents.

*D. Prospect of internal revolt or invasion*

The continued presence of the Soviet expedition in Cuba can now be seen to be a most effective shield against either internal revolt by native insurgents, or invasion by external forces from any source. The ringing of the island by the Soviet air defense and missile system, and the islandwide evidence of impressive, powerful, armored Russian troop units, all apparently immune from attack, has been and will be an increasing psychological damper to the fires of revolt. We can only expect, under present circumstances, that whatever capacity and will to resist communism may exist among the people in Cuba, will wither and shrink. The communization of the younger element creates simultaneously an increasingly militant Communist nation.

The withdrawal of the Soviet forces from Cuba would remove a primary psychological prop of Castroism, and remove what is presently being used as a physical shield against any overt effort to keep alive the fires of freedom in Cuba. As mentioned before, the ability of Castro's native Cuba forces standing alone, to withstand any insurrection, depends upon the support the Cuban people give to the insurgents, and the effective outside help given to insurgent forces.

VII. CONCLUDING STATEMENT

Barring some development which is unforeseen at this time, the public debate will probably continue as to whether missiles and other strategic weapons are now based in Cuba and as to the number of Soviet troops being maintained there. These things are certainly of undeniable importance. The matter of basic and fundamental importance, however, and the source of the real threat, is that international communism now has a firm foothold in this hemisphere and that, if we permit it to do so, it is here to stay.

The Soviets are in Cuba primarily for the purpose of increasing and spreading communism's influence and power in Latin America and we can be sure that they will exploit their foothold to the greatest extent possible. The paramount danger at this time is that the nations of this hemisphere may be subverted one by one and be exploited, in turn, for subversive and revolutionary activities. By this process of erosion our neighbors to the south may fall nation by nation until the entire hemisphere is lost and the Communist goal of isolating the United States has been attained.

Communism, of course, operates on a worldwide scale and its methods and techniques are always adapted to the environment in which it operates. With this in mind, the value to the U.S.S.R. of the occupation of Cuba is apparent. The techniques of Communist subversion may vary from simple infiltration to violent intervention. Whatever its form, however, in Cuba as elsewhere it is conceived, developed, and perfected by the leaders of world communism for the purpose of furthering their concept of world domination. Its aim and goal is to destroy existing political, economic, and social orders and to replace them with new and dictatorial regimes which presuppose the complete physical and moral control of subjugated peoples.

This aim and goal has already been achieved in Cuba. It will be achieved elsewhere in Latin America unless positive steps are taken to prevent it. We must be prepared to take appropriate and positive action in our own national self-interest and in the interest of the collective security of the Western Hemisphere.

The Communist domination and occupation of Cuba, and the resulting menace to our security, requires and demands that the United States be ever alert and vigilant to all of its sinister implications. We must exercise the greatest surveillance and watchfulness possible, and use all available resources, for the purpose of ascertaining the true military situation in that unhappy island and to insure that we will not again be deceived and surprised. The entire Cuban problem, both military and political, should be accorded the highest possible priority by our governmental officials to the end that the evil threat which the Soviet occupation of Cuba represents will be eliminated at an early date.

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

Mr. HELMS. I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, may we proceed with morning business?

## ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 15 minutes, and Senators will be allowed to speak therein up to 5 minutes each.

## THE SOVIET MILITARY BUILDUP IN CUBA

Mr. ROBERT C. BYRD. I have just listened to the speech of the distinguished Senator from North Carolina, and I was going to make some brief comments thereon, if someone will ask him to return to the Chamber.

I was sorry that I was not present to hear all of the speech by the distinguished Senator from North Carolina. I have been at a meeting of the Senate Appropriations Committee attempting to get more money appropriated for the synthetic fuels program.

I heard the Senator say something to the effect that the failure—I may be stating it wrongly but, in essence, I think it was something like this, that the failure—of the President to get the Soviet troops removed was a tacit admission that the Soviets have great nuclear superiority. Is that what the Senator said right at the end of his speech?

Mr. HELMS. That it is tantamount to an admission; yes, sir.

Mr. ROBERT C. BYRD. Then, Mr. President, that is to imply that we should go to nuclear—have a nuclear exchange if the Soviets do not remove the "combat" troops from Cuba.

Mr. HELMS. Mr. President, if the Senator will yield——

Mr. ROBERT C. BYRD. I did not interrupt the Senator. If I may proceed.

Mr. HELMS. You are saying I implied something. I implied nothing. I stated facts and conclusions. The Senator can infer anything he pleases. There is a difference between implied and inferred.

Mr. ROBERT C. BYRD. I learned that in high school.

Mr. HELMS. It does not show.

Mr. ROBERT C. BYRD. I am sorry, I said the Senator implied. I said the Senator implied.

Mr. HELMS. And I said you inferred.

Mr. ROBERT C. BYRD. I inferred, that is correct.

Mr. HELMS. Very well.

Mr. ROBERT C. BYRD. All right, I inferred. I infer from what the Senator said that if the combat troops are not removed, and that the President was not able to force such removal, then it is a tacit admission to the world that the Soviets have tremendous nuclear superiority over this country. In other words, I take it, if we do not get those 2,600 troops out of Cuba, then we ought to have a nuclear exchange, a nuclear holocaust. Well, that is the inference I have drawn.

Mr. BAKER. Mr. President, who has the floor?

Mr. ROBERT C. BYRD. I have the floor. Does the Senator want me to yield?

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

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Mr. President, I do not want to get into a fight between implying and inferring, but let me simply say that I have taken no such inference or any such suggestion from the statement made by the Senator from North Carolina. My impression is that the Senator from North Carolina is simply saying that we stood toe to toe with the Russians and, unlike 1962, we blinked.

Mr. ROBERT C. BYRD. Well, now, Mr. President, the Senator from North Carolina, I take it, is able to defend himself, but I am glad the minority leader came to the floor because I would just as soon have this discussion fleshed out.

Talk is cheap. Anybody can talk. That is the one thing that inflation has not touched, talk, and it will always be cheap. So when we talk about confrontations and compare the Carter talks with the Soviets in the context of the current situation with the Kennedy-Khrushchev talks, when we talk about our failure to get the troops out as a tacit admission to the world that the Soviets have great nuclear superiority, now, Mr. President, that is simply talk—nothing more.

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

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. BAKER. Talk is also the coinage of intellect, and intellect is not always cheap. An intelligent approach to the matter at hand is the absolute fundamental requirement of the foreign policy of this country. For a month I reiterated time after time that you can have only one Presidential authority at a time and that it was up to the President to make his decision without any limitation or suggestion from me. I was true to that commitment.

Now that the decision has been made, I feel perfectly free to talk on this subject. I am very fond of President Carter, and I sympathize with the difficult situation he faces. I think too often we jump at each other's throats. But, Mr. President, while I regret to say it, I believe the President's response was inadequate.

No one that I know is suggesting that we have a confrontation with the Soviet

Union, least of all the Senator from North Carolina. Nevertheless, I think all Senators have the responsibility to state our views on the adequacy or the inadequacy of the Presidential response.

Mr. ROBERT C. BYRD. Well, Mr. President, nobody denies the minority leader's feeling that we should state our views. I am stating mine. The Senator is stating his. But all this talk about confrontation leaves the inference to be drawn that we should engage in some kind of nuclear exchange over combat troops in Cuba, an island on which we have military forces——

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

Mr. ROBERT C. BYRD. No, I do not yield at the moment. I did not interrupt the Senator.

Mr. HELMS. The Senator was not even in the Chamber, so he could not interrupt. I will give you 50 cents if you can find——

Mr. ROBERT C. BYRD. Mr. President, I ask for the regular order.

The ACTING PRESIDENT pro tempore. The Senate will be in order.

Mr. ROBERT C. BYRD. The regular order means that Senators address other Senators in the third person, and through the Chair.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, in his address to the Nation last evening, President Carter placed the issue of Soviet troops in Cuba in its proper perspective.

It has been my view, and one that I have consistently stated, that the issue of Soviet troops is a matter for concern, but not for confrontation. It should not overshadow a far more significant issue—the SALT II treaty.

I hope that the President's address and the steps he is taking will help to disentangle the SALT II treaty from the controversy over Cuba. I want to see the Senate proceed to consider the treaty on its merits, and not be subjugated to less important questions.

The ACTING PRESIDENT pro tempore. The time of the majority leader has expired.

Mr. CRANSTON. Mr. President, I seek recognition.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mr. CRANSTON. I yield to the majority leader. I hope the Senator will leave me a few minutes.

Mr. ROBERT C. BYRD. President Carter has received important assurances from the Soviet leadership relating to the nature, activity, and capability of the Soviet troops.

The President clearly stated that the United States will act to protect its national interests. He announced a number of measures that will be undertaken to strengthen our intelligence gathering and military capabilities in the Caribbean region.

The President has responded to this problem in an appropriate manner—reasoned but firm. The important consideration here is that we not lose sight of what our country's real interests are. We have more than sufficient means at our disposal to deal with any problem related to the Soviet troop presence in Cuba. In dealing with that issue we do not want to undermine our larger national interests—and the international leadership role of the United States.

The President emphasized that the greatest danger to the United States and to all the nations of the world is the breakdown of a common effort to preserve the peace and to reduce the threat of nuclear war.

He correctly pointed out that the Nation's security interests are not served by allowing SALT II to become a political issue.

It is my hope that as a result of the President's speech and the steps he is taking, we can now move on to a more productive phase in the debate on SALT II. The issue of Soviet troops has diverted attention from the more serious and substantial issues which are at stake in SALT II. I hope that in the days and weeks ahead the Senate and the Nation will focus once again on the treaty itself. The Foreign Relations, Armed Services, and Intelligence Committees have laid the groundwork, through their valuable hearings, for careful deliberation of the treaty by the Senate. That is what is in the interests of U.S. national security, and is what the American people deserve and expect.

I thank the Senator.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mr. CRANSTON. Mr. President, for all we know, these Soviet combat troops have been in Cuba for 17 years; maybe longer. Have they threatened us in these past years? No. Do they threaten us now? No. It is time to put aside childish things and childish ways. It is time we recognize we are a grownup, mature nation.

We are the oldest and most stable democracy on the face of the Earth. We are the strongest Nation on the face of the Earth militarily, economically, industrially, technologically, ideologically, and politically. Let us stop trembling and shaking every time the Soviet Union does something we do not like.

Let us act in the world with the confidence and the serenity that our strength so amply justifies. That is what President Carter last night called upon us to do. It was a reaffirmation of our Nation's strength.

The President's address was reasoned and restrained, as befits a strong nation. A strong nation that is also wise will never overreact. The measures President Carter proposes should satisfy any legitimate concern over the Soviet troops in Cuba. The measures he proposes carry out fully the 1962 agreement with the Soviets that Cuba will never become an offensive base against the United States.

Mr. President, it is time for the U.S. Senate to return to the great unfinished work before us—moving ahead on effective steps to bring the nuclear arms race with the Soviet Union under control.

We have already been diverted all too long by the Cuban episode.

I expect the argument will continue, here in the Senate and elsewhere in the Nation, over the administration's handling of the Cuban situation.

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

Mr. CRANSTON. Mr. President, I ask for another 1½ minutes.

Mr. BAKER. Mr. President, I seek recognition.

Mr. MUSKIE addressed the Chair.

The ACTING PRESIDENT pro tempore. I believe the Senator from Tennessee had requested permission prior.

Mr. BAKER. Mr. President, I thank the Chair.

I inquire, how much time is remaining in the period, so I can ascertain whether I can then yield a minute to the distinguished Senator?

Mr. CRANSTON. I appreciate that. I need about 1½ minutes.

The ACTING PRESIDENT pro tempore. Two minutes remain.

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for morning business be extended an additional 10 minutes under the same conditions.

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

Mr. BAKER. I yield to the Senator from California.

Mr. CRANSTON. I thank the Senator very much.

Mr. President, I expect the argument will continue over the nature of the so-called Soviet challenge;

Over the behavior of the Soviets and the Cubans in Africa and elsewhere;

Over the security of our friends and allies in Central and South America;

Over the security of the United States;

Over the adequacy of the President's response to the Cuban affair;

Over our "over" or "under" reaction; over whether the President has lost or gained politically; over whether this was all a terrible tempest in a tiny teapot—or a threat to our national manhood.

Perhaps it is right that these arguments continue for awhile yet: There are questions still unanswered and it is proper that they be fully explored in a public forum.

But let us return, Mr. President, to the prime, the transcending issue before us: The survival of our Nation, the survival of mankind.

There never was any real relevance between Soviet troops in Cuba and the SALT treaty. There is, of course, a relevance in emotion and in politics.

There is no relevance in terms of logic or in terms of our national defense interests.

This controversy with the Soviet Union over troops in Cuba was not our first, nor will it be our last, collision with the Soviet Union. We have different systems, different philosophies, different political objectives, different social aims, different world views. Plainly, we will collide in direct controversy time and time and time again.

The gravest danger to our national security lies in the possibility of a nuclear war with the other superpower, the Soviet Union. While SALT II is not a certain way to avoid that, it is an essential step in the process.

The purpose of the SALT treaty is to set certain ground rules that will contain the dimensions of these collisions so that they will be less likely to wind up in a nuclear holocaust.

Indeed, the whole disagreement over Soviet troops in Cuba points up the urgent need for Senate ratification of SALT II—and soon.

Mr. BAKER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized to take his 3 minutes.

Mr. BAKER. Mr. President, I do not intend for a moment to suggest that the Senator from California had any Member of this Chamber in mind when he admonished us to put aside our childish ways; surely, he did not. But as surely, he must remember that it was not this Senator nor any Member on this side of the aisle who made the announcement that there were combat troops in Cuba. It was not a Republican Senator, who declared that the status quo was unacceptable, or that the Russian troops had to be moved or else the SALT treaty would be defeated.

We have been spectators, Mr. President, and I think remarkably restrained, in our opposition. So I assume, that the Senator from California did not refer to this Senator or any Member of this Senate on this side of the aisle.

Mr. CRANSTON. That is correct, I did not have any Member of this Chamber in mind.

Mr. BAKER. Mr. President, I assert, on the best information available to me, that there was no indication of a Russian combat brigade in Cuba prior to 1978. Moreover, Mr. President, I assert that it does not make any difference when they were there. The fact of the matter is that we uttered the challenge when it was suggested that the status quo was unacceptable. It became our obligation, then, to state our response.

It is not in anger but in regret that I have said this morning that I feel our response was inadequate. The ultimate defeat of logic, reason, intellect, would be that our policies fail to the point where we suffer the annihilation that would be inevitable in nuclear warfare. But the surest way to nuclear confrontation with the Soviet Union is to convince them, by design or otherwise, that America no longer has the will for leadership; that we no longer will define our vital interests in the Caribbean or the Western Hemisphere; that for the first time, since the Monroe Doctrine we have acknowledged and condoned the presence of foreign combat troops in the Western Hemisphere.

I do not advocate a rattling of missiles with the Soviet Union but, rather, a statement of our resolve and a marshaling of our resources to diminsh this threat.

I have not been among those who have called on the Senate to postpone the consideration of SALT in the light of this development. I might come to that. There are many Members of the Senate, many of them on this side of the aisle, who advocate that. I understand their concern. But I have always contended that the Senate should consider SALT in the context of real-world circumstances.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. ROBERT C. BYRD. Mr. President, may I be recognized?

Mr. President, I know what the rules are. I seek recognition.

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

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

Mr. BAKER. I thank the Senator.

Mr. President, I have never contended that SALT should be defeated or postponed on the basis of Russian troops in Cuba. What I do contend is that we should take account of this most recent development, just as we take account of the Mig-23's or the Russian pilots in Cuba, the Cuban troops in Angola, Ethiopia, or North and South Yemen, the submarine facilities on Cuba or the presence of a guided missile task force in the Caribbean.

The real world: that is the framework in which we should consider SALT. I cannot speak for my colleagues because I have not yet consulted them, but for my part, I am willing to take up SALT any time and consider it in light of this development.

I do not think SALT will pass this Chamber primarily because the Russians have had such an adventuristic foreign policy, culminating in this latest development in Cuba. In light of that policy many Members will decide that a treaty which I believe is inherently unequal would not stand the scrutiny of our constitutional responsibility.

Mr. ROBERT C. BYRD. Mr. President, the distinguished minority leader speaks of "this latest development in Cuba." From all the indications that I have heard and read, there is no late "development." The troops have apparently been there for years. They are a possible residue of the troops, the personnel, that were there in 1962—at least going back some years. So it is not a late development. It was only recently identified.

I, too, say that we ought to look at this in the context of the "real world." That is precisely what I have been advocating: Let us look at it in the context of the real world; 2,600 troops in Cuba, no airlift possibilities, no sealift possibilities, no threat to the security interests of this country. Everyone admits that. That is the "real world."

I say let us not connect that recent identification of a unit that has possibly been there for years with our consideration of the SALT II treaty.

I have not determined what my position on the SALT II treaty is going to be. I do not intend to until I get a better understanding of the report that will be submitted by the Intelligence Committee.

I am in no hurry. That treaty was signed on June 18. I have been in no hurry to be for it or against it. I have just attempted to urge that we approach it in a systematic and careful manner and not let our judgment of SALT, which deals with strategic central systems, be discolored or affected by the identity of 2,600 Soviet troops in Cuba.

I welcome this discussion. I hope there will be nonpartisanship. There is certainly nothing that I have ever said that will reflect on the Republican Party in this regard. A lot of the opposition will be on this side of the aisle. I do not attempt to categorize the opposition to the treaty as partisan. I do not now and I never have.

I think I have a right to assume that there will be Members on that side of the aisle, if and when we reach a vote on the treaty, who will support it. This is what we need, nonpartisanship—or bipartisanship—on a matter of this kind.

I had always heard that on matters of foreign policy, the two political parties would join together, and that partisanship would end at the water's edge. If there ever were a time for this to be demonstrated, it is, I think, in the context of this national debate on the SALT II treaty. I hope that will be the case.

Does the Senator wish me to yield?

Mr. BAKER. Mr. President, only briefly.

Mr. President, I join the majority leader in welcoming this debate. I think it is useful. I think it is important, and I think it is in the best traditions of the Senate. We ought to do it more often.

I do want to point out that while I, too, believe in a nonpartisan foreign policy, I have never believed that a foreign policy is so transcendentally important that it is immune from discussion in the political arena. I welcome, as well, open and public debate of defense and SALT and foreign policy issues on this floor and in the political arena about the Nation.

Finally, Mr. President, and I thank my distinguished colleague, the majority leader, for yielding, I should like to suggest that, at some point, we as an institution ought to consider extending this debate into the homes of Americans, so that we follow the example of our colleagues in the other body and televise these proceedings. SALT would be a good place to start.

Mr. ROBERT C. BYRD. Mr. President, that has been under consideration by me. I have discussed it with many of my colleagues. Not all of them are in favor of it. I have discussed it with representatives of the networks, and it is still under consideration.

I will say this: I have read every word, every period, every semicolon, every double dash, every clause, every phrase of every transcript of every hearing that has been conducted by the Armed Services Committee and the Foreign Relations Committee, up to the time that the August recess began. If anything opened my eyes as to the need for this country to modernize its strategic central systems and theater nuclear forces and conventional forces, it was the information that I derived from the transcripts of those hearings. If they had that much impact on me, therefore, I should think they would have an equally great impact on the American people.

Ergo, I am considering this factor as I put it in the context of whether or not the Senate should proceed with televised proceedings when the SALT II treaty is debated.

Mr. BAKER. Mr. President, I thank the Senator for his consideration. I will be happy to pursue that at his convenience.

Mr. ROBERT C. BYRD. I yield the floor.

Mr. HATCH. Mr. President, I have been surprised at one aspect of the announcement by President Carter last night that he will be taking specific steps to offset the presence of the Soviet combat unit in Cuba. Everything he announced could have been anticipated in advance. Indeed, several Senators who proposed specific moderate options to the President in their comments to the press must be pleased this morning to see that he has done much of what they wanted. To be sure, he has done very little. I am reminded of the 1962 debate over the missiles in Cuba when none other than the Secretary of Defense Robert Strange MacNamara advised President Kennedy that there was no reason to get excited about the Soviet nuclear missiles in Cuba. In a much quoted remark, Secretary MacNamara said: "A missile is a missile."

As we all know, he failed to persuade the President and the other members of the executive committee set up to study the options. President Kennedy took firm decisive action. He ordered what was essentially a blockade of Cuba, but slightly modified the naval rules of engagement and called it a "quarantine" to avoid the international legal and military consequences of a full blockade. Whatever the name and whatever the rules of engagement, it amounted to a blockade. That is why I called for the consideration of another blockade of Cuba last week. President Carter, however, had already ruled out the use of military force in advance—a very different approach than President Kennedy. And, as we heard last night, President Carter has decided that not only is "a missile a missile" but, more strangely, "a combat brigade is a training center." This time, the Soviets can stay.

Lest this body think I am being overly critical of our President, I hasten to add that what he did not announce last night is much more important than what he did. One of the most dramatic moves in American policy since World War II has gone unnoticed in the headlines of today's papers.

In a surprise announcement, coinciding exactly with the President's on Cuba, we have learned that the Secretary of Defense will be going to Peking, China, before the end of 1979. This amounts to rubbing raw the single most sensitive nerve of the Soviet Union. It comes after repeated pledges by Secretary of State Vance that we will not sell arms to China. It comes after we have apparently blocked the efforts of the French Government to sell short-range missiles to China, and after we have discouraged the British from selling the Harrier jump jet to China. It comes after Secretary Leonid Brezhnev wrote letters to the heads of governments of Western Europe warning them not to establish military relations or sell arms to China. And it comes after several years of denials by Henry Kissinger that he had any sort of defense discussions with the Chinese Government during the Nixon and Ford administrations.

The Senate knows little about what the Secretary of Defense will be doing in China. The White House did not see fit to inform either the chairman of the Subcommittee on Asian and Pacific Affairs nor the ranking Republican of that subcommittee, the distinguished Senator from North Carolina. Several of us will be seeking clarification in the next few days. At the least, President Carter has handed the Soviet Union one of the biggest provocations of his Presidency, hidden within an apparently weak and accommodating set of measures to offset the combat brigade in Cuba. The Soviets may well wish they had withdrawn the brigade by the time they realize the implications to them of 1 billion Chinese at their back with military ties to the United States.

Had this not occurred, had not the President indicated that Secretary Brown will be going to China, I would have to say President Carter is a little like Macbeth: full of sound, but lacking the fury, and signifying nothing.

In spite of the fact of not acknowledging the presence in Cuba of foreign troops which will be used to foment revolution and bloodshed in Central and South America, the President is going through the motions of moving around troops in general.

But the essential fact remains, Carter is letting the Soviets keep those combat troops in Cuba. For all practical purposes, the Monroe Doctrine which protected the Western Hemisphere from foreign aggressions for 150 years is a dead letter.

Jimmy Carter's timid, weak leadership within America, is little more than a hollow shell of its former greatness.

I thank the Chair and I appreciate this time.

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## RESPONSE TO PRESIDENT CARTER'S STATEMENT ON CUBAN SITUATION

Mr. NUNN. Mr. President, in my view, there are positive and negative aspects of the President's speech. On the positive side, the President has indicated his determination to:

First. Improve our rapid deployment capabilities.

Second. Enhance our intelligence capability.

Third. Prevent any Soviet or Cuban intervention in this hemisphere.

Fourth. Insist that the Soviets abide by the 1962 and 1970 agreements regarding strategic nuclear forces in Cuba.

On the negative side:

First. There is little evidence of any real U.S. strategy to deal with Soviet-Cuban intervention outside this hemisphere or to link Soviet-United States relations to Soviet behavior in the world.

Second. There was no clear line drawn on the continued buildup of forces in Cuba. There was no mention of Mig 23's or attack submarines, nor was there any warning to the Soviets that this buildup must cease. We appear to have an understanding or agreement with the Soviets only with respect to nuclear forces in Cuba. We apparently have no agreement, nor have we drawn a line, in regard to conventional forces in Cuba.

It is clear to me that our Nation has not been able to appropriately analyze and respond to the Soviet-Cuban challenge because we have not been able to put the problem in perspective. The Soviet Union's mounting military activity in Cuba is the symptom, but Cuba's growing military activity in the Third World is the underlying disease.

The Soviet brigade represents only one element in what appears to be a much larger Soviet program to assume the primary responsibility for Cuba's defense with the aim of freeing even more Cuban troops for operations overseas. This appears to be the real purpose of the brigade, the Mig-23's, and of the expanding Soviet naval activity at Cienfuegos. Cuban troops have, in effect, become the Hessians of the Soviet drive for power in the Third World.

Fully one-quarter of the Cuban army is now deployed in Angola and Ethiopia. Additional hundreds of Cuban military "advisors" are present in Algeria, Congo, Grenada, Guinea, Libya, Mozambique, Nicaragua, Sierra Leone, Tanzania, South Yemen, and Zambia.

To deal with this challenge, we must be able to distinguish between its major and minor components as follows:

Soviet-backed Cuban intervention in the Third World.

Soviet military presence in Cuba—to embolden and encourage Cuba.

At least 10 Mig-23 fighter aircraft.

A diesel-powered attack submarine, a training submarine, a number of coastal missile boats, ground-based surface-to-air missiles, several thousand Soviet advisors, and intelligence personnel plus a major intelligence facility.

The Soviet "combat brigade."

The Soviet brigade is not unimportant. Certainly it has some symbolic and geopolitical effect, but it should be listed as number three in terms of the Soviet military presence in Cuba.

In weighing the impact of the President's speech, some may concentrate on whether or not the troops are combat or training, and others will debate how long the troops have been configured as a combat brigade—I believe that it is essential for us to look at the larger issue.

The President alluded to "the more general problem of Soviet-Cuban military activities in the Third World," but he carefully avoided drawing any line or issuing any warning on this activity except as it may in the future pertain to the Caribbean. The President hints at the underlying disease when he states:

> It raises the level of responsibility that the Soviet Union must take for escalating Cuban military actions abroad.

The President has also addressed this

serious disease indirectly by directing the Secretary of Defense to enhance the capacity of our rapid deployment force. As I pointed out in the recent Senate debate on military spending, while this so-called rapid deployment force has been discussed by the Carter administration, it has not been fully identified, nor has it been funded for rapid deployment. Perhaps the 1981 defense budget and the President's 5-year budget plan will give us additional information as to whether U.S. forces will be capable in the future of getting there "firstest with the mostest" or "lastest with the leastest."

In summary, our Nation is finally beginning a process of creeping reality, but our response remains uncertain. The appropriate responses to this Russian-Cuban intervention policy will be difficult to devise even when we reluctantly confront reality. In the meantime, the Russians and Cubans will continue pursuing their goal of "stabilizing the Third World."

Mr. President, historians of the future will be hard pressed to explain how it was that the United States in the 1970's permitted a tiny hostile nation 90 miles from its own shores to assume the role of a superpower, at least in terms of its influence on military events in the nonindustrial world.

We must clearly recognize this threat, and begin to deal with it politically, economically, and in our military preparations. Hopefully, the "Cuban brigade crisis" has moved us a step closer to facing this reality.

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## OFF THE AIRWAVES

Mr. PROXMIRE. Mr. President, the Federal Communications Commission recently proposed rules that would result in the almost total deregulation of commercial radio broadcasters.

The FCC proposals would, for example, do the following:

First. Eliminate all requirements that radio licensees demonstrate they have ascertained and addressed the needs and problems of their communities;

Second. Eliminate all limitations on the amount of time radio stations can devote to commercials;

Third. End requirements on the minimum amount of nonentertainment programing, such as news and public affairs, that must be provided by radio stations; and

Fourth. End requirements that commercial stations keep strict logs of their programing for the FCC.

In commenting on these proposals, Chairman Charles Ferris of the FCC stated that information gathered by his staff "indicates that in radio broadcasting, the public interest can be met most effectively by the forces of competition in the radio marketplace."

I strongly share that opinion. To support this contention, Mr. Ferris further noted that 2,500 of the 8,653 radio stations in existence today have begun their operations since 1967.

Chairman Ferris then went on to point out that the radio broadcasting industry was much different in 1934, when the regulation of radio began, than it is today. Because the number of radio stations at that time was small, the Government felt compelled to impose regulations requiring those stations to act in the public interest.

But now, as Mr. Ferris made clear, the force of the marketplace, and not the Federal Government, is the best device to insure that radio broadcasters operate in the public interest.

Radio stations today, for example, far exceed Federal requirements for news and public affairs programing. Why? Because the public demands it.

And since the public today has a wide choice of listening options, radio stations must continue to provide the service demanded by the public or risk going out of business.

Mr. President, I applaud the words of Chairman Ferris and his leadership in helping to bring about this recent action by the FCC.

But as the Wall Street Journal said in its lead editorial of last Friday, September 28, "It's time to push further."

In this editorial, entitled "Off the Airwaves," the Wall Street Journal eloquently stated the case for the abolition of the FCC's so-called Fairness Doctrine and equal time rule for both radio and television.

Mr. President, in January of this year, and in the two preceding Congresses as well, I introduced legislation—known as the First Amendment Clarification Act—that would do just that.

And as the Wall Street Journal editorial pointed out, the same logic that led to the FCC proposals should also trigger action by the Congress to do away with both of these onerous restrictions on the first amendment rights of broadcasters.

As I have noted, Chairman Ferris suggested the obsolescence of the so-called "scarcity rationale" as a key reason for the FCC proposals on radio deregulation.

But, Mr. President, those who favor continuing regulation of the broadcast media—both radio and television—through the Fairness Doctrine and the equal time rule consistently cite this same "scarcity rationale" to justify their position.

Their argument is that there are only a limited number of TV channels and radio frequencies. So, they maintain, the Government must license those who can broadcast and make them operate in the way that the Government thinks is in the public interest.

But does this "scarcity rationale" hold up today? The answer is "No". In almost every city in America—regardless of size—there are more television signals available than daily newspapers. If radio stations are counted, as they must be, general audience broadcasting stations far outnumber general circulation newspapers.

Moreover, economic pressures make it nearly impossible to establish a daily newspaper in a community where one already exists.

Since the supposed rationale for the fairness doctrine and the equal time rule is no longer valid, it follows, quite clearly, that both of these restraints on the first amendment freedom of broadcasters should also fall.

Mr. President, the Wall Street Journal editorial to which I have been referring is a strong and compelling statement in favor of eliminating "obsolete and counterproductive" governmental controls like the fairness doctrine and the equal time rule. I ask unanimous consent that the text of the editorial be printed at this point in the RECORD.

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

### OFF THE AIRWAVES

Common sense is becoming more common at the Federal Communications Commission. With some prodding from the courts, the FCC has been lifting restrictions on the diffusion of cable and pay television. Now the commissioners want to scrap some superfluous and bothersome rules they have long imposed on radio stations.

We applaud such moves. There's no reason why radio stations should have to log every minute of their programing, or interview community leaders about local needs and interests, or prove they devote a certain minimum of airtime to news and public affairs and a certain maximum to advertising. These regulations may have made some sense when radio was the leading source of home entertainment and programing was dominated by a few national networks, with only a handful of stations in each community. But today there are more than 8,000 stations, with several dozen competing in each major urban area.

In such an environment, as the FCC has correctly recognized, minority interests will be better served by the marketplace than by regulatory paperwork. Most radio stations these days can attract advertisers and make money only if they appeal to specialized audiences. And market signals have led to more local news and information than the regulators ever dreamed of.

By the same logic, it's also time to cast aside the "Fairness Doctrine" and the "equal time" provision for election coverage, two FCC rules mandated by Congress and designed to ensure that radio and television broadcasters maintain some semblance of editorial balance in their political programing. When stations were few and far between, and entry into broadcasting was restricted, the rules may have helped guard against political bias in programing by legally enforced monopolies. Today the rules are obsolete and counterproductive.

Not only radio but also television stations have been proliferating—first with the introduction of UHF channels, now with the almost unlimited channel possibilities opened up by cable and by satellite transmission. With the advancing revolution in video technology, competition in home entertainment and audiovisual information will also come from off the airwaves. The marketplace, if allowed to function, will encourage a rich diversity of programing. But the requirement of editorial balance for each station is stifling potentially lively debate between stations.

Under the "Fairness Doctrine," it is economically costly and legally risky for any broadcaster to air programs or advertisements that voice controversial political opinions; the broadcaster must either give up valuable airtime to present opposing views, or risk losing his license. The "equal time" requirement imposes comparable costs and risks on any broadcaster providing in-depth presentations of any one candidate's positions.

As a result, radio and television programming often takes the spice out of political or public policy controversies, and coverage of campaign issues has come to incorporate such stilted devices as the highly formalized and structured 1976 Ford-Carter debates.

Besides, the rules have always carried disturbing First Amendment implications. Only this June, the D.C. Circuit Court of Appeals upheld an FCC ruling that dismissed without a hearing a "Fairness Doctrine" suit against CBS News's coverage of "national security issues." National security, the court ruled, was "too diffuse" an issue to be considered a "controversial issue of public importance" and therefore subject to the fairness requirement. In 1968, by contrast, the same court adjudged tobacco advertisements to be sufficiently controversial that stations had to grant equal time, free if necessary, to anti-smoking pronouncements.

By leaving to administrative law judges the right to determine whether coverage is "fair" or "controversial," the rules also give them the opportunity to inject their personal opinions about what should be broadcast.

Congressman Lionel Van Deerlin introduced legislation this year that would have repealed these rules, as part of a more ambitious effort to rewrite the FCC's charter. The proposed repeal attracted little support from his colleagues, and, together with a more general initiative to limit the regulation of broadcast programming, is now on the shelf. This is unfortunate. With today's marketplace and tomorrow's technology, it is becoming less and less necessary to restrict what's broadcast, except for prohibiting obscenity over public airwaves. The FCC has begun moving in the right direction. It's time to push further.

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## JACOBO TIMMERMAN

Mr. PROXMIRE. Mr. President, according to news reports published last week, Jacobo Timmerman finally has been released by Argentina's military government.

Mr. Timmerman, the editor of a prominent opposition newspaper in Buenos Aires, was never informed of the charges against him during the 2 years he was held and allegedly tortured. His only crime seems to have been being Jewish and outspoken.

International pressure was largely responsible for Mr. Timmerman's release, and much of this pressure came from the United States. The administration used its diplomatic leverage on Mr. Timmerman's behalf, and the Anti-Defamation League of B'nai B'rith awarded him their Hubert Humphrey Freedom Prize.

It is wonderful to learn that Mr. Timmerman's long nightmare has ended, and I am proud of the part that Americans played in securing his release.

However, the influence of the United States in international human rights cases such as this is weakened by our stand on the Genocide Convention. For over 30 years the Senate has avoided the responsibility of putting this Nation on record as condemning genocide as an international crime.

This shameful inaction has opened the door for our adversaries to ridicule our earnest efforts on behalf of men like Jacobo Timmerman. I urge the Senate to ratify the Genocide Convention.

## THE PLO'S "MODERATE" STANCE IS NO SUCH THING

Mr. BAKER. Mr. President, Senator JAVITS of New York recently wrote an article that was published in one of this country's leading national newspapers, the Los Angeles Times, on the subject of American policy in the Middle East. I believe that Senator JAVITS' discussion of the background of our refusal to negotiate with the Palestine Liberation Organization is one of the most effective and forceful presentations on the subject that has recently been offered to the public.

In a time when conflict and confusion frequently muddy the waters, it seems to me that the American people are well served when the grounds of policy observed by three administrations are so effectively reexamined as they have been by the Senator from New York. His able presentation affords us a needed reminder that negotiating under the gun can lead only to further bloodshed and surrender of our country's national interests. I ask unanimous consent to have printed in the RECORD the distinguished Senator's article headlined: "The PLO's 'Moderate' Stance Is No Such Thing."

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

THE PLO'S "MODERATE" STANCE IS NO SUCH THING

(By JACOB K. JAVITS)

The resignation of U.N. Ambassador Andrew Young over his Palestine Liberation Organization contact, which has caused such a stir at home, will ultimately yield to reason and understanding, but the profound issues obstructing Middle East peace persist.

Some underlying questions continue to require examination:

—What commitments has the United States made concerning the Palestinians or the PLO?

—Is U.S. policy changing toward the PLO and its claim to be the sole legitimate representative of the Palestinian people?

—What effect will developments respecting these questions have on the prospects for peace in the Middle East?

The deferment of the Security Council's consideration of the "Palestinian Resolution," which would commit the United Nations on this issue, gives an opportunity for constructive statesmanship before the expected U.S. veto.

The basic U.S. commitment derives from the assurance given to Israel by the United States in connection with the second Sinai disengagement agreement between Egypt and Israel, and states clearly: "The United States will continue to adhere to its present policy with respect to the Palestine Liberation Organization, whereby it will not recognize or negotiate with the Palestine Liberation Organization so long as the Palestine Liberation Organization does not recognize Israel's right to exist and does not accept Security Council Resolutions 242 and 338." This commitment was explicitly reaffirmed by the Carter Administration during the negotiating process leading up to the Camp David accord.

The reasons for the American commitment are real and important, and they derive directly from the letter and spirit of Security Council Resolution 242 itself, which calls for secure and recognized boundaries for all states in the area, including Israel, and the right of all states to live in peace and security.

There are recurrent reports that Yasser Arafat and other PLO figures are prepared to "tacitly recognize" Israel in return for Israel's recognition of the PLO and to get a place at the table in the U.S.-Israel-Egypt negotiations. But the PLO charter still calls for the elimination of Israel, as well as its replacement by a Palestinian state that would cover the area of both Israel and the West Bank. Moreover, it remains to be seen whether the PLO will curtail, as it has hinted that it will, attacks on Israel's people from Lebanon and from inside Israel.

The United States must recognize that the PLO is a threat not only to Israel's existence but to Jordan's as well. The fact is that Jordan repelled the PLO in a bloody war in 1970, and has not allowed the organization to function inside its borders since then.

Actions speak louder than whispers of conciliation and moderation, and the PLO remains the main obstacle to the peace process in the area.

Security Council Resolution 242 properly remains the basic commitment of the United States and all nations genuinely seeking peace, in the area. It is equally balanced between "withdrawal" of Israeli armed forces "from territories occupied" in the 1967 war and "respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force."

It is not true that Palestinians are excluded under present arrangements from determining the ultimate status of the West Bank and Gaza Strip. The Camp David accord states that "the solution from these negotiations (on the permanent government of the West Bank and Gaza) must also recognize the legitimate rights of the Palestinian people and their just requirements." And it has been agreed also that in these negotiations "the delegations of Egypt and Jordan may include Palestinians from the West Bank and Gaza or other Palestinians as mutually agreed."

Now the PLO, under the guise of a new, "moderate" stance, is trying to gain a seat at the bargaining table—without any declared change in its policies and without accepting Security Council Resolution 242, as have Israel, Egypt and the United States, as well as Syria and Jordan, which are not yet party to the negotiations. This course of action must be resisted; it is destructive to the peace process and the ongoing negotiations. The PLO must qualify by accepting Israel's right to exist and Security Council Resolution 242.

Therefore, Washington's present course of action ought to be: (1) to stand by U.S. commitments not to negotiate with the PLO unless it changes its course, and to exercise patience in this respect; (2) to pursue the Camp David accord, which recognizes as negotiating parties for the West Bank and Gaza "representatives of the inhabitants of the West Bank and Gaza"; (3) to honor its commitment, if necessary by vetoing any Security Council resolution seeking to amend substantively Resolution 242, and (4) to insist that the status and condition of the Arab refugees remaining in camps on the West Bank and in Gaza be considered in the current U.S.-Israel-Egypt negotiations.

The present situation allows us an opportunity to give the Palestinians a voice in the negotiations on the West Bank without requiring any recognition of the PLO. This can be accomplished by giving consideration to the 24 mayors of the principal towns and cities of the West Bank, duly elected in 1976 under the provisions of Jordanian law, which is still administered there. These elections were widely recognized as being fair and representative.

In view of the fact that Jordan is unwilling to participate in the current negotiations, as called for by the Camp David accord, mayors could be offered the opportunity to supply the necessary representatives of the Palestinian inhabitants of the West Bank for the purpose of advising on the means of establishing "the elected self-governing authority on the West Bank and Gaza."

Israel did not challenge the results of the election of any West Bank mayors on the basis of their sympathy for PLO causes, and therefore the mayors need not be challenged for this role in the negotiations, either. And such representatives would be qualified as having been elected by the inhabitants of the affected area. Such as arrangement would not necessitate renegotiating the Camp David accord; it would only require the concurrence of Egypt, Israel and the United States.

We have in the Camp David accord a very clear charter as to who speaks for the Palestinians: the inhabitants of the West Bank. It took a long and arduous effort to negotiate this accord. It is a flexible and viable instrument, for achieving peace. Israel and Egypt, which are actively seeking peace, wish to stay with it. Certainly the United States should, too.

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## BUDGET ACT WAIVER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of Senate Resolution 244, which the clerk will state.

The legislative clerk read as follows:

A resolution (S. Res. 244) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1308.

The Senate proceeded to consider the resolution.

The ACTING PRESIDENT pro tempore. Time on this resolution is limited to 1 hour, to be equally divided and controlled between the majority leader and the minority leader or their designees, with 20 minutes on any debatable motion or appeal.

Who yields time?

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum and ask unanimous consent it not be charged to either side.

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

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

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

Mr. MUSKIE. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. Senate Resolution 244 is the pending business.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Charlene Sturbitts and Karl Braithwaite, of my staff, have the privilege of the floor during the consideration of S. 1308 and Senate Resolution 244.

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

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the following staff members of the Committee on Governmental Affairs have the privilege of the floor during the debate and votes on S. 1308: Richard A. Wegman, Claude Barfield, Paul Rosenthal, Dave Nichols, Ellen Miller, and Paul Hoff.

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

Mr. RANDOLPH. Mr. President, I ask unanimous consent that the following members of the staff of the Committee on Environment and Public Works have the privilege of the floor during the consideration of and votes on S. 1308 and the matter related thereto: Phil Cummings, Rick Fenton, Phil McGance, Jacqueline Schafer, Vic Maerki, Bailey Guard, Dennis Stickley, John Yago, Mimi Feller, Tom Altmeyer.

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

Mr. DOMENICI. Mr. President, I ask unanimous consent that the following staff members have the privilege of the floor during the consideration of and votes on S. 1308: Paul Gilman, Steve Hickok, Chuck Trabandt, Dave Swanson, Steve Crow, Howard Useem, Dave Russell, Gary Barbour, Carol Garnett, Cindy Calfee, Suzanne Whitehurst, and Trudy Transtrum.

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

Mr. MUSKIE. Mr. President, I wish to advise the Senate that a majority of the Budget Committee, moving on a "fast-track" to give expedited consideration to this matter, has voted to recommend favorable Senate action on Senate Resolution 244, a resolution to waive section 402(a) of the Budget Act with respect to consideration of S. 1308, the Energy Mobilization Board authorization bill.

Mr. President, I regret that I could not be here yesterday during the discussion of this matter, but I was in Boston to greet His Holiness John Paul II on his historic arrival in the United States

Mr. President, let me express my thanks to the senior Senator from Colorado, Mr. HART, the distinguished floor managers on the bill, Senators JACKSON and DOMENICI, and the distinguished majority and minority leaders Senator BYRD and Senator BAKER for their cooperation in developing the unanimous-consent order to provide for the orderly consideration of this budget waiver.

A waiver is necessary because S. 1308 authorizes $2 million in new budget authority for fiscal year 1980 and the bill was reported after May 15, 1979, the statutory reporting deadline.

In favorably reporting on Senate Resolution 244, as is the case with every favorable waiver recommendation, the budget committee is recommending that the Senate proceed to the consideration of this high priority energy legislation but is not prejudging the merits of the bill.

Mr. President, some Senators have suggested that the budget process is being used to delay consideration of this important legislation. Let me assure every Member of this body that in this instance as in every instance to date in the 96th Congress and since the beginning of the budget process in 1975, the Budget Committee and its staff have worked closely with the majority leader, the policy committee staffs of both sides and the standing committees of the Senate to assure that compliance with the Budget Act is not a road block to Senate floor deliberations.

Mr. President, for the benefit of all Senators, let me review the sequence of events with respect to this waiver resolution. S. 1308, the Energy Mobilization Board authorization bill, was filed last Tuesday, September 25. The waiver resolution was not filed until Wednesday, the 26th. The CBO cost estimate for fiscal years 1981 to 1984 was not available until late Wednesday evening. The report on the bill did not become available to Senators or our committee from either the Senate documents room or the Energy Committee until Thursday, the 27th. The Budget Committee staff then prepared an explanatory memorandum for the committee, and I authorized a poll of the committee on this matter on Friday, with a return for the poll at 6 p.m. Monday. The waiver resolution was filed last night.

Since the printed report on S. 1308 was not available until Thursday, September 27, and no Saturday session was then anticipated, the 3-day period required under the rules to precede consideration of this bill was not expected to expire until Tuesday, October 2, today. So we expected, and have obtained, approval of the waiver before the bill was thought likely to be eligible for consideration on its own merits under the 3-day rule. I believe that this expedited treatment is consistent with the Budget Committee commitment to cooperate with the leadership on timely consideration of budget waivers.

### BUDGET COMMITTEE CONSIDERATIONS

As Senators are aware, section 402(a) of the Congressional Budget Act of 1974, provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless the bill or resolution was reported in the House or the Senate, as the case may be, on or before May 15, preceding the beginning of such fiscal year.

Mr. President, S. 1308 authorizes appropriations of $2 million in fiscal year 1980 for the Energy Mobilization Board. This authorization level is projected to increase to approximately $13 million by fiscal year 1984. Since the bill was reported after May 15, 1979, a resolution waiving section 402(a) of the Budget Act must be adopted before the Senate can proceed with consideration of this bill.

Mr. President, section 402 was included in the Budget Act to provide an orderly relationship between authorizations and appropriations bills. The May 15 deadline was instituted to avoid authorizations being brought to the Senate floor after the appropriations process was already in full swing. Section 402 provides a waiver procedure to allow the Budget Committee to review the circumstances surrounding late reported authorizations and to make recommendations to the full Senate on whether

the situation warrants waiver of the May 15 deadline.

Mr. President, in this case, the Budget Committee has recommended favorable action on the waiver resolution because the need for Energy Mobilization Board legislation could not have been anticipated by the Energy Committee prior to the May 15 reporting deadline.

This bill was a component of the President's Energy message of July 15 and the subsequent energy package that addressed the national need to lessen U.S. dependency on imported oil. Indeed, the depth of the problem did not become evident until the impact of the latest round of OPEC prices on summer gas lines and escalating energy costs heightened public and congressional demands for mobilization of domestic production.

Moreover, the authorization levels in this bill are consistent with the energy ceiling in the second budget resolution as passed by both Houses.

In general, the authorizing committees have been cooperative and supportive of the budget process. On several occasions, the committees have reported waivers in order to allow the Senate to take up a bill reported with a late authorization so that an amendment could be introduced to change the authorizing date to comply with the Budget Act.

The Budget Committee has worked closely with the majority leader, the policy committees, and the authorizing committees to avoid any delay, and in this case we have done so. As a key author and supporter of the budget process, the distinguished majority leader is keenly aware of the need to enforce the discipline and orderly procedures set out in the Budget Act. I deeply value his cooperation with respect to these matters.

Mr. President, the Budget Committee recognizes that energy legislation will be a high priority for the Senate during the next several months and will continue to work closely with the Senate leadership and the authorizing committees to assure timely consideration of budget issues.

Unless there are other comments on the waiver resolution, and I take it that there are not, I yield back such time as is allotted for the consideration of this resolution under the Budget Act.

Mr. JACKSON. Mr. President, I thank the senior Senator from Maine for his cooperation in this matter. I do not think there is any need for debate or discussion.

I yield back whatever time I have, and we can vote.

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

Mr. MUSKIE. I yield.

Mr. DOMENICI. Mr. President, on behalf of myself and Senator BELLMON, as members of the Budget Committee, I say to our chairman that we appreciate expediting the matter. We are sorry if there was any misunderstanding. Many of us on the Energy Committee did not believe this required a waiver because no money is provided. Only after scrutiny by CBO did they assume and advise us that it might be $2 million.

Mr. President, I support Senate Resolution 244, the budget waiver for the Priority Energy Project Act, S. 1308. S. 1308 establishes the Energy Mobilization Board, grants the Board authority to expedite priority energy projects, and establishes expedited judicial review for the temporary emergency court of appeals. The bill authorizes "such sums as are necessary" for the Board's administrative operations and for the expended judicial activities placed in the temporary emergency court of appeals (TECA).

The fiscal year 1980 budget impacts of the Board and TECA would undoubtedly be very small, even if the bill is enacted into law this session. CBO, in a cost estimate the committee did not receive until after filing the report, estimates that the fiscal year 1980 costs will approximate $2 million. Our own view is that it is highly unlikely that the Board and TECA could obligate anywhere near that amount in this fiscal year.

Even if the Board and TECA could obligate $2 million, Mr. President, that should be no reason to hold this bill off the floor; $2 million simply is not the level of impact which should require any controversy under the Budget Act. Additionally, the Energy Mobilization Board is the centerpiece of the President's energy package and the omnibus energy legislation under consideration in both Houses. The country is well aware of the critical importance attached to cutting bureaucratic redtape stopping domestic energy production. To delay this bill any further for purposes of the Budget Act would be unwise and probably unreasonable, in light of the extreme national interest attached to this bill.

I, therefore, urge the passage of the budget waiver resolution.

Mr. MUSKIE. Mr. President, I am ready for a vote on the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

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## PRIORITY ENERGY PROJECT ACT OF 1979

The PRESIDING OFFICER. Under the previous order the Senate will now proceed to the consideration of S. 1308 which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 1308) to set forth a national program for the full development of energy supply, and for other purposes.

The Senate proceeded to the consideration of the bill which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 2, beginning with line 1, strike through and including page 17, line 16, and insert in lieu thereof the following:

That this Act may be cited as the "Priority Energy Project Act of 1979".

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PURPOSES

SEC. 2. (a) The purposes of this Act are to utilize to the fullest extent the constitutional power of Congress to regulate interstate and foreign commerce and to provide for the national defense in order to improve the Nation's balance of payments, reduce the threat of economic disruption from oil supply interruptions and increase the Nation's security by reducing its dependence upon imported oil.

(b) Congress finds and declares that these purposes can be served by—

(1) providing a coordinated, prompt, and simplified process for approval of non-nuclear energy facilities that are determined to be in the national interest;

(2) expediting the approval process without unduly interfering with the present statutory authority and responsibilities of Federal, State and local agencies; and

(3) fostering the integration of Federal, State, and local procedures for permitting, licensing, and approving energy projects which are determined to be in the national interest pursuant to section 11.

DEFINITIONS

SEC. 3. As used in this Act the term—

(a) "applicant" means any persons planning or proposing a project which has been designated a priority energy project;

(b) "approval" means any permit, license, lease, certificate, right-of-way, or other grant, rate, ruling, or decision authorized or issued by an agency of Federal, State, or local government;

(c) "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation;

(d) "Board" means the Energy Mobilization Board created under section 4 of this Act;

(e) "Chairman" means the Chairman of the Board;

(f) "class of energy projects" means any set, collection, or group of energy projects with common characteristics of which no single project has an expected cost in excess of $5,000,000, and the total cost of which is not expected to exceed $250,000,000, as adjusted to take into account the rate of inflation since the date of enactment, as measured by the adjusted gross national product implicit price deflator;

(g) "designation request" means an application filed with the Board pursuant to section 10(a) of this Act for an order by the Board designating an energy project or class of projects as a priority energy project;

(h) "energy facility" means any physical structure, including any structure which incorporates active and/or passive solar devices, any equipment, building, mine, well, rig, pipeline, transmission line, processing facility, transportation device, manufacturing facility, or installation, or any combination thereof, which will facilitate energy conservation or invention, exploration, research, development, demonstration, transportation, production, or commercialization of any form of energy other than atomic energy, including, but not limited to, any facility owned or operated in whole or in part by Federal, State, or local government or any combination thereof;

(i) "energy project" means any plan, proposal, program, scheme, or design to produce, build, install, expand, modify the operation of, or alter in any other way, an energy facility;

(j) "Federal agency" means an executive agency as defined in section 105 of title 5 of United States Code;

(k) "local agency" means any executive agency of local government;

(l) "local government" means (i) any government body, including any special purpose government body, of any political subdivision of any State, (ii) any recognized government board of any Indian tribe or Alaskan Native Village which performs substantial governmental functions, or (iii) any general or special purpose government among States or within a State;

(m) "local law" means the rules, regulations, ordinances, codes, case law, and other laws of any local government;

(n) "member" means a member of the Board other than the Chairman;

(o) "person" means any individual, cooperative, partnership, corporation, association, consortium, unincorporated organization, trust estate, nonprofit institution or any entity organized for a common purpose, and any instrumentality of Federal, State, or local government;

(p) "Priority energy project" means any project or class of projects which has been determined by the Board to be in the national interest pursuant to its authority under sections 9 and 11 of this Act;

(q) "Project Decision Schedule" means an unrevised Project Decision Schedule promulgated pursuant to section 17 or a revised Project Decision Schedule promulgated pursuant to section 17 and revised pursuant to section 18;

(r) "State" means any of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(s) "State agency" means any general or special purpose executive agency of State government; and

(t) "State law" means the laws, rules, resolutions and case law of any State.

ESTABLISHMENT OF THE ENERGY MOBILIZATION BOARD

SEC. 4. (a) There is hereby established a special executive agency to be known as the Energy Mobilization Board.

(b)(1) The Board shall consist of a Chairman, who shall hold office at the pleasure of the President, and three members. The Chairman and the three members shall be appointed by the President, by and with the advise and consent of the Senate.

(2) The Chairman shall be an individual who, as a result of his training, experience, and attainments in academia, industry, commerce, public interest activities, and/or government is exceptionally well qualified to perform the duties of his office.

(3) Members of the Board shall be appointed for a term of three years, except that the term of office of the members first appointed shall expire, as designated by the President at the time of appointment, one at the end of one year, one at the end of two years, and one at the end of three years.

(4) The Chairman of the Board shall serve as a full-time employee of the Board and shall receive compensation at the rate prescribed for offices and positions at level I of the Executive Schedule (5 U.S.C. 5312). Members of the Board shall receive compensation at a rate equal to the rate prescribed for offices and positions at level I, including travel time, for each day such member is engaged in the actual performance of duties as a member of the Board. All members of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(5) The Chairman shall not engage in any other employment or hold any other office or position in the Federal Government during the period of his employment. Members shall not hold any other office or position in the Federal Government during the period of their employment.

(6) The Chairman shall be subject to the same restrictions and requirements imposed upon supervisory employees under title VI, part A of the Department of Energy Organization Act (42 U.S.C. 7211–7218), except that in applying the provisions of title VI, part A to the Chairman, the term "the Board" shall be substituted in place of "the Department."

(7) Members of the Board shall be subject to the reporting requirements imposed upon individuals who are nominated by the President to positions which require the advice and consent of the Senate by title II of the Ethics in Government Act of 1978 (5 U.S.C. App. I).

(8) Except as provided in subsection (b)(7) of this section, members of the Board shall not be subject to any conflict of interest, disclosure, or divestiture requirements of any law solely by virtue of their service on the Board.

(c) The Board shall be administered under the supervision and direction of the Chairman, and except as provided in section 11, the Chairman shall have final and exclusive decisionmaking authority on all matters within the jurisdiction of the Board. The members of the Board shall advise the Chairman in carrying out his duties.

(d) There shall be a General Counsel to the board who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level III of the Executive Schedule (5 U.S.C. 5314).

MEETINGS, EXECUTIVE DIRECTOR, SUBPENA POWER

SEC. 5. (a) The Board is authorized to sit and act at such places and times as it may determine.

(b) The Chairman may appoint an executive director who shall exercise such powers and duties as may be delegated to him by the Board. The executive director shall receive compensation at the rate provided for level III of the Executive Schedule (5 U.S.C. 5314).

(c)(1) The Chairman shall have the power to issue such subpenas as are necessary for the purpose of monitoring compliance with any Project Decision Schedule or for the purpose of carrying out its authority under section 21. Such subpenas may require the attendance and testimony of witnesses and the production of any records, material or evidence from any Federal, State, or local agency body or any person that relates to any matter within the jurisdiction of the Board. The Board or any member of the Board or any agent designated by the Board for such purpose, may administer oaths and affirmations, examine witnesses, and receive records, materials, or evidence. Such attendance of witnesses and the production of such records, materials or evidence may be required from any place within the United States at any designated place.

(2) In any case of recalcitrance or refusal to obey a subpena issued under subsection (c)(1), the district court of the United States within the jurisdiction of which said person guilty of recalcitrance or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such agency or person an order requiring them to appear before the Board, its members, or agents there to produce records, materials or evidence if so ordered, or there to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Except as provided in section 32, the Temporary Emergency Court of Appeals shall have exclusive jurisdiction to review an order of a district court pursuant to this section. The Temporary Emergency Court of Appeals shall expedite such review pursuant to the provisions of this Act.

(3) Process and papers of the Board, its members, or agents may be served either upon the agency or person subpenaed in person or by registered or certified mail or by telegraph or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or telegraphed shall be proof of service of the same. Witnesses summoned before the Board, its members or agents shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(4) The Board may, with the approval of the Attorney General, issue an order requiring any person to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, in the same manner and subject to the same restrictions as a government agency which may issue an order pursuant to section 6004 of title 18, United States Code.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the person required to be served resides or may be found.

(6) Oral testimony given under compulsion of a subpena or materials furnished to the Board pursuant to a subpena shall be matters of public record to the extent required by section 552 of title 5, United States Code.

POWER AND AUTHORITY OF THE BOARD

SEC. 6. (a) The Board shall have the authority, subject to the provisions of this Act and, within the limits of available appropriations, to carry out the purposes of this Act including the authority to—

(1) make full use of competent personnel and organizations outside the Board, public or private; form advisory committees and special ad hoc interagency task forces; and make other personnel arrangements in accord with Federal law; as the Board determines to be appropriate;

(2) enter into contracts or other arrangements as may be necessary for the conduct of the work of the Board with any agency or instrumentality of Federal, State, or local government, or with any person, with or without reimbursement, with or without performance or other bonds and with or without regard to section 5 of title 41, United States Code: *Provided*, That the Board shall not use its authority to become directly involved in the actual construction or operation of any priority energy project;

(3) make advance, progress, and other payments which relate to the functions of the Board without regard to the provisions of section 529 of title 31, United States Code;

(4) accept and utilize the services of voluntary and uncompensated personnel necessary for the conduct of the work of the Board and provide transportation and subsistence as authorized by section 5703 of title 5, United States Code, for persons serving without compensation;

(5) acquire by purchase, lease, loan, or gift, and hold and dispose of by sale, lease, or loan, personal property of all kinds necessary for or resulting from the exercise of authority granted by this Act;

(6) prescribe such rules and regulations as it deems necessary governing the operation and organization of the Board; and

(7) act without regard to the Federal Advisory Committee Act (5 U.S.C. App. I).

(b) Contractors and other parties entering into contracts and other arrangements under this section which involve costs to the Government shall maintain such books and related record as will facilitate an effective audit of the execution of such contracts or arrangements in such detail and in such manner as shall be prescribed by the Board, and such books and records (and related documents and papers) shall be available to the Board and the Comptroller General of the United States, or any of their duly authorized representatives, for the purposes of such audit and examination.

(c) The Board is authorized to secure directly from any executive department or agency information, suggestions, estimates, statistics, and technical assistance for the purpose of carrying out its functions under this Act. Each such executive department or agency shall furnish the information, suggestions, estimates, statistics, and technical assistance directly and expeditiously to the Board upon its request.

(d) On request of the Board, the head of any executive department or agency may detail, with or without reimbursement, any of its personnel to assist the Board in carrying out its functions under this section.

(e) The Board may obtain services of experts in accordance with section 3109 of title 5, United States Code.

(f) In carrying out the provisions of this Act, the Board is authorized to appoint such personnel, subject to the provisions of title 5, United States Code, governing appointments and compensation in the competitive service, as may be necessary. The Board may appoint not to exceed thirty individuals 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.

(g) In carrying out the provisions of this Act, the Board is not authorized to interfere with labor-management relations, nor to take any actions which conflict with the terms of an existing labor-management contract.

(h) The Board may alter Federal, State, and local law only as authorized by sections 13, 17, 18, 21, 22, 28, 34, and 36 of this Act.

REPORTS OF THE BOARD

SEC. 7. In addition to the specific duties assigned to the Board by this Act, the Board is authorized and directed to review, monitor, and report annually, or more often as necessary, to the Congress on—

(a) the current status of activities and programs being conducted by the Board;

(b) the status of each priority energy project including any significant delays in the completion of the priority energy project and the causes thereof; and

(c) the need for legislation to expedite the completion of priority energy projects, including the need for legislation to waive Federal, State, or local laws.

ABOLITION OF THE BOARD

SEC. 8. (a) The authority of the Board under section 9 shall expire ten years after the date of enactment of this Act: *Provided*, That the provisions of this Act shall continue to be applicable to all energy projects designated as priority energy projects prior to the expiration of the Board's authority under section 9.

(b) On the last day of the first year after all agency decisions necessary for the completion and initial operation of all priority energy projects have been made, the Board shall be abolished. The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the operation of the Board shall be transferred to the Treasury or to such agencies of the Federal Government in such fashion as the Director of the Office of Management and Budget shall determine. For the purpose of this section, if an agency issues a final decision denying an approval or declining to perform an action necessary to the completion of a priority energy project, any other agency approvals or actions not yet performed or obtained by the project shall not be deemed necessary.

(c) (1) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Board shall abate by reason of the abolition of the Board. No cause of action by or against the Board shall abate by reason of the abolition of the Board.

(2) If, before the date of the abolition of the Board, the Board is a party to a suit, then such suit shall be continued with the Director of the Office of Management and Budget or his designee substituted.

AUTHORITY TO DESIGNATE PRIORITY ENERGY PROJECTS

SEC. 9. The Board is hereby authorized to designate any energy project or class of energy projects as a priority energy project pursuant to the procedures and criteria provided in this Act.

AUTHORITY TO APPLY FOR PRIORITY STATUS

SEC. 10. (a) Any person planning or proposing an energy project or class of projects may apply to the Board for an order designating such project or class of projects as a priority energy project. An application shall include such detailed information concerning the project as the Board may require by rule to enable the Board to make a designation, including a detailed design proposal for the project, detailed economic data on the costs of the project, and an analysis of environmental impacts of the project: *Provided*, That the adequacy of an application under this section shall not be subject to judicial review.

(b) Not later than five days after the receipt of a designation request, the Board shall publish notice of the filing of the designation request, together with a brief description thereof in the Federal Register. The Board shall also keep on file and make available for public inspection and copying at the main office of the Board and in such other places as the Board deems appropriate such portions of the full designation request which are not matters listed in section 552 (b) of title 5, United States Code. Interested persons shall be afforded at least thirty days from the date such request becomes available to the public for submitting written comments for the Board's consideration.

(c) A designation request for an energy project or class of projects may be submitted to the Board at any time prior to the completion of the project or class of projects notwithstanding any previous decision by the Board denying the same or a similar request for that project or class of projects.

PROCEDURES AND CRITERIA FOR DESIGNATING PRIORITY ENERGY PROJECTS

SEC. 11. (a) Not later than sixty days after receipt of a designation request, the Board shall determine whether the proposed energy project or class of projects is of sufficient national interest to be designated a priority energy project and shall publish its decision in the Federal Register. If the Board designates the project as a priority energy project, such publication shall contain a brief summary of the reasons for the Board's decision.

(b) No project or class of projects shall be designated a priority energy project without the concurrence of the Chairman and at least two of the three members of the Board.

(c) No project or class of projects shall be designated a priority energy project unless the Board finds that th project is likely to reduce directly or indirectly the Nation's dependence upon imported energy.

EXTENSION OF DEADLINES

SEC. 12. The Board may extend the deadline for receiving public comments under section 10(b) and the time for ruling on an application for priority energy project status under section 11 if more time is necessary to afford interested persons a reasonable time to comment.

RELATION TO NATIONAL ENVIRONMENTAL POLICY ACT

SEC. 13. (a) A determination by the Board under section 11 of this Act is not subject to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) Promulgation or revision of a Project Decision Schedule is not subject to section 102(2)(C) of the National Environmental Policy Act of 1969.

(c) Before publication of the Project Decision Schedule, the Board shall determine, after providing a reasonable opportunity for public comment, if any Federal action relating to the priority energy project will be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and shall publish notice of its determination in the Federal Register. Such a determination shall be immediately subject to judicial review under the provisions of this Act. If the Board determines that a priority energy project will require such a major Federal action, the remaining parts of this section shall apply.

(d) Notwithstanding any other provision of law, the Board may require that one final environmental impact statement be prepared and that such statement be used by any or all Federal agencies to satisfy the National Environmental Policy Act of 1969 and by any or all State and local agencies to substitute for any comparable statement required by State or local law: *Provided*, That if the

Board requires that such statement substitute for a comparable requirement of State or local law—

(1) such statement shall include discussion of all matters required under the comparable State or local law to the same degree and extent as required by such law; and

(2) the Federal agency or agencies preparing such statement shall consult with the appropriate State and local officials during the preparation of the statement with respect to any portions of such statement which will substitute for comparable requirements under State or local law.

(e) Before publishing the Project Decision Schedule pursuant to section 17 of this Act but after consulting with the Council on Environmental Quality, the Board shall designate the Lead Agency for the preparation of the environmental impact statement.

(f) Before publication of the Project Decision Schedule under section 17 of this Act, the Lead Agency shall convene one or more scoping meetings with such other Federal agencies as it deems appropriate and, if the Board has determined that the Federal environmental impact statement shall substitute for any comparable State or local statement or other assessment, with representatives of such States or localities. The purposes of the scoping meetings shall be to identify significant issues, establish the content of the environmental impact statement, and determine whether and how responsibilities should be apportioned among other Federal agencies.

(g) After the scoping meeting(s), the Lead Agency, with the concurrence of the Board, may determine to prepare the environmental impact statement without requiring assistance from any other Federal agency, notwithstanding any decision of the Board to require that one such statement be used by any or all Federal, State or local agencies: *Provided*, That any comments, opinions, or materials submitted by Federal, State, or local agencies shall be considered by the Lead Agency and made available to the public.

(h) At any time prior to the completion of the priority energy project, the Board may assign responsibilities in the preparation of the environmental impact statement to any Federal agency. The Board shall publish such assignments in the Federal Register, and such assignments shall be subject to procedures and deadlines specified by the Board. Such procedures and deadlines shall be incorporated in the Project Decision Schedule and shall be treated as part of the Schedule for the purposes of this Act. Except as provided in this section, the deadlines and procedures for carrying out such assignments shall be consistent with the provisions in section 17 of this Act. Such assignments, and the deadlines and procedures for carrying out such assignments, may be modified at any time subject to the limitations in section 18.

(i) All Federal agencies shall comply with the assignments, deadlines and procedures established pursuant to subsection (f) of this section. Nothing in this section shall authorize the Board or the Lead Agency to require any action from any State or local agency in the preparation of the environmental impact statement.

(j) The Board may require any Federal agency to prepare the environmental impact statement at the same time as it performs other actions necessary to process an application submitted by the applicant: *Provided*, That no Federal agency shall issue a final decision on a major Federal action significantly affecting the quality of the human environment until at least fifteen days after the environmental impact statement has been completed.

(k) Notwithstanding any other provision of law, the Project Decision Schedule established under section 17 shall provide that in preparing an environmental impact statement, agencies shall give interested persons an opportunity to submit written data, views, or arguments with or without opportunity for oral presentation and such opportunity shall constitute the exclusive opportunity for parties to submit written data, views, or arguments pertaining to any matter to be considered by the agency pursuant to its obligations under the National Environmental Policy Act.

(l) Notwithstanding any other provision of law, the Board may require any two or more Federal agencies to consolidate any or all aspects of their proceedings for preparing an environmental impact statement.

(m) For the purposes of this Act, the term "Lead Agency" means the Federal agency designated by the Board to supervise the preparation of an environmental impact statement on a priority energy project.

EARLY ACTION REQUIREMENT

SEC. 14. The Board shall encourage prospective applicants under section 10 to contact the Board and to file applications for any necessary Government actions or approvals with the appropriate agencies as soon as possible in order that any eventual action or decision may be expedited. The Board shall consider any failure to contact the Board or file such applications in a timely fashion in making its determination under section 11 on an application under section 10.

FEDERAL AGENCIES REQUIRED TO SUBMIT INFORMATION

SEC. 15. Not later than thirty days after notice appears in the Federal Register of a decision by the Board designating an energy project or class of projects as a priority energy project, any Federal agency with authority to grant or deny any approval or to perform any action necessary to the completion and initial operation of such project or any part thereof, shall transmit to the Board—

(a) a compilation of all significant actions required by such agency before a final decision or action on any approval(s) necessary to the completion and initial operation of the priority energy project can be rendered or performed;

(b) a compilation of all significant actions required of the applicant before a final decision or action by such agency can be made;

(c) a tentative schedule for completing actions listed in subsections (a) and (b) of this section within two years unless a longer period is necessary;

(d) all necessary application forms which must be completed by the applicant before such approval can be granted; and

(e) information regarding the amount of funds and personnel available to such agency to perform the actions required by such agency before any final decisions can be made and the impact of giving priority status to the applicant on other applications pending before such agency.

INFORMATION FROM STATE AND LOCAL AGENCIES

SEC. 16. (a) Not later than five days after notice appears in the Federal Register of a decision designating a proposed energy project as a priority energy project, the Board shall notify the Governor of any State which is likely to exercise jurisdiction over the priority energy project of the designation and shall request the Governor to compile and transmit to the Board within twenty-five days—

(1) a compilation of all significant agency actions required by all State and local agencies within the State before a final decision or action on any approval(s) necessary to the completion and initial operation of the priority energy project can be rendered or performed;

(2) a compilation of all significant actions required of the applicant before a final decision or action by such agencies can be made;

(3) a tentative schedule for completing the actions listed in paragraphs (1) and (2) of this subsection within two years unless a longer period is necessary;

(4) all necessary application forms which must be completed by the applicant before such approval can be granted; and

(5) information regarding the amount of funds and personnel available to such agencies for performing the actions required by such agencies before any final decisions can be made and the impact of giving priority status to the applicant on other applications pending before such agencies.

(b) If at any time the Governor fails to cooperate with the Board in complying with this section, or any State or local agency which is likely to have authority to grant or deny an approval or perfrom an action necessary to completion of such project fails to cooperate with the Governor, the Board may instruct such agencies directly to provide the information enumerated in subsection (a) and such agencies shall comply with the instructions of the Board.

PROMULGATION OF THE PROJECT DECISION SCHEDULE

SEC. 17. (a) Not later than sixty days after designating a proposed project or class of projects as a priority energy project, the Board shall publish in the Federal Register and in such other places as the Board deems appropriate a Project Decision Schedule containing reasonable deadlines for all significant final agency actions and decisions and all significant applicant actions about which the Board has received notice pursuant to sections 15 and 16 of this Act, and for any other actions or decisions which the Board, in its discretion, deems significant. A deadline may require that decisions and actions be performed in a shorter period of time than would be required if the project was not a priority energy project.

(b) Notwithstanding any other provision of law, the Board may establish special procedures in the Project Decision Schedule for any Federal agency subject to such Schedule. Such procedures shall be consistent with all statutes and rules, regulations, and orders promulgated by the agency except that the Board may require the agency to—

(1) consolidate, to the maximum extent practicable, its proceedings respecting actions and decisions which are subject to the Project Decision Schedule with the proceedings of other agencies, including Federal, State, and local agencies which are also subject to such schedule;

(2) establish permit, license, and other filing requirements which eliminate unnecessary duplication, and, to the maximum extent practicable, provide for uniform collection, analysis, and reporting of such data;

(3) substitute legislative-type hearings in lieu of trial-type hearings: *Provided*, That, in any cases in which (A) a formal hearing including an opportunity for cross-examination of witnesses is authorized by any provision of statute other than this Act, and (B) the agency determines there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in a formal hearing, the agency shall designate such dispute for resolution in a formal hearing conducted in accordance with the statute providing for such hearing;

(4) shorten time periods for actions required by agency procedures;

(5) conduct hearings, except where such hearings are conducted pursuant to paragraph (3) above, in which parties may sub-

mit such written data, views, or arguments and such written responses to the data, views, or arguments submitted by other parties, as the Board, agency, or the presiding employee may specify and in which oral presentation is limited to brief oral argument with respect to the written submissions;

(6) establish procedures for issuing final decisions in which the presiding employee at any hearing may be required to certify the hearing record to the agency for decision without an initial decision. Such procedures may also require the presiding employee to submit the record to the agency without a recommended or tentative decision, but with such analysis of the record as the agency may specify. The agency itself shall omit a tentative or recommended decision if the Board determines that due and timely execution of its function so requires; or

(7) utilize any combination of procedures authorized by this subsection:

*Provided*, That no requirement under this subsection (b) shall be binding on any State or local agency.

(c) In setting deadlines pursuant to this section, the Board shall consult with the Federal agencies subject to such deadlines. The Board shall also consult with the Governor of any State if any government agency within such State has authority to grant or deny any approval or perform any action necessary to the completion of the priority energy project and shall request the Governor to act as an intermediary between the Board and all State and local agencies: *Provided*, That if the Governor fails to cooperate with the Board or if any State or local agency fails to cooperate with the Governor under this section, the Board may consult directly with such State or local agency.

(d) No Project Decision Schedule shall encompass a period of more than two years unless the Board finds that additional time is necessary.

(e) The deadlines in the Project Decision Schedule shall be consistent with the deadlines submitted to the Board pursuant to sections 15 and 16 unless the Board determines that different deadlines would help expedite or coordinate Government review.

(f) Notwithstanding any other provision of law, the deadlines and special procedures imposed by the Project Decision Schedule shall constitute the lawful decisionmaking deadlines and procedures for reviewing applications filed by the applicant.

REVISIONS IN PROJECT DECISION SCHEDULES

SEC. 18. At any time prior to the completion of the priority energy project, the Board may (i) revise the special procedures for Federal agencies on the Project Decision Schedule; (ii) add new special procedures for Federal agencies on the Project Decision Schedule; (iii) revise any deadline on the Project Decision Schedule; or (iv) add any new deadline on the Project Decision Schedule: *Provided*, That no modification in the Project Decision Schedule shall be allowed unless the Board determines that—

(a) such modification would further the purposes of this Act; and

(b) continued adherence to the Schedule would be impractical or would not be in the public interest; and

(c) in the case of a request for a modification by an agency, that the agency has exercised due diligence in attempting to comply with section 15 or 16 and with the Schedule; and

(d) in the case of a request for a modification by an applicant, that the applicant has exercised due diligence in attempting to comply with the Schedule; and

(e) except as provided by this section, such modification is consistent with the provisions of section 17 and is published in the Federal Register.

AGENCY AUTHORITY TO ADOPT SPECIAL PROCEDURES

SEC. 19. All Federal, State, and local agencies governed by a Project Decision Schedule may establish special procedures which the agency determines to be appropriate for meeting the deadlines on such Schedule. Any agency which is likely to be governed by a Project Decision Schedule at any time may also establish special procedures to govern agency actions and decisions relating to priority energy projects. These procedures shall be consistent with all statutes governing the agency's actions, except that, notwithstanding any other statutes, the agency may—

(1) consolidate, to the maximum extent practicable, its proceedings respecting actions and decisions which are subject to the Project Decision Schedule with the proceedings of other agencies, including Federal, State, and local agencies which are also subject to such Schedule;

(2) establish permit, license, and other filing requirements which eliminate unnecessary duplication, and, to the maximum extent practicable, provide for uniform collection, analysis, and reporting of such data;

(3) substitute legislative-type hearings in lieu of trial-type hearings: *Provided*, That, in any cases in which (A) a formal hearing including an opportunity for cross-examination of witnesses is authorized by any provision of statute other than this Act, and (B) the agency determines there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in a formal hearing, the agency shall designate such dispute for resolution in a formal hearing conducted in accordance with the statute providing for such hearing;

(4) shorten time periods for actions required by agency procedures;

(5) conduct hearings, except where such hearings are conducted pursuant to paragraph (3) above, in which parties may submit such written data, views, or arguments and such written responses to the data, views, or arguments submitted by other parties, as the agency or the presiding employee may specify and in which oral presentation is limited to brief oral argument with respect to the written submissions;

(6) establish procedures for issuing final decisions in which the presiding employee at any hearing may be required to certify the hearing record to the agency for decision without an initial decision. Such procedures may also require the presiding employee to submit the record to the agency without a recommended or tentative decision, but such analysis of the record as the agency may specify. The agency itself may omit a tentative or recommended decision if it determines that due and timely execution of its function so requires; or

(7) utilize any combination of procedures authorized by this subsection.

AUTHORITY TO TERMINATE PRIORITY DESIGNATIONS

SEC. 20. (a) At any time after an energy project has been designated a priority energy project, the Board may terminate the priority designation if—

(1) the Board detemines that the applicant has not exercised due diligence in attempting to comply with any Project Decision Schedule;

(2) the Board determines that the applicant has not attempted in good faith to comply with any law governing the priority energy project;

(3) the Board determines that the priority designation is no longer necessary to expedite agency action or decisionmaking which is necessary to completion and initial operation of the priority energy project;

(4) the Board determines that an agency has denied an application for an approval which is essential for the completion and initial operation of the project and that the denial is not likely to be reversed by the agency or invalidated by a reviewing court; or

(5) the applicant has requested that the priority designation be withdrawn: *Provided*, That no such request shall be granted if a previous request by the applicant for the same project had been granted and the project had subsequently been redesignated a priority project.

(b) If the Board terminates the priority designation for any priority energy project, the deadlines and procedures in the Project Decision Schedule for that project shall no longer be binding upon any agency, and unless the Board redesignates the project pursuant to section 11, the Board shall no longer have authority to establish binding deadlines for agency actions and approvals relating to the project. In addition, except as provided by subsection (c) of this section, judicial review of any action relating to the project shall no longer be governed by the provisions of this title: *Provided*, That—

(1) jurisdiction over any action pending at the time the priority designation is terminated shall be retained by the court in which such action is pending if the court determines that the interests of justice be served by retaining jurisdiction; and

(2) any action or approval relating to a priority energy project which was valid before the priority designation for that project was terminated shall not be deemed invalid on the ground that the priority status has been withdrawn or that a Project Decision Schedule is no longer legally binding.

(c) A decision by the Board to withdraw a priority designation shall be subject to judicial review under the provisions of this Act.

(d) Termination of a priority designation is not subject to section 102(2)(C) of the National Environmental Policy Act of 1969.

ENFORCEMENT OF THE PROJECT DECISION SCHEDULE

SEC. 21. (a)(1) If any Federal, State, or local agency has failed to make a decision or take an action within the time required by a Project Decision Schedule, the Board may make the decision or perform the action in lieu of the agency.

(2) In making the decision or performing the action in lieu of the agency, the Board shall apply the decision criteria in the Federal, State, or local law that would have been applied had the Federal, State or local agency made the decision.

(3) If the Board notifies an agency that it has determined that the agency has failed to make a decision or perform an action within the time required by a Project Decision Schedule and that the Board will decide in lieu of the agency, the agency shall transmit to the Board forthwith all records in the possession of the agency pertinent to that decision or action. The Board may take whatever additional action is necessary to develop an adequate record for a final decision or action.

(b)(1) If any Federal, State, or local agency has failed or is reasonably likely to fail to comply with a Project Decision Schedule, the Board may bring an enforcement action in United States district court.

(2) In any action brought under this subsection, if the court determines that any Federal, State, or local agency has failed or is reasonably likely to fail to comply with a Project Decision Schedule, the court shall order the agency to act in accordance with the existing schedule where such action would be practical and would not deny any person due process of law.

(3) If the court determines that the agency has failed or is reasonably likely to

fail to comply with a Project Decision Schedule but that action in accordance with the Project Decision Schedule would clearly be impractical or would deny any person due process of law, the court shall instruct the Board to revise the Project Decision Schedule to require the agency to complete consideration of the applicant's request as soon as practicable consistent with due process of law. Immediately upon receipt from the Board of a certified copy of the revised Project Decision Schedule, the court shall issue an order directing the agency to comply with such Schedule.

(4) Notwithstanding any other provision of law including any other provision of this title, any action brought under this subsection shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at the time, and shall be expedited in every way by such court. Except as provided in section 32, the Temporary Emergency Court of Appeals shall have exclusive jurisdiction to review all rulings of the district court pursuant to this section. The Temporary Emergency Court of Appeals shall expedite such review pursuant to the provisions of this Act.

CERTIFICATION OF COMPLETED AGENCY REVIEW

SEC. 22. (a) If the Board has been notified by the agencies with authority to grant such approvals or perform such actions or by a reviewing court that all agency actions and approvals on the Project Decision Schedules relating to a priority energy project (i) have been granted, or (ii) have been performed, or (iii) are not necessary; and if judicial review of such actions or approvals is completed or is barred by section 25 of this Act, the Board shall certify the same to the project. Such certification shall indicate any conditions and the expiration date of any approvals that have been granted to the project.

(b) A certificate issued by the Board under subsection (a) of this section shall constitute conclusive evidence in any judicial or executive proceeding that all actions and approvals necessary to the completion and initial operation of the project have been granted for the duration and subject to the conditions specified on the certificate.

WATER LAW

SEC. 23. (a) Nothing in this Act shall be construed as expanding or conferring upon the United States, its agents, permittees, or licensees any right to acquire rights to the use of water.

(b) The United States, its agents, permittees, or licensees shall appropriate water within any State for a priority energy project pursuant to procedural and substantive provisions of State law, regulation, or rule of law governing appropriation, use, or diversion of water.

(c) The establishment or exercise pursuant to State law, of terms or conditions including terms or conditions terminating use, on permits or authorizations for the appropriation, use, or diversion of water for priority energy projects shall not be deemed because of any interstate carriage, use, or disposal of such water to constitute a burden on interstate commerce.

(d) No waiver under this Act shall apply to, or alter in any way, any provision of State law, regulation, or rule of law or of any interstate compact governing the appropriation, use, or diversion of water.

PRECEDENCE OVER OTHER LAWS

SEC. 24. Notwithstanding any other provision of law, the actions of Federal, State, and local officers or agencies pursuant to this Act shall not be subject to judicial review except as provided in this Act.

LIMITATION OF ACTIONS

SEC. 25. (a) Except as provided by subsection (b), any petition for review of any action pursuant to this Act or of the validity of this Act shall be brought not later than twenty days following the date of actual or constructive notice of the final agency action relating to the action which is being challenged.

(b) Any petition for review of the reasonableness of any deadline in a Project Decision Schedule shall be brought not later than thirty days after such deadline is listed on the Project Decision Schedule and published in the Federal Register or such challenge shall be barred. The party challenging the reasonableness of the deadline shall have the burden of proof.

(c) Any petition for review of the validity of this Act or of any action pursuant to this Act shall be barred unless a complaint is filed prior to the expiration of the time limits prescribed by this Act.

ADMINISTRATIVE PROCEDURES

SEC. 26. (a) Except as provided in subsection (b) of this section, the Board shall be exempt from sections 553 through 559 of title 5, United States Code.

(b) The establishment of procedures by the Board pursuant to this Act and the establishment of any special procedures by a Federal agency pursuant to section 19 of this Act shall be subject to sections 553, 704, and 706 of title 5, United States Code and any judicial review of such procedures shall be conducted in the Temporary Emergency Court of Appeals pursuant to section 27 of this Act.

REVIEW IN THE TEMPORARY EMERGENCY COURT OF APPEALS

SEC. 27. (a)(1)(A) A petition for review of the validity of this Act or of any action pursuant to this Act shall be filed in the Temporary Emergency Court of Appeals. Except as provided by this Act, such court shall have exclusive jurisdiction to determine such proceeding in accordance with procedures hereinafter provided and no other district court or Court of Appeals of the United States and no other court of any State or locality shall have jurisdiction over any such challenge in any proceeding instituted prior to, on, or after the date of enactment of this Act.

(2) Notwithstanding any provisions of section 211 of the Economic Stabilization Act of 1970 as amended by the Economic Stabilization Act Amendments of 1971, Public Law 92-210, the Temporary Emergency Court of Appeals shall exercise its powers and prescribe rules governing its procedures in such manner as to expedite the determination of cases over which it has jurisdiction under this Act. Such rules may set page limits on briefs and time limits for filing briefs and motions and other actions which are shorter than the limits specified in the Federal Rules of Appellate Procedure.

(3) In any proceeding before the Temporary Emergency Court of Appeals, the chief judge of the Temporary Emergency Court of Appeals shall designate at least one judge from the circuit in which the priority energy project or the most significant portion thereof would be located to sit on the panel presiding over the proceeding.

(4) There are hereby authorized to be appropriated such sums as are necessary to expand the capacity of the Temporary Emergency Court of Appeals in order to carry out the provisions of this Act.

(b) Any such proceeding shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way by such court and such court shall render its final decision relative to any challenge within one hundred and twenty days from the date such challenge is brought unless such court determines that a longer period of time is required to satisfy the requirements of the United States Constitution.

(c)(1) Notwithstanding any other provision of law, jurisdiction over any challenge to agency action pursuant to this title which is pending before any court other than the Temporary Emergency Court of Appeals at the time such agency action becomes an action pursuant to this title shall remain with such court unless the Temporary Emergency Court of Appeals issues an order transferring such civil action to the Temporary Emergency Court of Appeals pursuant to subsection (d) of this section.

(2) If the court before which such civil action is pending retains jurisdiction, such court shall assign the case for hearing and completion at the earliest possible date, and shall expedite the case in every way. All appeals from such court shall be to the Temporary Emergency Court of Appeals and shall be filed within fifteen days of the final decision of such court. On appeal the Temporary Emergency Court of Appeals shall comply with the procedures established in subsection (b) of this section.

(d) If any appeal involving a challenge to any agency action pursuant to this Act is pending before any State appellate court or any United States Court of Appeals other than the Temporary Emergency Court of Appeals at the time such agency action becomes an action pursuant to this title, the chief judge of the Temporary Emergency Court of Appeals, or any other judge of the Temporary Emergency Court of Appeals designated by the chief judge, may issue an order transferring such civil action to the Temporary Emergency Court of Appeals. Such transfers may be made whenever the transfer will expedite judicial review of the civil action and will not cause material prejudice to any party. Proceedings for the transfer of an action under this subsection may be initiated by the chief judge of the Temporary Emergency Court of Appeals or by any other judge authorized by the chief judge on his own initiative, by the Board, or by any party to the appeal.

ACTIONS SUBJECT TO EXPEDITED REVIEW

SEC. 28. For the purposes of this Act "an action pursuant to this Act" means—

(a) any significant action by the Board pursuant to this Act including, but not limited to, any action pursuant to sections 21 and 22 of the Act. An action of the Board shall be deemed significant if the Board determines that expedited review of such action would expedite completion of any priority energy project; or

(b) any action by any Federal agency or officer if such action is subject to a deadline on a Project Decision Schedule, including any action which is an intermediate step to an action listed on such Schedule; or

(c) any action by any State or local agency or officer if such action is subject to a deadline on a Project Decision Schedule, including any action which is an intermediate step to an action listed on such Schedule;

(d) any other action by any Federal, State, or local agency or officer relating to a priority energy project which the Board determines requires expedited judicial review in order to expedite completion of a priority energy project; or

(e) any action by any United States district court or any State or local trial court with respect to a case involving an action pursuant to this Act.

JUDICIAL REVIEW UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

SEC. 29. Except as specifically provided by this Act, the scope of judicial review under the National Environmental Policy Act of 1969 shall not be limited by this Act.

LIMITATION ON REVIEW OF PRIORITY DESIGNATIONS

SEC. 30. (a) A decision of the Board designating a project or class of projects as a priority energy project shall not be subject to judicial review and no court shall hold unlawful or set aside any Board or agency action, finding, rule, or conclusion on the basis of a decision designating a project or class of projects as a priority energy project.

(b) A decision of the Board denying a request for designation as a priority energy project shall be subject to expedited judicial review pursuant to the provisions of this Act.

INTERVENTION AUTHORITY

SEC. 31. The Board may intervene in any Federal, State, or local agency proceeding and shall appear as a party of right in any judicial proceeding, if such agency or judicial proceeding involves an action pursuant to this Act. The Board shall encourage expedited action or decisionmaking by the agency or court in such proceeding.

SUPREME COURT REVIEW

SEC. 32. (a) The Supreme Court shall have exclusive jurisdiction to review any interlocutory judgment or order of the Temporary Emergency Court of Appeals, or any United States Court of Appeals or the final court in any State in any case involving an action pursuant to this Act. The petitioner must file a petition for certiorari or a certification as provided in section 1254 of title 28, United States Code within fifteen days after the decision of the court of appeals or his appeal shall be barred.

(b) Any review by the Supreme Court shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court.

INJUNCTIVE RELIEF

SEC. 33. (a) Except as provided in subsection (b), no court shall have jurisdiction to grant any injunctive relief lasting longer than ninety days against any action pursuant to this Act except in conjunction with a final judgment entered in a case involving an action pursuant to this Act.

(b) No court shall have jurisdiction to grant any injunctive relief preventing the enforcement of a Project Decision Schedule except in conjunction with a final judgment. If the court on review determines that a deadline on a Project Decision Schedule is not reasonable, the Court may instruct the Board to extend the deadline.

ACTION ON REMAND

SEC. 34. Immediately following any decision remanding to an agency any case or controversy involving the validity of this Act or, an action pursuant to this Act, the Board shall revise the Project Decision Schedule as necessary to expedite any further proceedings required by the decision of the court. Such revisions shall be consistent with section 18 of this Act.

AUTHORIZATION

SEC. 35. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

On page 63, beginning with line 17, strike through and including page 140, line 2, and insert in lieu thereof the following:

WAIVER OF NEW REQUIREMENTS

SEC. 36. (a) The Board is authorized to waive the application of any Federal, State, or local statute, regulation, or requirement enacted or promulgated after the commencement of construction of a critical energy facility, unless Congress explicitly prohibits such waiver. No waiver pursuant to this section shall take effect unless—

(1) the Board finds that the waiver is necessary to ensure timely and cost-effective completion and operation of the facility; and

(2) the Board, after consultation with the agency responsible for implementing the statute, regulation, or requirement to be waived, finds that the waiver will not unduly endanger public health or safety.

(b) For the purposes of this section, "commencement of construction" means that the owner or operator of a critical energy facility has obtained all necessary preconstruction approvals or permits required by Federal, State, or local laws or regulations and either has (1) begun or caused to begin, a continuous program of physical onsite construction of the facility including site clearance, grading, dredging, or land filling in preparation for the fabrication, erection, or installation of the building components of the facility, or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time. For the purpose of this subsection, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether such construction is continuous.

The PRESIDING OFFICER. The Chair states that since the committee amendments leave nothing of the original bill they will be considered and treated as an amendment in the nature of a substitute for the bill, striking all after the enacting clause and inserting new language in lieu thereof.

Mr. JACKSON. Mr. President, before making my opening statement I yield to the senior Senator from Connecticut for the purpose of offering a substitute amendment.

Mr. RIBICOFF. I thank the distinguished chairman.

AMENDMENT NO. 488

(Purpose: To establish an Energy Mobilization Board to reduce the delay in the governmental review process for nonnuclear energy projects determined to be in the national interest)

Mr. RIBICOFF. Mr. President, I call up my amendment No. 488 in the nature of a substitute and ask for its immediate consideration as the pending business.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) for himself, Mr. MUSKIE, Mr. GLENN, Mr. ROTH, Mr. PERCY, Mr. STAFFORD, Mr. HART, Mr. JAVITS, Mr. DURENBERGER, Mr. CRANSTON, Mr. WILLIAMS, Mr. PROXMIRE, Mr. MATHIAS, and Mr. WEICKER, proposes an amendment numbered 488. In lieu of the language intended to be proposed by the committee amendment insert the following:

Mr. RIBICOFF. 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:

Strike out all after the enacting clause and substitute the following:

PURPOSES

SEC. 2. The purposes of this Act are—

(a) to establish an Energy Mobilization Board to administer jointly with the Department of Energy a priority energy project program;

(b) to expedite the review process of energy projects determined to need accelerated decisionmaking so that such projects will contribute to a timely reduction in the use of imported energy supplies, without interfering with the present statutory authorities and responsibilities of Federal, State, and local agencies; and

(c) to foster, within proper limits, the integration of Federal, State, and local processes for permitting, licensing, and approving energy projects which are determined to be in the national interest.

DEFINITIONS

SEC. 3. As used in this Act the term—

(a) "applicant" means any person planning or proposing a project which has been designated a priority energy project;

(b) "approval" means any permit, license, lease, certificate, right-of-way, or other grant, rate, ruling, or decision authorized or issued by an agency of Federal, State, or local government;

(c) "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation;

(d) "Board" means the Energy Mobilization Board established by section 4;

(e) "Chairman" means the Chairman of the Board;

(f) "candidate priority energy project" means a designation request selected by the Secretary of Energy under section 9 to be forwarded to the Board;

(g) "designation request" means an application filed with the Secretary of Energy pursuant to section 8;

(h) "energy facility" means any physical structure, including any structure which incorporates active and/or passive solar devices, any equipment, building, mine, well, rig, pipeline transmission line, processing facility, transportation device, manufacturing facility, or installation, which is designed to promote energy conservation or invention, exploration, research, development, demonstration, transportation, production, or commercialization of any form of energy other than atomic energy, including any facility owned or operated in whole or in part by Federal, State, regional, or local government or any combination thereof;

(i) "energy project" means any plan, proposal, program, scheme, or design to produce, build, install, expand, modify the operation of, or alter in any other way, an energy facility;

(j) "Federal agency" means an executive agency as defined in section 105 of title 5 of the United States Code;

(k) "local agency" means any executive agency of local government;

(l) "local government" means the government of any political subdivision of a State and any recognized government board of an Indian tribe or Alaskan Native village which performs substantial governmental functions;

(m) "Member" means a member of the Board other than the Chairman;

(n) "person" means any individual cooperative, partnership, corporation, association, consortium, unincorporated organization, trust estate, nonprofit institution, or any entity organized for a common purpose, and any instrumentality of Federal, State, or local government;

(o) "priority energy project" means any project which has been designated as a priority energy project by the Energy Mobilization Board under section 10 of this Act;

(p) "project decision schedule" means a schedule established by the Board pursuant to section 16 of this Act;

(q) "Secretary" means the Secretary of Energy;

(r) "State" means any of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and

the Commonwealth of the Northern Mariana Islands;

(s) "State agency" means any executive agency of State government; and

(t) "State law" means the law of any State or any subdivision thereof.

ESTABLISHMENT AND MEMBERSHIP OF THE ENERGY MOBILIZATION BOARD

SEC. 4. (a) There is hereby established the Energy Mobilization Board (the "Board"). The Board shall consist of three members appointed by the President, by and with the advice and consent of the Senate.

(b) The Chairman and members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board.

(c) No member of the Board may hold another office or position in the Government of the United States.

(d) The Board shall have its principal office in or near the District of Columbia.

(e) The term of office for each member of the Board shall be four years, coterminous with the term of the President. A member whose term has expired may continue to serve until a successor is appointed by the President, by and with the advice and consent of the Senate, but may not serve more than one year after the date on which the term of the member would otherwise expire under this section.

(f) A member appointed to fill a vacancy before the end of a term of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of this section.

OFFICERS OF THE BOARD

SEC. 5. (a)(1) The President shall from time to time appoint, by and with the advice and consent of the Senate, one of the members of the Board as the Chairman of the Board. The Chairman serves at the pleasure of the President as Chairman.

(2) The Chairman of the Board shall be the principal executive officer of the Board, and he shall exercise all of the executive and administrative functions of the Board, including functions of the Board with respect to (i) the appointment and supervision of personnel employed under the Board (other than personnel employed regularly and full time in the immediate offices of members other than the Chairman, and except as otherwise provided in this Act), (ii) the distribution of business among such personnel and among administrative units of the Board, and (iii) the use and expenditure of funds.

(3) In carrying out any of his functions under the provisions of this Act, the Chairman shall be governed by general policies of the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make.

(4) There are hereby reserved to the Board its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

(c) During the absence or disability of both the Chairman and Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman. Two members of the Board shall constitute a quorum for the transaction of business.

(d) The Chairman and members of the Board shall not engage in any other business, vocation, or employment while serving on the Board. The Chairman shall receive compensation at the rate prescribed for offices and positions at level I of the Executive Schedule (5 U.S.C. 5312). Members of the Board shall receive compensation at the rate prescribed for offices and positions at level II of the Executive Schedule (5 U.S.C. 5313).

(e)(1) There shall be a General Counsel to the Board who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level IV of the Executive Schedule (5 U.S.C. 5315).

(2) The General Counsel shall be an individual who, by demonstrated ability, background, training, or experience is especially qualified to carry out the functions of the General Counsel.

(f) The Chairman may appoint an executive director who shall exercise such powers and duties as may be delegated to him by the Board or the Chairman. The executive director shall receive compensation at the rate provided for level IV of the Executive Schedule (5 U.S.C. 5315).

POWER AND AUTHORITY OF THE BOARD

SEC. 6. (a) The Board shall decide and administer all matters within the jurisdiction of the Board under this Act subject to otherwise applicable provisions of law, and take final action on any such matter. The Board is authorized to—

(1) sit and act at places and times as it may determine;

(2) make full use of competent personnel and organizations outside the Board, public or private; from advisory committees and special ad hoc interagency task forces; and make other personnel arrangements in accord with Federal law, as the Board determines to be appropriate;

(3) enter into contracts or other arrangements as may be necessary for the conduct of the work of the Board with any agency or instrumentality of Federal, State, regional, or local government or with any person, with or without reimbursement, with or without performance or other bonds, and with or without regard to section 5 of title 41, United States Code: *Provided*, That the Board shall not use its authority to become directly involved in the actual construction or operation of any priority energy project;

(4) intervene in any Federal, State, or local agency proceeding and shall appear as a party of right in any judicial proceeding, if such agency or judicial proceeding involves an action pursuant to this Act. The Board shall encourage expedited action or decisionmaking by the agency or court in such proceeding; and

(5) prescribe such rules and regulations as it deems necessary governing the operation and organization of the Board, and take other appropriate actions to fulfill the purposes of this Act.

(b) Contractors and other parties entering into contracts and other arrangements under this section which involve costs to the Government shall maintain such books and related records as will facilitate an effective audit of the execution of such contracts or arrangements in such detail and in such manner as shall be prescribed by the Board, and such books and records (and related documents and papers) shall be available to the Board and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of such audit and examination.

(c) The Board is authorized to secure directly from any executive department or agency information, suggestions, estimates, statistics, and technical assistance for the purpose of carrying out its functions under this Act. Each such executive department or agency shall furnish the information, suggestions, estimates, statistics, and technical assistance directly and expeditiously to the Board upon its request.

(d) On request of the Board, the head of any executive department or agency may detail, with or without reimbursement, any of its personnel to assist the Board in carrying out its functions under this Act.

(e) The Chairman may obtain services of experts in accordance with section 3109 of title 5, United States Code.

(f) In carrying out the provisions of this Act, the Chairman is authorized, in accordance with section 5, to appoint such personnel as may be necessary, subject to the provisions of title 5, United States Code, governing appointments and compensation in the competitive service.

(g) In carrying out the provisions of this Act, the Board shall not interfere with labor-management relations, nor take any actions which conflict with terms of an existing labor-management contract.

REPORTS OF THE BOARD

SEC. 7. (a) The Board shall conduct periodic reviews of its activities under this Act and shall report annually, or more often as it may deem necessary, to the Congress on such activities including—

(1) the functioning of the selection and designation process for priority energy projects;

(2) the status of projects;

(3) the effectiveness of the Board's actions in expediting the development and construction of energy projects; and

(4) any significant delays in the completion of priority energy projects and the causes thereof.

AUTHORITY TO APPLY FOR PRIORITY STATUS

SEC. 8. (a) Any person planning or proposing an energy project may apply to the Secretary of Energy for designation of such project as a candidate priority energy project.

(b) An application for designation shall—

(1) identify all Federal, State, and local licensing and permitting actions necessary for the approval and development of the project known to the applicant; and

(2) include such detailed information concerning the project as the Secretary may require by rule, including a detailed design proposal for the project, detailed economic data on the financing of the project, and an analysis of environmental impacts of the project.

(c) Not later than five days after the receipt of a designation request the Secretary shall publish notice of the filing of the designation request, together with a brief description thereof in the Federal Register.

AUTHORITY OF THE SECRETARY OF ENERGY

SEC. 9. (a) The Secretary shall consider applications for priority energy project designation, and shall select as candidate priority energy projects only projects that meet the criteria in sections 10 (c) and (d). The Secretary shall select those candidate priority energy projects that best meet the criteria of sections 10 (c) and (d), and that, to the maximum extent practicable, represent a diverse range of energy sources and technologies. The Secretary of Energy shall, not later than January 1, and July 1, of each calendar year following the effective date of this Act, prepare and publish in the Federal Register a list of candidate priority energy projects.

(b) The Secretary shall, in consultation with the Board, propose and promulgate regulations for the selection of candidate priority energy projects in accordance with the requirements of this Act.

(c) The Secretary shall, in considering applications from persons for candidate priority energy projects, adopt such procedures as are necessary to assure that potential applicants, affected agencies, and interested members of the public are provided an opportunity to participate in the process of selecting candidate priority energy projects.

(d) The Secretary shall transmit a list of not less than twelve nor more than thirty-six candidate energy priority projects to the Chairman of the Board, together with a statement describing each candidate priority energy project, and explaining the basis for his selection of each project. The Secretary shall also forward a copy of the application, and any other material received by the Secretary in connection with its consideration of the application. There shall be no judicial review of the Secretary's selection of a candidate energy project.

DESIGNATION OF PRIORITY ENERGY PROJECTS

SEC. 10. (a) Upon receipt from the Secretary of the list of candidate priority energy projects and the other information specified in section 9, the Board shall immediately publish such list in the Federal Register and shall afford interested persons at least sixty days thereafter within which to submit written comments for the Board's consideration. The Board shall provide written notice of the candidate priority energy project to the Federal, State, and local agencies identified by the applicant under section 8(b)(1), and such agencies may present such written comments as they deem desirable, including information listed in sections 14 and 15. The Board shall consult with officials of those agencies of State and local government likely to be affected by the designation of a project as a priority energy project. The Board may hold hearings and adopt any other such procedures to aid in the Board's consideration. The Board shall keep on file and make available for public inspection and copying at the main office of the Board and in such other places as the Board deems appropriate the designation requests and comments received thereupon.

(b) The Secretary may forward and the Board may consider a designation request notwithstanding any previous decision by the Board denying the same or a similar request for that project.

(c) Not later than sixty days after the close of the comment period required in subsection (a), the Board shall review the candidate priority project list and determine whether any of the candidate priority energy projects is of sufficient national interest to be designated a priority energy project and shall publish its decision and the reasons therefor in the Federal Register. Not more than twelve projects may be designated in any one calendar year, and not more than thirty-six projects may have been designated and be pending certification at any one time. No project shall be designated a priority energy project unless the Board determines that such project—

(1) will affect interstate or foreign commerce;

(2) will significantly contribute to a reduction in the use of imported energy supplies (and the achievement of a 50 per centum reduction in the use of imported oil by calendar year 1990);

(3) needs the accelerated decisionmaking available under this Act to assure that such facility will be in operation so that it will make a timely reduction in the use of imported oil.

(d) In making a determination whether to designate a project as a priority energy project, the Board shall also consider—

(1) whether the environmental uncertainties or the potential adverse environmental impacts of the project are such that they cannot be adequately considered and resolved in the period of time permitted for review of the priority energy project;

(2) the extent to which the proposed facility would make use of renewable energy resources;

(3) the extent to which the proposed facility would promote energy conservation;

(4) the extent to which the proposed facility would contribute to the development of new energy production or conservation technologies and techniques;

(5) the degree of specificity in describing the proposed facility in the application;

(6) the probable long-term impact of the facility upon energy supply and demand; and

(7) comments submitted by the public and other governmental entities.

(e) The designation by the Board of priority energy projects pursuant to this section shall, to the maximum extent practicable, represent a diverse range of energy sources and technologies.

(f) The Board may designate as a priority energy project more than one related energy facility only if the Board determines that—

(1) the related energy facilities are located in the same or in contiguous geographic areas; and

(2) the principal use of each energy facility is to—

(i) contribute directly to satisfaction of the criteria specified in section 10(b) or

(ii) support a facility within the proposed energy project which satisfies the criteria specified in section 10(b) of this Act.

(g) The Board shall publish in the Federal Register a statement explaining the basis for its designation of each priority energy project. Each such designation shall be subject to judicial review in accordance with sections 21 to 26.

EXTENSION OF DEADLINES

SEC. 11. The Board may extend the deadlines for receiving comments under section 10(a) and the time for ruling on an application for priority energy project status under section 10(c) if such application is incomplete or if more time is necessary to afford interested persons a reasonable time to comment.

RELATION TO NATIONAL ENVIRONMENTAL POLICY ACT

SEC. 12. (a) Determinations by the Secretary under section 9 and by the Board under section 10 are not subject to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) Promulgation or revision of a project decision schedule under sections 16 and 17 is not subject to section 102(2)(C) of the National Environmental Policy Act of 1969.

(c) Promptly following designation of an energy project as a priority energy project pursuant to section 10, and prior to establishment of a project decision schedule under section 16, the appropriate Federal agency shall determine whether any Federal action relating to the priority energy project will be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and shall publish notice of its determination in the Federal Register. Upon publication, any person aggrieved may immediately commence a civil action seeking judicial review of that determination under the provisions of this Act. If a Federal agency determines that a priority energy project will be such a major Federal action, the remaining parts of this section shall apply.

(d)(1) Notwithstanding any other provision of law, the Board, after consultation with the Council on Environmental Quality and appropriate State and local agencies, may require that one final environmental impact statement be prepared to reflect the actions of any or all Federal agencies to satisfy their obligations under the National Environmental Policy Act of 1969 and by any or all State and local agencies to substitute for any comparable statement required by State or local law.

(2)(i) A lead agency shall supervise the preparation of the environmental impact statement if more than one agency either:

(A) proposed or is involved in the same action; or

(B) is involved in a group of related actions directly related to each other because of their functional independence or geographical proximity.

(ii) Federal, State, or local agencies, including at least one Federal agency may act as joint lead agencies to prepare the environmental impact statement.

(iii) If Federal agencies are unable to agree on which will be the lead agency or a lead agency is not otherwise designated within forty-five days of the determination in subsection (d)(1), any of the agencies or persons concerned may file a request with the Council on Environmental Quality asking it to determine which Federal agency shall be the lead agency. The Council shall determine as soon as possible, but not later than twenty days after receiving the request, which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

(3) If the Board requires pursuant to paragraph (1) that such statement substitute for a comparable requirement of State or local law—

(i) such statement shall meet the requirements of the comparable State or local law in the same manner specified under comparable State or local law; and

(ii) the Federal agency or agencies preparing such statement shall consult with the appropriate State and local officials during the preparation of the statement with respect to any portions of such statement which will substitute for comparable requirements under State or local law. At the request of the State or local agency, such agency may prepare the position of the statement dealing with the applicable State or local law.

(e)(1) Before publication of the Project Decision Schedule under section 16, the lead agency designated under subsection (d) shall convene one or more meetings with such other Federal agencies as it deems appropriate and, if the Board has determined that the Federal environmental impact statement shall substitute for any comparable State or local statement or other assessment, with representatives of such States or localities. The purposes of such meeting(s) shall be to identify significant issues, establish the content of the environmental impact statement, and determine whether and how responsibilities should be apportioned among other Federal agencies.

(2) After such meetings, the lead agency with the concurrence of the Board and the Council on Environmental Quality, may determine to prepare the environmental impact statement without requiring assistance from any other Federal agency, notwithstanding any decision by the Board to require that one such statement be used by any or all Federal, State, and local agencies.

(f) At any time prior to the completion of the priority energy project and in accordance with the requirement of subsection (d), the lead agency may assign responsibilities in the preparation of the environmental impact statement to any appropriate Federal agency. The lead agency shall publish such assignments in the Federal Register, and such assignments shall be subject to procedures and deadlines specified by the Board. Such procedures and deadlines shall be incorporated in

the project decision schedule and shall be treated as part of the schedule for the purposes of this Act. Except as provided in this section, the deadlines and procedures for carrying out such assignments shall be consistent with the provisions in section 219.

(g) All Federal agencies shall comply with the assignments, deadlines, and procedures established pursuant to subsection (f). Nothing in this section shall authorize the Board or Council on Environmental Quality or the lead agency to require any action from any State or local agency in the preparation of the environmental impact statement.

(h) The Board may require that proceedings in which the consideration of an environmental analysis is not required to commerce prior to the completion of such environmental statement: *Provided*, That no Federal agency shall issue a final decision significantly affecting the quality of the human environment until at least thirty days after the environmental impact statement has been completed.

(i) Notwithstanding any other provision of law, the Project Decision Schedule established under section 219 shall provide that, prior to the completion of agency preparation of the environmental impact statement, agencies shall give interested persons an opportunity to submit written data, views, or arguments with or without opportunity for oral presentation.

(j) For the purposes of this Act, the term—

(1) "lead agency" means the Federal agency designated under subsection (d) of this section to prepare an environmental impact statement on a priority energy project;

(2) "cooperating agency" means a Federal agency other than the lead agency which has jurisdiction by law or special expertise with respect to an environmental impact statement on a priority energy project and is designated by the lead agency as a cooperating agency.

EARLY ACTION REQUIREMENT

SEC. 13. The Secretary shall encourage prospective applicants under section 8 to notify the Secretary and to file applications for any necessary Government actions or approvals with the appropriate agencies as soon as possible in order that any eventual action or decision may be expedited. The Secretary and the Board may consider any failure to contact the Secretary in a timely fashion in making their respective determinations under sections 9 and 10.

FEDERAL AGENCIES REQUIRED TO SUBMIT INFORMATION

SEC. 14. (a) Upon designation of a priority energy project, the Board shall promptly provide written notice of such designation to the head of—

(1) the Department of the Interior including the Fish and Wildlife Service;

(2) the Department of Agriculture;

(3) the Department of Commerce;

(4) the Department of Transportation;

(5) the Department of Energy;

(6) the Environmental Protection Agency;

(7) the Council on Environmental Quality;

(8) the Department of the Army; and

(9) any other Federal agency with authority to grant or deny any approval or perform any action necessary to the completion of such project or any part thereof.

(b) With respect to each project designated a priority energy project, not later than thirty days after receiving notice as specified in subsection (a), each agency so notified shall transmit to the Board—

(1) a compilation of all significant actions required by such agency before a final decision on any necessary approval(s) can be rendered, including an indication of any time limits established by statute or regulation for such actions;

(2) a compilation of all significant actions required of the applicant or of any other agency before a final decision by such agency can be made, including an indication of any time limits established by statute or regulation for such actions;

(3) a tentative schedule for completing actions listed in paragraphs (1) and (2) of this section and an environmental analysis necessary for the preparation of the environmental impact statement required by section 12 of this title, together with a preliminary indication of any points on such schedules that may present unusual delays anticipated by such agency;

(4) all necessary application forms which must be completed by the priority energy project before such approval can be granted; and

(5) an analysis of (i) the amount of funds and personnel available to such agency to perform the actions required by such agency before any final decisions can be made and (ii) the impact of giving priority status to the applicant on other activities of and applications pending before such agency.

REQUEST FOR STATE COOPERATION AND INFORMATION

SEC. 15. (a) Upon designation of a priority energy project, the Board shall notify the Governor and other appropriate local government agencies or officials of any State which would be significantly affected by a priority energy project and shall request them to supply—

(1) a compilation of significant actions required by the State and local governments before the priority energy project can be completed, including an indication of any time limits established by statute or regulation for such actions;

(2) a compilation of significant actions required of the applicant or any other agency before a final decision can be made, including an indication of any time limits established by statute or regulation for such actions;

(3) a tentative schedule for completing the actions listed in paragraphs (1) and (2) of this subsection, together with a preliminary indication of any points on such schedule that may present unusual delays anticipated by the affected agencies;

(4) all necessary application forms which must be completed by the applicant before such approval can be granted; and

(5) an analysis of (i) the amount of funds and personnel available to the agencies of such governments for performing the actions required by such agencies before any final decisions can be made and (ii) the impact of giving priority status to the applicant on other applications pending before such agencies.

(b) The Board may provide any assistance authorized by law to assist State and local authorities (i) in complying with requests for cooperation from the Board, (ii) developing an adequate record for decisionmaking for priority energy projects, and (iii) in expediting decisionmaking for such projects.

PROJECT DECISION SCHEDULE ESTABLISHED BY THE BOARD

SEC. 16. (a) Not later than sixty days after designating a proposed energy facility as a priority energy project, the Board, in consultation with the appropriate Federal, State, and local agencies, shall publish in the Federal Register a reasonable project decision schedule. The project decision schedule shall (i) establish deadlines for all Federal, State, and local actions relating to such project and all applications required of such applicant; (ii) clearly identify the order in which licenses, permits, and other Government approvals must be obtained by the priority energy project before such project can be completed; and (iii) include deadlines for the completion of required portions of the environmental impact statement prior to and as a part of each scheduled agency action. In carrying out its functions under this section, the Board may set deadlines for completion of any significant intermediate step to a final agency action governed by the project decision schedule and may suggest concurrent review of applicants and joint hearings by agencies of Federal, State, and local governments. All relevant Federal, State, and local agencies shall comply with the project decision schedule.

(b)(1) The deadlines in the project decision schedule shall be consistent with the deadlines submitted to the Board under sections 14 and 15 unless the Board determines that different deadlines are essential in order to expedite and coordinate agency review, and publishes, togther with the project decision schedule, a brief statement of its reasons for such determination.

(2) Whenever the project decision schedule is not consistent with the schedule which would otherwise apply, such project decision schedule shall apply in lieu of such otherwise applicable schedule.

(3) The Board may require an agency to consolidate, to the maximum extent practicable, its proceedings respecting actions and decisions which are subject to the project decision schedule with the proceedings of other agencies which are also subject to such schedule.

(c) The Federal project decision schedule established pursuant to subsection (a) shall expressly provide for the completion of all final agency actions and the issuance of all final agency decisions by a date no later than one year from the date the applicant's application for such actions or decisions is complete, unless a longer period is essential to enable the agency to comply with its statutory obligations or to assure that due process is not denied to any person.

(d) All Federal, State, and local agencies governed by a project decision schedule may establish special procedures which the agency determines to be necessary to meet the deadlines on such schedule. Any agency which is likely to be governed by a project decision schedule may, upon reasonable notice and opportunity for comment, also establish special procedures to govern agency actions and decisions relating to priority energy projects. These procedures shall be consistent with all statutes governing the agency's action, except that, notwithstanding any other statutes, the agency may—

(1) consolidate, to the maximum extent practicable, its proceedings respecting actions and decisions which are subject to the project decision schedule with the proceedings of other agencies, including Federal, State, and local agencies which are also subject to such schedule;

(2) establish permit, license, and other filing requirements which eliminate unnecessary duplication, and, to the maximum extent practicable, provide for uniform collection, analysis, and reporting of such data;

(3) substitute legislative-type hearings in lieu of trial-type hearings; *Provided*, That, in any cases in which (A) a formal hearing including an opportunity for cross-examination of witnesses is authorized by any provision of statute other than this Act, and (B) the agency determines there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in a formal hearing, the agency shall designate such dispute for resolution in a formal hearing conducted in accordance with the statute providing for such hearing;

(4) shorten the time periods for actions required by agency procedures;

(5) conduct hearings, except where such hearings are conducted pursuant to paragraph (3) above, in which parties may submit such written data, views, or arguments and such written responses to the data, views, or arguments submitted by other par-

ties, as the agency or the presiding employee may specify and in which oral presentation is limited to brief oral argument with respect to the written submissions;

(6) establish procedures for issuing final decisions in which the presiding employee at any hearing may be required to certify the hearing record to the agency for decision without an initial decision. Such procedures may also require the presiding employee to submit the record to the agency without a recommended or tentative decision, but with such analysis of the record as the agency may specify. The agency itself may omit a tentative or recommended decision if it determines that due and timely execution of its function so requires; or

(7) utilize any combination of procedures authorized by this subsection.

(e) The designation of any energy project as a priority energy project pursuant to this part shall not, except as provided by this section, affect the application to such project of any requirement established by, or pursuant to, Federal, State, or local law, shall not affect the basis on which any agency decision is made with respect to such project, and shall not affect or influence the outcome of any such decision.

(f) Except as specifically provided, nothing in this Act shall be construed to affect the authority or independence of any independent Federal regulatory agency.

MODIFICATION OF PROJECT DECISION SCHEDULE

SEC. 17. (a) Upon the petition of any agency with authority governed by a project decision schedule, the applicant or other interested person, or on its own motion, the Board may modify the project decision schedule. No extension of any time period applicable to any agency under such schedule may be granted unless the Board determines that—

(1) continued adherence to the schedule would be impractical or would not be in the public interest;

(2) such modification is consistent with the other provisions of this section and is published in the Federal Register;

(3) in the case of a request for a modification by an agency, the agency has exercised due diligence in attempting to comply with the project decision schedule, taking into account the personnel and funds available to the agency for complying with such schedule; and

(4) in the case of a request for a modification by an applicant, the applicant has exercised due diligence in attempting to comply with the schedule.

(b)(1) The Board shall establish procedures for receiving, considering, and ruling in an expedited manner on requests for modifications of project decision schedules and shall publish a description of such procedures in the Federal Register. The Board shall allow a reasonable period for public comment on proposed modification of project decision schedules.

(2) Decisions of the Board on any request for a modification of a project decision schedule shall be issued in writing with a statement of the reasons for the decision. Such statement shall consider comments individually or collectively as the Board deems appropriate.

CERTIFICATION OF COMPLETED AGENCY REVIEW

SEC. 18. (a) If the Board has been notified by the agencies with authority to grant approvals or perform actions or by a reviewing court that all agency actions and approvals on the project decision schedules relating to a priority energy project (i) have been granted, or (ii) have been performed, or (iii) are not necessary; and if further judicial review of such actions or approvals is barred by section 23, the Board shall certify the same to the applicant. Such certification shall indicate any conditions and the expiration date of any approvals that have been granted to the project.

(b) A certificate issued by the Board under subsection (a) of this section shall constitute prima facie evidence in any judicial or executive proceeding that all actions and approvals necessary to the completion of the project have been granted for the duration and subject to the conditions specified on the certificate.

ENFORCEMENT OF PROJECT DECISION SCHEDULE

SEC. 19. (a) If any Federal, State, or local agency has failed or is reasonably likely to fail to comply with a deadline established as part of a project decision schedule pursuant to section 16, the General Counsel of the Board may bring an enforcement action on behalf of the Board in the United States court of appeals for the circuit in which the priority energy project is, or is proposed to be, located. Except as provided in subsection (d), such court shall have exclusive jurisdiction to determine actions brought under this section.

(b) In any action brought under this section, if the court determines that a Federal, State, or local agency has failed, or is reasonably likely to fail, to comply with a deadline established as part of a project decision schedule established pursuant to section 16, the court, may exercise its powers at law and in equity and shall order the agency to act in accordance with the existing schedule. The court shall act within forty-five days after the filing of an enforcement action under this section, unless the court determines that a longer period of time is required.

(c) Notwithstanding any other provision of law, including any other provision of this Act, any action brought under this section shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court.

(d) In the case of a State or local agency, the General Counsel of the Board may in its discretion bring an enforcement action on behalf of the Board in the appropriate State court instead of the United States court of appeals.

MONITORING OF COMPLIANCE; TERMINATION OF PRIORITY DESIGNATION

SEC. 20. (a) The Board shall monitor compliance with the project decision schedule by the applicant and by the agencies to which the schedule applies and may require such agencies and applicant to submit to the Board such information regarding compliance with such schedule as the Board deems necessary and appropriate for such purposes. If the Board determines that a priority energy project is being delayed or threatened with delay, the Board shall determine the reason for such delay and notify the appropriate agencies and other persons of its determination together with suggestions on how to eliminate or reduce such delay. The Board shall publish such reasons and suggestions in the Federal Register and notify the President and the Congress of its determinations.

(b) At any time after an energy project has been designated a priority energy project, the Board, on its own motion or by a petition by an interested person, shall terminate the priority designation if—

(1) the applicant has not exercised due diligence in attempting to comply with the project decision schedule;

(2) the applicant has not attempted in good faith to comply with any law governing the priority energy project;

(3) the applicant has requested that the priority designation be withdrawn;

(4) the project has been certified under section or the Board determines that it is unlikely that the project will be certified under such section; or

(5) the Board determines that, notwithstanding the Board's earlier determination, the project will not satisfy the criteria specified in sections 10 (b) and (c).

(c) The Board shall publish in the Federal Register notice of its intent to terminate a priority designation and shall afford interested persons at least thirty days in which to submit written comments. A decision to terminate shall be subject to judicial review in accordance with sections 21 through 26. The Board shall publish a detailed statement explaining the basis for its decision to terminate a priority energy project.

(d) If the Board terminates the priority designation for any priority energy project, the deadlines in the project decision schedule for that project shall no longer apply to any Federal, State, or local agency, and unless the Board redesignates the project pursuant to section 10, the Board shall no longer have authority to establish deadlines for agency decisions relating to the project. Judicial review of any Federal action relating to such project shall no longer be governed by the provisions of this title: *Provided*, That—

(1) jurisdiction over any challenge to any action which is pending in the court specified in section 21 at the time the priority designation is terminated shall be retained by that court if the court determines that the interests of justice would be served by such action; and

(2) any Federal action or approval relating to a priority energy project which was valid before the priority designation for that project was terminated shall not be deemed invalid on the ground that the priority status has been withdrawn or that the project decision schedule is no longer legally applicable.

(e) Termination of a priority designation is not subject to section 102(2)(C) of the National Environmental Policy Act of 1969.

JUDICIAL REVIEW

SEC. 21. (a) The granting or denying of an extension under section 11, shall not be subject to judicial review, except as may be required by the Constitution of the United States.

(b) The designation of a priority energy project under section 10 and the termination of a priority designation under section 20 shall be subject to judicial review in accordance with the other provisions of this title. In reviewing such actions, no court shall—

(1) stay or enjoin such action pending appeal; or

(2) conduct a trial de novo.

(c) Any civil action brought by any person seeking review of final Federal agency action (whether authorized by this Act or any other provision of law) shall be subject to the following provisions if the action for which review is sought is subject to a deadline in a Federal project decision schedule:

(1) Such action may only be brought in any United States court of appeals for the circuit in which the priority energy project is, or is proposed to be, located.

(2) Such action may only be brought within thirty days following the date on which such decision has become final or within a shorter time as may be required by other applicable law.

(3) The court shall assign such action for hearing, and shall complete such hearing, at the earliest possible date.

(4) Such action shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, shall be expedited in every way by such court, and shall be consolidated, to the greatest extent practicable, with other actions relating to the same priority energy project which are brought in such court or in any other court of the United States.

(5) Any reviewing court shall also expedite and consolidate such review to the maximum extent practicable.

(6) Any agency decision with respect to which review could have been obtained under this subsection may not be subject to judicial review in any other proceeding.

(d) The provisions of subsection (c)(1) through (5) shall also apply to any action by the Board pursuant to sections 10, 19, and 20 of this Act.

LIMITATION OF ACTIONS

SEC. 22. Any challenge to any action pursuant to this title, including any challenge to the constitutionality of this title, shall be brought not later than thirty days following the date of the final agency action relating to the action which is being challenged.

TIME BAR; JURISDICTION OF THE COURTS OF APPEALS

SEC. 23. Any claim arising out of action pursuant to this title shall be barred unless a complaint is filed prior to the expiration of the time limits prescribed by this title unless the court determines that a longer period of time is required to satisfy the requirements of the United States Constitution.

SUPREME COURT REVIEW

SEC. 24. (a) The Supreme Court shall have exclusive jurisdiction to review any judgment or order of the court of appeals pursuant to this title and the petitioner must file a petition for certiorari or a certification as provided in section 1254 of title 28, United States Code, within fifteen days after the decision of the court of appeals or his appeal shall be barred.

(b) Any review by the Supreme Court shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court of that time, and shall be expedited in every way of such court.

SCOPE OF REVIEW

SEC. 25. Notwithstanding any other provision of law, no action pursuant to this title shall be subject to trial de novo by the reviewing court.

ACTION ON REMAND

SEC. 26. Immediately following any decision remanding to an agency any case or controversy involving an action pursuant to this Act, the Board shall revise the project decision schedule as necessary to expedite any further proceedings required by the decision of the court. Such revisions shall be consistent with section 16 of this Act.

EFFECTIVE DATE

SEC. 27. The provisions of this Act shall become effective thirty days after the date of enactment of this Act, but no application may be submitted for designation of any project as a priority energy project before promulgation of regulations establishing criteria for designation of such projects.

EXPIRATION OF AUTHORITY

SEC. 28. The Board shall cease to exist, and the authority provided to the Board under this Act, shall terminate, on September 30, 1985. Notwithstanding the previous sentence, any project decision schedule established under this part for any priority energy project prior to the expiration of such authority, and the other provisions of this part applicable to such project, shall continue to be applicable to such project after September 30, 1985.

AUTHORIZATION

SEC. 29. There is authorized to be appropriated to the Board to carry out the provisions of this Act such sums as are necessary for fiscal years 1980, 1981, and 1982.

Mr. DOMENICI. Mr. President will the distinguished chairman yield for a parliamentary inquiry?

Mr. JACKSON. I yield.

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Is there any time agreement on the bill at this point?

The PRESIDING OFFICER. There is none.

Mr. DOMENICI. How much time did the Senator from Washington yield to himself?

Mr. JACKSON. I do not need to yield. I will be on this statement about 15 minutes.

Mr. DOMENICI. All right.

Mr. JACKSON. It will be 10 or 12 minutes, maybe.

Mr. DOMENICI. I wish to make a brief opening statement. I will have to leave the Chamber. Will it take the Senator 15 minutes?

Mr. JACKSON. Ten or 12 minutes.

Mr. DOMENICI. I thank the Senator.

Mr. JACKSON. Mr. President, S. 1308 would create an Energy Mobilization Board with the power to expedite permit and approval decisions on priority energy projects. No time could be more critical for considering this legislation. The United States is now dangerously dependent upon the Middle East and North Africa—one of the most unstable regions of the world—for a substantial portion of its oil. Each passing year, this dependence makes us more and more vulnerable to supply interruptions and drastic increases in the price of oil.

Last summer's gasoline lines are now gone but we must not be lulled into a false sense of security. The worldwide system for the production and distribution of petroleum is already stretched taut. Yet Iran continues to teeter on the edge of anarchy. At this very moment, reports of unrest in the oil fields there make even the present level of Iranian production uncertain. The dangers elsewhere are equally grave. Iraq, which exports over 2½ million barrels a day is plagued by religious schisms and an ever-present internal Communist threat. Consider also that we now import twice as much oil from Algeria and Libya as we imported from Iran when production in that country was at its height. The leaders of either Algeria or Libya, by threatening to reduce production, could quickly bring the United States to its knees.

The military perils to our supply are also grave. Sixty percent of the free world's oil passes through the Straits of Hormuz, a body of water only 25 miles wide. The lifeline of the Western economies are literally held together by this fragile thread.

But, lest you conclude supply interruptions are the only danger, let me remind you of the equally grave threat of rising oil prices. Because of our dependence upon imported oil, the price is simply out of our control. In 1973, before the embargo, the price was less than $3 a barrel. At the beginning of this year, the figure was almost five times higher or $14 per barrel. But now, only 10 months later, the world prices is almost $21 and further increases are likely. Just this past week, Nigeria threatened to lift its price to $26 a barrel.

Last summer, during the OPEC conference in Geneva, we saw how a handful of men meeting behind closed doors could rock the economies of the free world. Since then, we have heard a lot of talk about the problem, but we have yet to do anything about it. Now, with the Energy Mobilization Board, we have our first chance to really get something done.

The EMB offers the best hope in the short term for reducing our dependence upon OPEC oil. The Nation is now paralyzed by a bureaucracy that can delay vital energy projects for months and even years. Pipelines that could bring domestic oil to market and powerplants that could burn coal are hopelessly caught in a massive web of Government redtape.

The Sohio pipeline is a perfect example. The pipeline would have carried Alaska oil from California to Texas by a secure overland route. The project was proposed in 1974, but 5 years later, in 1979 it still needed a permit from California when the sponsors decided to give up. The pipeline was defeated not because it could not stand on its own merits, not because it would have reduced oil imports, but because it could not win a war of attrition against the bureaucracy. Government delays made the project uneconomic.

A powerful Energy Mobilization Board could cut through the redtape that holds up vital energy projects. Unlike synthetic fuels projects which will not bear fruit until the end of the next decade, the Mobilization Board could reduce oil imports substantially within the next few years. The Board would expedite synfuels projects, that is true, but it would also get faster decisions on a host of conventional proposals which could bring oil savings right away. These projects could include proposals to build coal-fired powerplants, pipelines to carry Alaska oil and gas, and projects to switch oil-fired burners to coal.

The concept of an Energy Mobilization Board is not new. In 1975, I introduced a bill that would create a Board and give it substantial powers. But public awareness was not as great then as it is now, and the bill received only modest support. Synfuels in those years fared only slightly better. In 1975 and 1976, the Senate passed synfuels legislation, only to witness defeat in the House of Representatives.

Look where we would have been had that been passed 4 years ago.

We now have a new opportunity to act on the energy problem and show our determination to succeed. The Nation, and the rest of the world will be watching to see how we respond. The proposal before us would create a strong EMB, one that would cut through the bureaucracy and dramatically reduce the time required to bring vital energy projects on line. The Board could set deadlines for Federal, State, and local agencies and see that the deadlines were enforced.

In vesting the Board with these powers we have been mindful of the dangers of concentrating too much authority in the hands of a small body of men. The bill, therefore, limits the power of the Board by giving it only the authority necessary to get its job done.

Attempts to weaken the bill are likely to have serious consequences. Indeed, they could undermine the entire legislation. The last thing we should do now is create a new layer of bureaucracy which will add new delays and new complications and cost the taxpayer even more money. We should either give the Board authority to get the job done, or not create a board at all. Going half way in this business is worse than going nowhere at all.

Mr. President, our dependence upon OPEC oil is a grave threat to the very security of this Nation. Yet here we stand helpless, caught in reams of red-tape.

We can allow this pitiful situation to continue or we can break loose from our own bureaucratic chains.

The vote on the Energy Mobilization Board is nothing less than a test of our will. By weakening the bill, we will only cast new doubts on our determination. When the next oil crisis appears—and mark my words it is likely—those who vote for a weak Board will not find it easy explaining their vote.

A strong Board is essential for getting priority energy projects on line. The bill before us would give the Board the power to get the job done.

A vote for this bill is a vote to get the Nation moving. A vote to weaken it is a vote to stand still.

Mr. President, for the benefit of other Senators and the general public, I ask unanimous consent that the following summary of S. 1308, explaining what the bill would and would not do, be printed in the RECORD.

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

SUMMARY OF MAJOR PROVISIONS

S. 1308 would create an Energy Mobilization Board with authority to give priority to energy projects which are in the national interest. The Board could designate a project as a "priority energy project" if the Chairman and two of the three members agreed that it was likely to reduce, directly or indirectly, the Nation's dependence upon imported energy. The bill would not limit the number of priority projects to a specific number, but the Board would be directed to use its discretion in designating projects.

S. 1308 would authorize the Board to set reasonable deadlines which would be binding on all Federal, State and local agencies with authority over priority projects. The Board could also prescribe special procedures for Federal agencies for expediting decisions and could require that one environmental impact statement be prepared for all Federal, State and local agencies with authority over the project.

The bill would allow Federal, State and local agencies to streamline their procedures. Agencies would be authorized to consolidate hearings and avoid unnecessary duplication in processing applications. Agencies could substitute informal hearings for trial-type proceedings and eliminate unnecessary steps in reaching decisions. Many of these reforms are based on the recommendations of the Government Affairs Committee's study on regulatory reform and on a bill introduced this session by Senator Ribicoff which was co-sponsored by Senators Glenn, Javits, and Roth, among others.

The bill would allow the Energy Mobilization Board to enforce its deadlines, either by going to court or by making decisions itself when the responsible agency takes too long. If the Board decides in place of another agency it would have to apply all the standards and decision criteria in applicable law.

Finally, the bill would provide for expedited judicial review of all Federal, State and local agency actions involving priority energy projects. Review would be consolidated in the Temporary Emergency Court of Appeals, a Federal Court which has already demonstrated that it can dispose of cases in an expeditious manner. In reviewing agency actions, TECA would apply exactly the same standards of review that apply to non-priority projects.

As for the equally important question of what the bill would not do:

The bill would not authorize the waiver of any substantive or procedural law unless it was enacted after construction of a project had already begun. In making decisions on priority projects, agencies would apply the same standards they would apply to non-priority projects. Moreover, agencies could only use procedures which they were authorized to use by law. The Board's authority to waive or modify statutory law would be limited to "grandfathering" projects which are under way when the law is enacted. The grandfather provision would merely prevent the government from changing the rules of the game after work on a project had begun.

The bill would not allow the Board to set deadlines that forced agencies to ignore other statutes. The bill specifically provides that deadlines must be reasonable, and a deadline that would not allow an agency to comply fully with the law clearly would not be reasonable. Although deadlines should require agencies to act with dispatch, they cannot authorize or require agencies to ignore other requirements of law.

The bill would not give the Board broad authority to preempt State and local laws or take over the role of Federal, State, or local agencies. An agency with authority to grant or deny a permit today would still have that authority under S. 1308. Moreover, the standards for issuing the permit would not change. Decisions which are now made at the State and local level would still be made at those levels. Only when an agency failed to act within a reasonable time would the Board have authority to step in and decide using the criteria of the applicable law.

Mr. JACKSON. I also ask unanimous consent that an editorial from yesterday's New York Times endorsing the Energy Committee's Energy Mobilization Board be printed in the RECORD, and I also ask unanimous consent that a letter from the new Secretary of the Department of Energy, Mr. Charles Duncan, the letter being dated October 1, 1979, be printed in the RECORD.

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

THE ENERGY RISK WORTH TAKING

The bitter debate over the creation of an energy mobilization board is coming to a head in both houses of Congress. The House must soon decide between very different approaches sponsored by Representatives Dingell and Udall. But first will come a pivotal decision this week in the Senate, where a plan close to the one proposed by the Carter Administration is backed by Senator Jackson. Opponents of that bill raise some troubling objections. But given the need to assure speedy development of alternative energy resources, the Carter-Jackson approach deserves support.

Under the Administration's plan, the primary function of the energy mobilization board would be to trim red tape. It could set deadlines for Federal, state and local review of project permits. If these various authorities did not meet the deadlines, the board would be permitted to make decisions for them, within the constraints of existing law.

Once construction had begun on a project, the board could exert somewhat broader powers. It could block any imposition of added restrictions—new air quality standards, for example—unless health or safety were threatened. All challenges of projects requiring adjudication—whether Federal, state or local—would be heard by a single Federal appellate court.

Some environmentalists dislike the plan because they oppose enabling a Federal board to do what this one would—that is, prevent delay for the sake of delay. More thoughtful environmental opponents recognize the need to get moving on energy, but are worried that the board's discretion would be insufficiently constrained by law. A Carter-style board could not directly alter environmental laws, save in the special case of regulations imposed after the fact. By forcing rapid decisions, though, it might prevent careful review of environmental hazards.

That risk is real; bureaucracies do have a way of focusing on narrowly defined goals—like the completion of energy projects—and, in the process, of giving short shrift to competing concerns. In this case, however, the risks are acceptable, precisely because the alternatives are not.

The United States faces unprecedented dangers in continued dependence on foreign oil. Only with luck will the nation make it through the 1980's without catastrophic oil shortages or shameful foreign policy concessions to OPEC. An energy mobilization board alone can hardly be expected to solve the problem of dependence. But it would help, at a time when America will need all the help it can get.

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U.S. DEPARTMENT OF ENERGY,
*Washington, D.C., October 1, 1979.*

Hon. HENRY M. JACKSON,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: As you know, President Carter proposed creation of an Energy Mobilization Board (EMB) as part of the Oil Import Reduction Program announced on July 15, 1979. I very much appreciate the prompt action taken by the Energy Committee and its members to report a bill (S. 1308) which would substantially effectuate the Administration's objectives.

I understand that weakening amendments to S. 1308 may be offered and am writing to express the Administration's support for the adoption of S. 1308 by the Senate in the form reported by the Energy Committee.

As I am sure you agree, we, as a Nation, must take action now to avoid a growing and unacceptable dependence on foreign sources of energy. But this pursuit is doomed to failure unless we develop at once a mechanism to ensure that timely, coordinated decisions are made at all levels of Government concerning specific projects which will contribute to this effort.

The number of Federal, State and local requirements applicable to energy projects has grown dramatically in the last decade. While the merits of specific laws are not in question here, with few exceptions, each requirement has been adopted in isolation, with little or no attention to its relationship to an overall approval process for energy facilities. It can take as much as six to eight years to obtain final decisions on major energy facilities and even longer where substantial controversy is involved. Typically at least a dozen separate agencies must act, each following its own requirements, schedule and priorities.

Existing authority is plainly inadequate to the task of providing a workable decision-making process. New measures are essential to convert the now disparate, disconnected permitting process into a coordinated one which will provide final decisions in time to meet the energy needs which specific projects are designed to meet. S. 1308 provides these measures.

Specifically, S. 1308:

Provides the EMB with flexibility to designate a wide variety of non-nuclear energy projects for fast-track treatment;

Empowers the EMB, after consultation with affected government officials, to set decision schedules for critical energy projects which bind Federal, State and local agencies;

Provides a decision-forcing mechanism by authorizing the EMB to step in and make a decision where a particular agency fails to act in a timely manner, in accordance with the decision criteria the agency itself would have applied;

Empowers the EMB to waive new regulatory requirements adopted after a project has received all necessary approvals and construction has commenced, where necessary for timely completion or operation, and public health and safety would not be endangered; and,

Provides expedited judicial review of Federal, State and local decisions in a single Federal court.

The EMB is not intended as a vehicle to promote any specific type of energy project, as opposed for example to the proposed Energy Security Corporation which is directed at synthetic fuels, and would operate without altering the substantive Federal, State or local standards pertinent to securing required permits. Moreover, S. 1308 reflects the view that responsible Federal, State and local officials retain control over decisions as to whether energy facilities will be built, and if so, under what circumstances. At the same time, it ensures that often difficult decisions presented by energy facility proposals are confronted, not avoided.

In establishing an EMB, it is essential that Congress provide it with all legal tools necessary to do the job; otherwise, the Board could wind up as just another bureaucratic layer and even compound the problem it is intended to address. S. 1308 meets this test and, accordingly, the Administration looks forward to its prompt adoption by the Senate.

Sincerely,

C. W. DUNCAN, Jr.

Mr. JACKSON. In the comparison of S. 1308 with S. 1806, the latter is now amendment No. 483 in the nature of a substitute. And I ask unanimous consent that the comparison be printed in the RECORD.

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

COMPARISON WITH S. 1806

S. 1308 would create an Energy Mobilization Board and give it authority to designate priority energy projects. The bill would require a decision from the Board on designation within 60 days.

Under S. 1806 the Board could not even consider a proposal until the Department of Energy had up to six months to review it. The proposal would split authority for designating projects between two agencies, would require two separate public comment periods, and would take up to ten months or longer just for a decision designating a priority project.

S. 1308 would give Federal, State and local agencies important new authority to streamline their procedures, authority which in more than one instance, is taken from the Government Affairs Committee bill, S. 262, on regulatory reform. S. 1308 would *not* authorize the Board, however, to tell State and local agencies to use specific procedures.

S. 1806 would not allow agencies to make decisions any faster than the minimum period required under existing law. The proposal does not even include some of the most important provisions of the Government Affairs Committee bill on regulatory reform.

S. 1308 would authorize the Energy Mobilization Board to make decisions in place of Federal, State, and local agencies that refused to decide within a reasonable amount of time. The Board would use the same decision criteria the agency would have used if the agency had not delayed.

S. 1806 would force the Board to go to court before the Board could enforce its deadlines. Enforcement orders could be subject to lengthy litigation and could lead to unnecessary confrontations between the Federal courts and the States.

S. 1308 would consolidate judicial review of all Federal, State and local agency actions involving priority energy projects in the Temporary Emergency Court of Appeals. This special Federal appellate court has already built an impressive record in deciding complicated energy cases in a short period of time.

S. 1806 has no special provision for expedited review of State and local agency action. Priority projects could be held up for months, or even years as they slowly wound their way through State courts.

S. 1308 authorizes the Board to "grandfather" priority projects by waiving the application of laws enacted after construction of a project has begun. The grandfather power would prevent agencies from changing the rules of the game after work on a project is already well under way.

S. 1806 has no grandfather provision.

Mr. JACKSON. I would also like to take this opportunity to praise Senator JOHNSTON for his outstanding leadership in chairing the committee meetings on the bill. The committee had 15 separate meetings to consider S. 1308 and Senator JOHNSTON attended each. He skillfully led the committee through an extremely complicated subject while showing fairness to every member and point of view. I know we can all agree we are indebted to Senator JOHNSTON for his efforts.

Mr. President, we are also indebted to Senator HATFIELD, Senator DOMENICI, and other Members on the minority side for their work on this bipartisan effort, and it has been a bipartisan effort. The minority worked in a true spirit of cooperation with the majority as both sides joined efforts to put together what I think is indeed an effective bill.

Mr. JACKSON. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Kenneth Young, director of the Department of Legislation, AFL–CIO, in support of the pending legislation and opposed to the substitute amendment now before the Senate.

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

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

*Washington, October 2, 1979.*

DEAR SENATOR: On September 25, 1979, the Senate Energy Committee reported S. 1308, a bill to establish an Energy Mobilization Board. This important legislation can play a vital role in alleviating the threat to our nation's security and economy that now exists because of our dependence on imported oil. S. 1308 has the support of the AFL–CIO.

The United States has not built a major domestic refinery since 1963, and construction of vital energy projects throughout the nation is snarled in red tape. The energy crisis we face is real. We strongly urge the Senate to adopt S. 1308 as reported by the Senate Energy Committee and to reject weakening amendments intended to be offered, including the Muskie-Ribicoff amendment.

The proposed Energy Mobilization Board would speed up the decision-making process for national priority energy projects while at the same time preserving environmental values as well as state and local responsibilities.

Specifically, S. 1308 authorizes the Board to designate certain non-nuclear energy projects as national priorities and to establish binding schedules for Federal, state and local decisions on the project. Project schedules would be established only after full consultation with the affected Federal, state and local officials and must be sufficiently reasonable to pass judicial review. Only if a particular agency failed to make its decision on time would the Board be authorized either to seek court enforcement of the action or to make the decision for the agency within the constraints of existing law. In all cases, the right of Federal, state and local agencies to deny a project application would be fully protected.

To avoid unnecessary delay, all judicial challenges to decisions on priority projects would be reviewed in a single Federal appellate court, with appeals to the Supreme Court.

Finally, once construction had begun on a project, the Board could block the imposition of new restrictions—a change in the position of a local zoning board, for example—but only if the waiver was necessary for the timely and cost-effective completion of the project and did not endanger public health or safety.

The AFL–CIO strongly urges your support of the bill as reported to the Senate floor.

Sincerely,

KENNETH YOUNG,
*Director.*

Mr. ZORINSKY. Mr. President, I rise for the purpose of making an inquiry of the distinguished Senator, Mr. JACKSON, who is chairman of the Senate Committee on Energy and Natural Resources, who is so knowledgeable and helpful in these matters.

I will very briefly describe the situation about which I shall propound an inquiry. The Central Nebraska Public Power and Irrigation District owns and operates an on-river dam on the Platte River near Ogallala. It is the Kingsley Dam. The dam was completed in the early 1940's and has been in operation ever since. It is a good-size dam. The lake that it creates extends for over 20 miles and has a capacity of 2 million acre-feet and operates with a capacity of 1,800,000 acre-feet. The penstocks were installed when the dam was built but no hydroelectric generating facilities were placed in them at the time of construction. As we well know, the economic situation has changed and it is now economically feasible to install hydroelectric generating facilities in the penstocks at the Kingsley Dam.

The Central Nebraska Public Power and Irrigation District operates three other hydroelectric generating plants lo-

cated at other points in its system. This proposed installation of hydroelectric generating facilities at Kingsley Dam would nearly double their capacity. This proposed installation would add 50,000 kilowatts maximum and an average of 38,000 kilowatts of power. Were this amount of power produced by the use of petroleum, it would take 150,000 barrels of oil annually with an estimated cost of $3 billion or probably more.

In other words, the dam is already in place—the water is there—there is an opportunity for the production of a very significant amount of energy from renewable sources which will in no small way contribute to the energy needs of the State of Nebraska, the surrounding area, and to the Nation as a whole. That energy would be produced without smoke stacks to pollute the air and the source of the power would be continuous.

The Central Nebraska Public Power and Irrigation District has had an application pending with the Federal Energy Regulatory Commission since a year ago April and there are some intervenors. The district has advertised for bids and has a very favorable bid pending. They are anxious to proceed and the district is anxious to avail itself of the provisions of the pending legislation.

In the light of these facts I would like to ask the distinguished chairman if it is the intent of the Congress that the Board which will be created upon the passage of this legislation should consider the application for a priority status of a project such as I have described?

Mr. JACKSON. Yes, that is the intent.

Mr. ZORINSKY. I thank the distinguished Chairman for his response and the clarification that he has placed on this legislation.

Several Senators addressed the Chair.

Mr. DOMENICI. Mr. President, will the chairman yield for a few opening remarks?

Mr. RANDOLPH. Mr. President, if the Senator from Washington will just yield to me for a moment.

Mr. JACKSON. I yield to the distinguished Senator from West Virginia (Mr. RANDOLPH).

Mr. RANDOLPH. Mr. President, I ask this opportunity so that I may not pass a pleasantry on the chairman of the Energy and Natural Resources Committee, but so that the record will reflect my very genuine admiration for him as he has worked in the Senate over many years.

I say also personally that I appreciate the legislation he has brought us today which, in a modified form, can provide a vehicle for bringing energy projects on line quickly for the good of the entire Nation.

I also thank Senator DOMENICI, who is handling the present bill for the minority for the courtesies and the opportunities he has given as a member of our committee. He makes very diligent effort to be present and to participate in hearings of all types in connection with the subject matter before the Environment and Public Works Committee.

I say again that the chairman of the Energy and Natural Resources Committee has given, not only to the Senate and to the Congress, but to the people of the United States, a leadership role of which I am not unmindful. I do have a series of modifying amendments, somewhat middle ground, in connection with the Priority Energy Act of 1979, but I wish, to repeat Mr. Chairman, and to Senator DOMENICI as you join in the presenting of this bill, that your participation indicates further evidence of the dedication, the desire, and the determination you have to move forward at a critical time with regard to increasing our domestic energy supplies.

Mr. JACKSON. Mr. President, I want to thank the distinguished Senator from West Virginia (Mr. RANDOLPH) for his comments. He has been very gracious and very modest. I would point out that he was a leading cosponsor in the effort that resulted in the passage of the synthetic fuels bill program in the Senate by an overwhelming vote in 1975, and again in 1976. He also supported the effort for a Mobilization Board. The Board would have been created, would have gone forward, Mr. President, if we had something to mobilize. But when the House, after an overwhelming vote in favor in the Senate, voted down, in one case by one vote and in another case by a larger vote, such legislation there was not anything to mobilize.

I just want to point out that the United States Senate, Mr. President, has been ahead of the country in trying to find alternative sources of fuel, in this case synthetic fuels.

I just want to drive home this one point, Mr. President: The Senate has to put up or shut up. If Members of this body want to go back and face the electorate, especially during a period of rising prices and longer lines that can develop—and I predict will develop—I can only say that Senators who vote against this minimal effort to bring about a mobilization of our resources addressed to the energy problem are going to have a lot of explaining to do.

This is their chance, this is the first effort now that has ever been brought either to the House or the Senate other than what occurred in World War II and the Korean war, to address the question of how do you get things done.

Mr. President, we have an institutional crisis in this country. It is—and you hear it when you go back home and talk to your people, and what do they say? "You cannot get anything done any more." Now, that is the overriding issue. This bill makes it possible for local people to be heard, all groups, all elements of government to be heard. But what we are saying is that we will not tolerate filibusters. Mr. President, every year that the Alaska gas pipeline is delayed adds $1 billion to the cost of that project. Who pays for it? The consumers pay for it.

The tragedy of the Sohio pipeline—imagine, Mr. President, over a period of 4 years requiring over 700 permits. Now, what have we come to in this country? This is a challenge to the U.S. Senate to demonstrate that we can make the system work, and I am confident we will do it.

Mr. DOMENICI. Mr. President, I yield myself 15 minutes.

Let me say that it is really a pleasure to rise in support of this bill. At long last, the Senate as an institution, as our distinguished chairman has indicated, has an opportunity to put up or shut up, as I see it. We have an opportunity to say "yes" to an America that indeed is ready to say there must be some way to get rid of the delays that seem to have become a part of the American way of doing business—delays that sometimes are 5, 6, and 7 years—and in particular an opportunity to say, for critical energy projects in this country, "We are going to find a way to expedite without harming anyone."

So I am pleased to be the Republican who comes to the floor in an effort to convince the U.S. Senate that the time has come for us to act. I am also pleased to remind the Senate that some distinguished Senators on our side of the aisle who have heard almost every argument that will be made here today in opposition to this measure have joined in the report recommending that it be adopted as a new law of the land for America. They are Senators HATFIELD, BELLMON, and MCCLURE, from the Energy Committee. I believe that to have those three Senators on this report along with some distinguished majority Members clearly indicates this is a balanced field.

There will be those who will say that this is too drastic from the standpoint of expediting, or that it takes away some kind of rights on the part of the States to determine how long they need to approve projects, in a sense saying that this bill is not balanced in terms of America's energy needs versus other needs.

Well, let me say to the Senate, there is no Senator who has a more distinguished record in environmental matters than Senator JACKSON, who is reputed, and properly so, to have brought into being the NEPA law, the National Environmental Protection Act. And even knowing of the great environmental challenge and his concern, we heard him here today say there is also a concern for institutional prices in America.

Mr. President, this bill strikes an extremely delicate balance between the extreme necessity to cut bureaucratic redtape for priority energy projects and the continuation of protections under Federal, State, and local law. This balance was struck by the Energy Committee over the span of 15 lengthy markup sessions. I am convinced that the bill provides the strongest approach to cutting the procedural redtape, while at the same time positively preserving the substantive protections in our various statutes.

I need not reiterate in detail the problems which we face in our domestic energy situation today. We are dependent on imported foreign oil at levels approximating 8 million barrels per day. An interruption of even a portion of those imports would have devastating impact on our economy and national security. The transfer of wealth from the United States to the oil producing countries is running at the rate of $50 to $60 billion or more per year, with direct and indirect impacts on the economy, financial stability, and foreign policy.

It is completely obvious that we must act forcefully in many areas to break this virtual stranglehold on our Nation's well-being. We must develop fully all of our domestic energy resources. We must implement incentive measures to achieve meaningful, near-term conservation. And, we must act now to cut the bureaucratic redtape at all levels of Government which effectively handcuff new energy projects which are of national significance.

Twenty-eight Members of the Senate cosponsored S. 1308 when it was originally introduced on June 11 of this year. Eight Republicans, including four members of the Energy Committee, joined in cosponsoring the bill. One of our primary motivations in doing so was because of title II, the priority energy project title in the introduced bill, which was the original legislative vehicle for the bill before us today. Title II was the centerpiece of the introduced bill, and it remains the centerpiece today of any aggressive initiative to work toward the long-range solution to our devastating dependence on foreign oil.

President Carter acknowledged the critical importance of this priority energy project, or so-called fast track, proposal in his July 15, 1979, energy message, by proposing a similar concept with an Energy Mobilization Board. The details associated with the President's concept generally paralleled those in title II of S. 1308, as introduced, although certain provisions in the President's proposal involved broader powers and authorities. The Energy Committee carefully reviewed each provision in the President's proposal during the course of our markups. President Carter met with the committee on September 11, 1979, and generally endorsed our decisions in the bill before us, even though the committee did narrow some of the administration's broader powers and authorities.

Mr. President, we also received and benefited from comments during the August recess from the staffs of the Committee on Environment and Public Works and the Committee on Governmental Affairs. In attempting to strike the delicate balance I discussed earlier, we carefully considered the views forwarded by those committee staffs. While we did not adopt each and every recommendation, we did review them in our decision process and, I believe, developed a more careful balance as a result.

In all candor, Mr. President, throughout the 3 months of markup and the many interactions with the administration, other committees, and outside interests, both public interest and industrial, the committee agonized over the balance to be struck. Many proposed concepts were carefully considered and finally rejected as being too strong or too broad in authority. Some of the rejected concepts included: First, allocation of materials and prioritization of contracts and orders, as in the Defense Production Act; second, the establishment of a single Federal field inspector for any project, a de facto field czar; third, authority to waive in whole or in part the application of almost all Federal, State, and local laws; fourth, authority to reverse the decision of a Federal, State, or local agency which disapproves a required permit or other action; fifth, exempt generally the priority energy projects from the application of the Clean Air Act, the Clean Water Act and a host of other environmental and conservation laws; and sixth, eliminate all or most judicial review of regulatory actions at the Federal, State, and local level. Those concepts and many others are not in the bill before us today.

What is in the bill, Mr. President, simply is a series of procedural mechanisms which will set and enforce deadlines and will expedite the required regulatory and judicial actions for priority energy projects. All substantive provisions of all applicable Federal, State, and local laws are retained intact. All regulatory actions now subject to judicial review remain subject to judicial review. The only exception to these general statements is the so-called grandfather clause, which gives the Energy Mobilization Board authority to waive the application of certain future laws where there is no public health or safety impact. With that single exception, the bill only addresses procedural concepts necessary to insure that we can effectively expedite priority energy projects in this country.

The debate on this bill will develop further the detailed issues associated with the balance we have struck in this bill. I would urge my colleagues during the debate to retain uppermost in their consideration the critical nature of our Nation's energy situation. The real issue in the debate, which should not be obscured by the details, is whether or not we should proceed in the future with a business as usual approach to priority energy projects of national significance which will reduce our dependence on foreign oil.

If the answer is no and, we want to have a strong procedural mechanism, rather than business as usual, S. 1308 provides that mechanism. If, on the contrary, we are not ready to break through the business as usual syndrome, despite our critical energy situation, then we should reject the priority energy project concept. We should not water it down and get the worst of the alternatives. I believe the choice for the Nation is clear and that S. 1308 should be passed as reported. I urge the support of my colleagues for this bill.

I would urge my Senate colleagues to listen carefully to what we are trying to do here, to listen carefully to those who support this measure, because, as our good friend and chairman, the Senator from Washington (Mr. JACKSON) says, the Nation is going to be looking to see whether we are willing to act as we have spoken. I think that any effort to significantly weaken the authority of a national board to expedite critical energy projects is a vote against action. This committee has considered what this national Board should do and what powers it should have, and we have had every color of proposed power from none—from a sham—to adding substantive law which protects the American people.

I believe we have prudently gone right down the middle. We want to expedite the time frames, which seem to be duplicative and incessant in America, but we do not waive any substantive law. There are going to be those who will argue that by saying to the States, "You can only have so much time for permitting and processing," we are waiving their law. I want to remind Senators that there are many who think that America is in such a critical energy situation that we should create a mobilization board that would waive substantive law generally, Nation and State.

We have not done that. We have not waived national laws of a substantive nature. We did not give this mobilization board that authority. We have not waived local laws of a substantive nature, and we have not waived State laws of a substantive nature; but, having said that, we had to do something, and the something is that if a project is deemed critical, time frames within which all processes and procedures are to be met may be set.

There may be a challenge to the reasonableness of that, but when it is set it is set, and I submit that if we decide not even to go with that, we might as well abandon any hope of expediting any energy projects in this country, be they synthetic fuels, pipelines, major refineries, or whatever.

So I hope that, while the Senate has many problems for consideration, it will not forget that the gaslines were here, the crisis has not disappeared, America is behind in the development of major energy projects that we know how to develop and that we know we should be developing, that there is either money for or money will be provided for, and that we cannot build them because of the maze of conflicting, duplicative, time-consuming laws that have been created a new jargon in financing, now called "regulatory risk," and that is not only regulatory as to price, it is regulatory risk as to the uncertainty of how long the private sector or the public has to have money waiting to build a project. It is to that particular risk that this bill addresses itself.

If we do not want to do anything about that, we better be willing to say, Everything is OK. Everything is OK; whatever major energy projects America needs, we will build them; the private sector and the public sector are having no problem. They are being built.

I submit that anyone who wants to take that position here on the floor would be confronted with a litany of projects that cannot get started, that need some relief from the regulatory risk.

Again, we are not waiving any substantive law aimed at protecting the American people's health, aimed at protecting clean air and clean water, and against toxic substances; but we ought to be bold and imaginative enough to say we can do it quicker.

I truly believe it cannot be emphasized enough that the United States, giant that it is, is on its knees in terms of energy dependence. If we are, we certainly ought to turn ourselves somewhat free to get off our knees. That is what this measure will do. It is kind of a middle ground for select major projects. It

will provide a mechanism for expediting them.

So I believe the test is, Do we really want to permit America to move ahead in this regard, or do we want to continue to say, "Well, we do but," or "Well, we do, however"—"Well, we do, but we want to be sure of every little syllable, dot every 'i' and cross every 't,' "? That just assumes there are no unreasonable delays, which flies in the face of reality.

I hope everyone will realize the seriousness of this. It is not a synthetic fuel bill expediter. It may become that ultimately. But it provides a mechanism for major energy projects, to get the assistance of this body in terms of expediting time, the time that it takes, and that is all. In a nutshell, when you strip it of everything else, that is what it is.

So I hope that within the next 48 hours or so we will pass this measure substantially as reported, and certainly that we will not accept a total substitute for it to minimize its impact and unbalance or take out of balance the delicate balances of protection versus production which this bill attempts to provide.

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. RIBICOFF. 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. RIBICOFF. Mr. President, amendment No. 488 is in the nature of a substitute to S. 1308. The amendment represents a most careful balancing of the need for new mechanisms to expedite the construction of new mechanisms to expedite the construction of new energy supply facilities with the need to protect and preserve environmental values, State and local responsibilities, and individual rights of due process. It is a positive effort to reduce redtape, eliminate redundant regulatory actions, and to speed up the decisionmaking process for national priority energy projects. Yet it does so without undermining or destroying existing statutory safeguards.

The amendment's enforcement provisions are stronger and more effective than those proposed either by the administration or the Energy Committee. Under this proposal, the Energy Mobilization Board will act as a watchdog over the regulatory process for priority energy projects; it will be able to spot early on potential bottlenecks and dilatory action by Federal, State, or local agencies; and it will be given authority to go into court to force those agencies to meet the reasonable deadlines which they themselves have agreed to.

In the week since S. 1806 was introduced, the bill has attracted the interest and attention of a number of other Senators, as well as the support of many outside groups and individuals.

STATE AND LOCAL GOVERNMENTS

Mr. President, the proposals that Congress is considering to create an Energy Mobilization Board all will have a profound and far-reaching impact on intergovernmental relations. No organizations have a greater interest or more at stake in the legislation than those representing State and local governments. Thus, it is of great significance that as of Friday last week every major organization representing State and local governments had endorsed S. 1806, which is now amendment No. 488, as preferable to S. 1308, the Energy Committee alternative. The list of endorsements by these organizations include: The National Governors' Association, the National Association of Counties, the National Conference of State Legislatures, the U.S. Conference of Mayors, and the National League of Cities. In addition, the League of Women Voters and Common Cause have also joined the statements of support for S. 1806. My colleague, Senator ROTH of Delaware, placed letters of support in the RECORD on Friday.

I should like briefly to read excerpts from the letters and statement, to explain the reasons why these organizations find S. 1806 preferable to S. 1308.

The National League of Cities states the following:

> We believe your bill is much preferable to S. 1308 as reported by the Senate Energy and Natural Resources Committee. The central justification for an EMB is to force authorized local, state and federal decisionmakers to act expeditiously. We believe that your bill does this. And S. 1806 does it without running afoul of the historic and constitutional rights of state and local governments.
>
> By permitting the EMB to set enforceable schedules and deadlines for local, state and federal decisionmakers, your bill guarantees that decisions on priority energy projects will be made in a timely manner by duly authorized decisionmakers. By requiring that all decisions be made within a year of project application, your bill guarantees an expeditious decisionmaking process at all levels of government. And by allowing the EMB to monitor decisionmaking schedules and to obtain court orders forcing compliance when the schedule is violated or final deadlines are missed, your bill guarantees effective and efficient enforcement while avoiding serious constitutional problems that could embroil the EMB in litigation and keep it from exercising its power . . .
>
> Unfortunately, this rational approach to the EMB is missing from S. 1308, the Senate Energy Committee's bill. Many municipal officials have indicated to NLC their anxiety about just the kind of powers that S. 1308 grants the EMB. We are strongly opposed to Senate passage of S. 1308 as reported by the Energy Committee.
>
> Most objectionable to local governments is the power which S. 1308 gives the EMB to override substantive requirement of laws enacted after construction has begun on a priority energy project . . .
>
> Another major objection of local governments to S. 1308 is that it permits the EMB to make decisions under state and local law in place of duly authorized local and state officials. . . . Not the least of the problems with this provision is that it would necessitate another large bureaucracy with the expertise to make decisions based on local, state and Federal law.

The U.S. Conference of Mayors states:

> The U.S. Conference of Mayors is pleased to support your proposed legislation, S. 1806, the Energy Mobilization Board Act of 1979.
>
> The various proposals for creation of an EMB to move energy projects more expeditiously have been of great concern to Mayors for several months. S. 1806 meets many of these concerns directly, while still creating a mechanism which can get important projects going. Your proposal would keep all decisions within a one year after application framework, empower the EMB to monitor decisionmaking schedules, obtain court orders forcing compliance when the schedule is violated, and require consultation with state and local governments, among its most important components. These elements can be supported by Mayors who are intensely interested in playing an important part in reducing the nation's dependence on foreign energy sources.
>
> S. 1308 . . . has several flaws, including waivers of substantive requirements of laws enacted after construction of a project begins, waivers which are unchecked by any requirements for presidential or congressional concurrence, and the ability of the EMB to make decisions under state and local laws in place of duly authorized state and local officials.

The National Association of Counties endorsed S. 1806 with the following comment:

> While we support an Energy Mobilization Board we feel very strongly that state and local governments should retain authority over the final determination of decision deadlines as they relate to our laws and procedures. In addition, we feel that we should retain our procedures. In addition, we feel that we should retain our authority over siting and permitting decisions without fear of federal preemption. Consequently, we oppose any structure which would allow an appointed federal body to substitute its judgment for that of state and local decisionmakers.
>
> We have reviewed S. 1806 as introduced by yourself and others and we feel that of the EMB proposals currently under consideration by the Senate it strikes the best balance between protecting state and local prerogatives while insuring that decisions will be made quickly.

The National Governors Association lists a group of four objections to S. 1308, including power for EMB to set deadlines without obtaining the agreement of State and local governments; power of EMB to make decisions in lieu of State and local agencies; and the open-ended EMB authority to waive any statute passed after commencement of construction of a priority energy project. Because of these concerns the Governors Association states that it "supports the passage of S. 1806, the Ribicoff-Muskie-Roth substitute, as the alternative that best meets our concerns."

The National Conference of State Legislatures, in a thorough analysis of the two bills, wrote the following in explaining its support for S. 1806:

> We must take care that we do not create an agency that would only add to delays by imposing more cumbersome procedures fraught with more opportunities for litigation. The NCSL is concerned that the power proposed for the Mobilization Board in S. 1308 could well have just this effect.
>
> One of the most troublesome aspects of S. 1308 is the authority it gives the Board to make decisions in lieu of state or local agencies that fail to meet Board-set decision schedules. As a practical matter, substantial momentum could be lost during the time it would take the Board to complete decisionmaking record of the state or local agency, decide what information is

most important, and review existing state or local statutes and case law to determine how they should be applied. Secondly the Board would probably be more subject to lawsuits because it would be perceived as a single-purpose agency whose primary mission is to facilitate energy projects, not to observe the spirit of state and local laws.

(Another) question is whether the lean, fast-moving entity originally conceived by its authors could even pretend to know the intricacies of many state and local functions it might seek to displace. Simply to assume the responsibilities of a state or local agency, the Board would need substantial expertise to assure that its decisions are judicially sustainable. The likely result is thus not timely action but a redundant bureaucracy absorbed in defending itself against the unnecessary litigation its every action makes possible. Far better to let the state or local agency make the decision itself, under court order if necessary, than to create an untried entity with powers that tend to make self-justification its primary reason for existence.

A second area of difficulty arises from the authority given the Board to waive state and local laws adopted after construction starts on a priority facility. We understand the apprehension that a change in the rules after this point could severely affect the timely and cost-effective completion and operation of such a facility, but we question the presumption on which this concern is apparently based: that state and local governments would impose new requirements simply to obstruct a critical facility. Studies . . . have shown that in an overwhelming majority of cases, federal agencies, not state or local governments, have been the primary cause for delay.

For all these reasons, NCSL strongly opposes the adoption of S. 1308 in its present form. Given its sweeping power and the problems that could arise from them . . . this bill could be a major setback for the intergovernmental harmony so essential for effective national action.

On the other hand, we commend you for your bill, Mr. Chairman, not only for the improvements it offers, but for the flaws it lacks. We agree with you and the bipartisan groups of Senators who have co-sponsored S. 1806 and the EMB would be most effective without the troublesome provisions I have mentioned . . . (S. 1806) will go far to promote the international cooperation that will be necessary for sound, timely decisions. We appreciate your care for state and local concerns, and wish you and the co-sponsors of your bill every success in the upcoming debate on the Senate floor.

ENVIRONMENTAL ORGANIZATIONS

Mr. President, a group of the most active and influential national environmental organizations have formed an energy coalition to respond to the administration's energy proposals for environmentalists. This coalition includes the following organizations: The National Wildlife Federation; the Sierra Club; the Wilderness Society; the Solar Lobby; the Natural Resources Defense Fund; Environmental Action; Environmental Defense Fund; Friends of the Earth; and the Environmental Policy Center.

The energy coalition has expressed strong support for S. 1806 as an alternative to S. 1308. In a letter to all Senators, the coalition stated:

S. 1308 goes far beyond any reasonable response by Congress to the delays which have affected a limited number of well-publicized energy projects in recent years. The Jackson bill would:

Give the EMB unlimited authority to designate priority energy projects without regard to social, economic or public health consequences;

Empower the EMB to alter existing laws and, through a "grandfather waiver" to set aside laws and regulations yet to be written;

Authorize the EMB to pre-empt Federal, state and local agency functions;

Undermine the procedural safeguards of NEPA;

And exempt the EMB from many of the accountability requirements which apply to other government agencies.

In sharp contrast, S. 1806 will protect Constitutional rights of due process, the framework of our Federal system, and the concept of fairness and rule of law in the behavior of government agencies. It is carefully crafted to achieve a "fast track" in energy decision-making while avoiding the many problems of S. 1308. The Ribicoff-Muskie substitute is a far preferable—and far safer—approach for the EMB. We urge your support for S. 1806.

COMPARISON OF AMENDMENT NO. 488 AND S. 1308

Mr. President, I should like briefly to describe the major difference between amendment No. 488 and S. 1308.

First. Composition and accountability of the Energy Mobilization Board.

S. 1308 creates a four-member board, appointed by the President with the consent of the Senate. Except for the chairman, the members serve part-time and would not be subject to conflict of interest laws.

Amendment No. 488 creates a three-member Energy Mobilization Board appointed by the President and confirmed by the Senate. The Board would act collegially in regard to all the powers it exercises. Its members would serve full-time and it would be subject to conflict of interests, the Advisory Committee Act, and the Administrative Procedure Act.

It seems to me it is unwise to exempt the Board members from conflict of interest laws for the Board will routinely be dealing with large-scale construction projects in which millions and billions of dollars will be at stake. Thus, such an exemption would inevitably erode the credibility of the Board and open it to unnecessary suspicion even when its decisions were correct. In addition, given the substantial duties being granted to the Board, its members must devote their full time and attention to its activities.

Second. Designation of priority energy projects: National energy policy.

Furthermore, S. 1308 provides for a random selection of priority energy projects as they come in. It establishes an extremely loose criterion for designation, merely providing that the Board must find that a project is likely to reduce directly or indirectly the Nation's dependence on foreign oil. The designated decision is not judicially reviewable.

The amendment provides that no project could be designated unless it would contribute directly to a 50-percent reduction in the use of imported oil by 1990 and that it needs the fast track system to contribute to that goal. The designation would be judicially reviewable.

The amendment also establishes orderly procedures for managing the large volume of designation requests, for encouraging State and local participation in the designation process and for assuring consistency of the Board's action with national energy policies administered by the Secretary of Energy. Every 6 months, the DOE Secretary would initially screen the applications for priority status. This will assure that the projects follow national energy priorities and will provide a technical evaluation of each candidate, precluding the necessity of the Board building a large, redundant bureaucracy to render such technical judgment.

Third. Limitation of priority energy projects.

Mr. President, amendment No. 488 places no limit on the number of priority energy projects that may be designated.

The amendment limits the number of priority energy projects to 12 in any 1 year and a total of 36 at any one time. This restriction will give the Board the authority to place those projects that are truly of national significance and importance on the fast decision track, while at the same time foreclosing the possibility of wholesale use of this mechanism for projects of lesser importance that should utilize existing regulatory mechanisms. Without the discipline imposed by a numerical limit, the Board may designate so large a number of projects that agencies will not be able to carry out their regulatory functions properly.

Fourth. Deadlines for agency action.

S. 1308 requires the Board to establish a project decision with binding deadlines for every agency action that is no longer than 2 years from the date of designation, unless the Board determines that a longer period is necessary. This arbitrary 2-year deadline has no reference to the particular requirements of any statute which may be longer or shorter than the uniform deadline.

The amendment gives the Board authority to set reasonable deadlines for decisionmaking by Federal, State, and local agencies. The deadline can be no longer than 1 year after the completion of a permit application by the applicant, unless the Board finds that some special circumstance requires extension of the deadline. The amendment also provides for expedited judicial review of the reasonableness of deadlines.

Fifth. Waiver of procedural requirements.

S. 1308 authorizes the Board to adopt special procedures for Federal agencies governed by the deadlines set by the Board. Such special procedures include the consolidation of proceedings with other agencies, the establishment of permit requirements to eliminate unnecessary duplication, the substitution of legislative hearings in lieu of trial-type hearings and shortening the specific time period required by statute, regulation or rule for agency action. S. 1308 also authorizes State and local agencies to establish similar special procedures to meet deadlines imposed by the Board.

The committee report accompanying S. 1308, however, openly calls for an expansion of procedural waivers into areas that are normally thought of as substantive, thus opening the way for a much broader waiver of local, State, and

Federal statutes. The amendment will allow Federal, State, and local agencies to adopt special procedures to meet the deadlines imposed by the Board. It will not allow the Board to establish such procedures on its own for Federal agencies. In addition, the amendment will be limited strictly to procedural questions and will not allow substantive override of existing statutes under the guise of procedural changes.

Sixth. Enforcement of deadlines.

S. 1308 authorizes the Board to perform any agency decision in lieu of Federal, State, or local agency which has missed a deadline.

The amendment gives the Board power to seek a court order compelling action in accordance with the Project Decision Schedule. It also gives the Board the authority to monitor closely Federal, State, and local agency actions and to move in before a final deadline is missed if there is evidence that through neglect, lack of leadership or dilatory tactics an agency will at some future date miss a final deadline established in the Project Decision Schedule. This is a stronger, less complicated and ultimately more efficient and workable enforcement mechanism than the provision in S. 1308 calling the Board to step in and make the decision for the Federal, State, or local agency.

Giving the Board power to act in lieu of the agency is an unwise proposal. Specifically, it would: Lead to complications and inevitable delays in court actions if a court remands a case either to the Energy Mobilization Board or to an agency, to develop a further record for decision; or if a court decides that the Board has improperly applied the relevant law;

Decrease Government accountability by tempting agencies to "pass the buck" to the Energy Mobilization Board on particularly tough or policy-sensitive issues;

Erode the authority of independent regulatory agencies at all levels of Government;

Invite abuse of enforcement power for political purpose on decisions affecting large, capital-intensive energy projects;

Lead to the establishment of a large bureaucracy at the Board which would have to have the expertise to make decisions on a wide range of Federal, State, and local matters.

Seventh. Grandfathering priority energy projects.

S. 1308 permits the Board to waive any new Federal, State, or local law or regulation once construction has begun on a priority energy project.

The amendment contains no such "grandfather" provision. Providing for a "grandfathering" of priority energy projects fails to recognize that most new requirements are often enacted or promulgated as specific responses to problems which were unknown when a project was initially approved. Such an exemption would effectively prevent corrective action needed to protect the public and the environment.

Eighth. National Environmental Policy Act.

S. 1308 authorizes the Board to designate a lead agency before preparation of an environmental impact statement. The Board is also authorized to determine whether a Federal action requires an impact statement. In addition the Board is authorized to consolidate Federal, State and local impact statements into one Federal consolidated statement.

The amendment follows existing regulations in permitting the relevant agencies to decide among themselves the lead agency for preparation of the environmental impact statement. The lead agency then determines whether a particular Federal action requires an environmental impact statement. The amendment also allows State or local agencies to prepare their segments of a consolidated environmental impact statement if they so choose.

The amendment builds on the new expedited procedures recently promulgated by the Council on Environmental Quality and also more adequately protects State and local laws and concerns.

Ninth. Protection of rights of State and local governments.

While furthering the goal of a more expedited decisionmaking process for priority energy projects, the bill contains a number of provisions to protect the authority and rights of State and local governments. I am particularly indebted to Senator ROTH for his contributions in this area. The provisions include: A mandate to the Energy Secretary to consult with State and local agencies before making a final selection of candidates for priority energy project status;

Provision that where a single environmental impact statement is called for, that statement must include all the factors and criteria in a State or local law or ordinance in the manner provided in that law or ordinance;

Allowance for a State or local government to undertake to complete those parts of an environmental impact statement that relate to its jurisdiction and concerns;

Preservation of State court jurisdiction on purely State law matters;

Provision for the use of State courts for the enforcement of the Board's deadlines in matters related to State laws.

Finally, and possibly of greatest significance, the bill does not allow the Board to substitute its judgment for that of State or local agencies on regulatory matters relating to the priority energy projects.

In conclusion, Mr. President, I reemphasize that this amendment represents the most careful balancing of national needs and priorities with State and local responsibilities and the protection of individual rights and due process. It will reduce redtape. It will speed up the decisionmaking process for the Nation's most urgently needed energy projects. Yet it will do so without destroying the statutory safeguards Congress has so carefully constructed over the past decade.

The PRESIDING OFFICER (Mr. CULVER). The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, let us make one thing very clear: The Ribicoff-Muskie amendment would totally gut this bill.

If the Muskie-Ribicoff amendment is agreed to, we would be obliged strongly to oppose the bill as amended, for the reason that the amendment does nothing to help expedite time schedules but puts on another layer of bureaucracy and interjects the courts in that bureaucracy.

Mr. President, what is our problem? Our problem is that you cannot get anything built in the United States today.

I had hearings yesterday on refineries, and we have not been able to build a refinery in the Northeast part of this country for years. I have a list of them:

Shell Oil Co., Fuels Desulfurization, Northeast Petroleum, Supermarine, Inc., Commerce Oil, Steuart Petroleum, Olympic Oil Refineries, Inc., Occidental, Crown Central Petroleum, Ashland Oil, JOC Oil, Gibbs Oil, Granite State Refineries, Shell, Cumberland Farms, Saber-Tex, Pepco, Mobil.

All tried to build refineries in the Northeast and could not do so, and they gave up, because it is impossible to get anything done in this country with permits.

It is not just refineries. It applies also to oil terminal and pipeline projects.

For example, the Sohiols Pactex pipeline project was abandoned after $50 million was expended, after some 7 years, if I am correct on the amount of time. Fifty million dollars in 7 years, and they could not get the necessary permits. Tens upon tens upon tens of different permits, different agencies of Government, different time schedules, different attitudes toward the project, and they could not do it.

The Seadock Deepwater Port project, off the Texas coast, was abandoned after the expenditure of $20 million. Liquefied natural gas projects were abandoned or suspended. Others are as follows:

El Paso II, Eascogas LNG, Inc., Tenneco, Inc. Pending but threatened: Pac-Indonesia/Pac-Alaska, Tenneco Trinidad LNG, Inc., NPC-LNG, Inc., Southern California LNG Terminal Co.

Coal liquefaction projects have been abandoned. Some projects are as follows:

WESCO, El Paso Natural Gas Co., Panhandle Eastern Pipeline Co./Peabody Coal Co., Natural Gas Pipeline Co. of America, Northern Natural Gas Co. of America, Columbia Gas System, Inc., Exxon Corp./Carter Oil, Consolidated Natural Gas Co.

All projects were suspended or are inactive because of redtape delays and the permit process.

Coal liquefaction projects abandoned: Coalcon/Union Carbide, New Athens, Ill.

Nonnuclear electric power generating projects:

Kaiparowitz Project, Southern California Edison, Utah; Empire Energy Center, Empire District Electric Co., Missouri; Pioneer No. 1 and 2, Idaho Power Company, Idaho; Salem Harbor No. 5, North Shore No. 4, New England Power Co., Massachusetts; Sherburne County No. 4, Northern States Power Company, Minnesota; Sewaren No. 7 and No. 8, Public Service Electric & Gas Company, New Jersey; Rush Island No. 3 and 4, Union Electric Company, Missouri.

Mr. President, the list is almost unending of projects unable to be built in this country. If it were just a question of redtape, we could say it is bureaucratic irritation, and we can put up with irritation in this country. But at a time when inflation is raging at 13 percent, these delays are costing the consumer very dearly in this country.

This bill has nothing to do with nuclear power, but nuclear powerplants, they say, cost $120 million a year for every year of delay. Coal-fired plants, I would say, cost in the neighborhood of $50 to $60 million for every year of delay. So it is with these other projects as well. There is tremendous cost to the consumer because of delay.

What does our bill do, Mr. President? It rifles in on the question of delay.

Our bill was passed in the Senate Energy Committee—not noted for being a rightwing conservative committee at all, fairly balanced. Senators will recall that on natural gas, our committee was balanced, nine to nine, for what seemed like months on end. So it is a fairly balanced committee. Yet, we passed this bill in the Senate Energy Committee with only three dissenting votes.

This is a compromise, Mr. President. A number of us in the committee, including myself and the chairman of the committee, would like to have been able, under certain circumstances, not involving health and safety, to waive provisions of the substantive law of States.

And we discussed that over a period of many days, and finally we withdrew that amendment. We withdrew the amendment and came together as a committee on this bill that specifically does not waive substantive law except in the case of the grandfather clause, and we came together on that because we recognized that there are great sensitivities involved across this land and in this Senate on questions like waiving of substantive law and we wanted to be able to put together a sensible, workable bill to which an overwhelming majority of the Energy Committee did subscribe to this bill.

It is very simple. It involves three main thrusts. First of all, time schedules which can be enforcible; second, grandfather clauses; and third, judicial review which is expedited. Those are the three main thrusts.

It totally preserves the right of a State or a local subdivision of a State to make its own decision. In no instance do we deprive a State or local jurisdiction of making that decision, except when they refuse to make a decision within the time schedule and moreover we give them the opportunity to go to court to test the reasonableness of that time schedule.

But in the case of recalcitrant local boards or recalcitrant State boards or indeed recalcitrant Federal boards, we authorize the Energy Mobilization Board to make that decision for them when they do not meet the time schedule.

Mr. President, under the substitute amendment the board could not even consider a proposal until the Department of Energy had up to 6 months to review it. The proposal would split authority for designating projects between two agencies, would require two separate public comment periods and would take up to 10 months, or longer, just for a decision as to whether to designate it as a priority energy project. That is contrasted with 60 days in our case.

So, Mr. President, where we are in a national emergency, to use a tired phrase now "the moral equivalent of war," under the substitute amendment you would have up to 10 months just to determine whether this project was a priority energy project under the Ribicoff amendment, up to 10 months just to make that determination. Once that determination is made and a time schedule is set and they fail to meet the time schedule under the Ribicoff amendment, you would have to go to court to try to enforce it.

In the first place, I think the procedure provided for under the Ribicoff amendment is illegal because in effect it provides a mandamus for a State board, which frankly I think does violence to the very foundation of our Constitution, one of separation of powers. But even assuming that it is legal, can you imagine, Mr. President, having to go to State court to make a mandamus against a local zoning board and having to go up through three levels of State court and most of them do have at least three levels—some have four levels—the trial court, the court of appeal and the supreme court, just to get an order to force them to make a decision?

And then after that order becomes final, and I do not know how long it takes to go through three levels of State court on the average—I would say on the average more than 2 years—then you have to get the local jurisdiction to make its decision and no telling how long that would be. So, what you would have, Mr. President, you would be worse off with that bill than you would under this bill. That is 10 months to decide whether it is a priority energy project. Then you have to set up the time schedule and then you have to go through three levels of State court and maybe even on certiorari to the U.S. Supreme Court. So you would have delay compounded to delay which is already in the statute.

Mr. President, if we had to rely on the Ribicoff amendment it would be a bonanza for lawyers, because you would have appeals going in every level of court, State and Federal, and there would be a proliferation of delay.

Mr. President, another item we deal with here is the grandfather clause. Under the committee compromise, and it is a compromise, we do not overrule State substantive law save in one case and that is the case where substantial sums of money have been spent in reliance upon a stautory and permitting scheme, for example, where a company wanting to build a synfuel plant would go into a State, get all its permits, go through all the process and they are ready now. They have spent, let us say, as the Sohio-Pactex pipeline spent.

Let us take the Sohio-Pactex pipeline. They spent $50 million trying to get a permit. Let us suppose a company wants to build a pipeline and they spent $50 million and they get all these local permits, all these Federal permits, and they are ready to go. Their men are out there on the site, ready to start digging and along comes the State and says, "Well, we gave you a permit but now we are going to pass a new law. Our new law says there can be no pipeline in southern California."

That is the kind of new law which would be prevented under the committee bill because, Mr. President, it is not only the fact that they do pass these kinds of laws that prevent ex post facto the building of a plant, but it is the fact that companies which are going to invest hundreds of millions of dollars know that these State and local boards have that power to pass these ex post facto laws and therefore they are afraid, with good cause, to make the investment.

And the number of examples of these kinds of ex post facto laws are legend.

One company wanted to build a refinery in Piney Point, N.C., for example. The legislature comes along and passes one of these ex post facto laws that says there shall be no refinery at Piney Point. I mean at least they were direct. At least they did not try to hide their purpose behind a lot of legalism. They just said there shall be no refinery. So we prevent that kind of thing in the committee compromise.

Finally, Mr. President, we provide for consolidated judicial review. We are not against courts. We are not against lawyers. And we certainly reinforce the right to due process of law. But, Mr. President, when we have a real energy shortage which threatens the lifeblood of this economy, which holds our whole system hostage to the whims of people abroad, then we think at least that there should be a consolidation of appeals in one court in order to expedite those appeals. So under this bill we consolidate all those appeals in the Temporary Emergency Court of Appeals called TECA. They can all be heard, and rapidly heard. Due process of law but a consolidated and rapid appeal.

Mr. President, at this time the Senator from Oregon, I believe, would like to be recognized, and I will resume my statement when he finishes. I yield the floor to him.

Mr. HATFIELD. Mr. President, I thank the Senator from Louisiana for his courtesy in yielding the floor. I have, like everyone here, conflicts today that are beyond my control, and I would like to make an opening statement on this particular piece of legislation.

Although the President has recently announced the oil import regulation program, the fact remains that our Nation has increased its dangerous dependence on foreign crude oil over the last decade. At the same time, there is clear evidence that many energy projects have been delayed in a thicket of regulatory redtape. These facts tend to underline the need for legislation to assist certain energy projects in overcoming regulatory and administrative hurdles. Under this bill, nonnuclear priority energy projects of significant national importance, which

directly decrease our dependence on foreign imports, would be put on a "fast track" decisionmaking process.

The Senate bill creates an Energy Mobilization Board comprised of a Chairman and three members. The designation of a priority energy project would be made by the Chairman with concurrence of a majority of the members. In all other actions of the Board, the Chairman would have exclusive decisionmaking authority. Although the designation of priority energy projects would not be subject to judicial review, a decision not to designate a project as a priority energy project would be subject to expedited judicial review. This court review will deter the Board from abusing its discretion in designating certain projects.

Once the Board determines that a project should have priority status, it has the power to set "reasonable" deadlines for decisions by Federal, State, and local governments. At the Federal level, the Board will have authority, among other things, to consolidate into one environmental statement all Federal, State, and local documents and to designate one lead Federal agency to prepare the EIS. At the local level, the Board is expected to work closely through the Governor with local governments in order to set reasonable deadlines for decisionmaking. If an agency fails to meet a deadline set by the Board, which seems unlikely, the Board could either make the decision itself without the potential for long court delay, or it could seek a court order enforcing the deadline. In making a decision in place of another agency, the Board must apply the applicable law which would have been applied by that agency.

Aside from setting deadlines and in some cases limiting the application of NEPA, the committee does not authorize the waiver of Federal, State, or local substantive law. Let me underscore the term "substantive law." I have already been lobbied three or four times today by those who have the misunderstanding or misimpression that this does provide for the waiver of substantive law. There was strong feeling in the committee, however, that in order to give the Board any significant power it must have the authority to negotiate with State and local authorities to fix reasonable deadlines and set certain procedures in order to reduce the time involved in decisionmaking.

In order to implement these provisions, the bill before us would not significantly interfere or usurp rights of States or localities to regulate or restrict in any way the development of energy facilities. Although deadlines are established, local officials retain full authority for traditional activities such as facilities siting and permitting. Because no general waiver authority was granted to the Board, the committee felt that meaningful "fast-track" must give the Board power to expedite procedures at all levels of government.

One of the controversial issues during committee deliberations was the amendment on water rights offered by Senator court appeals. The number of lawyers in WALLOP. This amendment sought to clarify the Federal/State relationship over water rights as they relate to energy development.

The nature of the Federal/State relationship over water rights has been and continues to be a highly complex and frequently litigated issue. The flames of controversy were fanned recently when the Interior Department Solicitor issued his opinion on Federal water rights. Western States disagree with the Solicitor's legal conclusions which tend to broadly interpret the Federal Governments' rights to water. I share the concern which has been expressed by Senator WALLOP and others.

Coupled with my concern over the impact of energy development on scarce water supplies in the West, however, there was some question under the original language of the amendment as to its impact on Federal reserved water rights for management programs other than energy projects. Though technical changes in wording, I believe that the possibility of any misinterpretation of the amendment has been eliminated. This is clarified further by Senator WALLOP's additional views which state:

> Let there be no mistake. The amendment which the Committee adopted, and the expansion of that amendment which I believe is necessary and appropriate, would not limit rights the federal government might otherwise have to protect National Parks and Monuments, National Forests, or other reserved federal lands. This amendment, and its extension would clarify federal responsibilities regarding energy projects only.

Without going into further detailed discussion, let me conclude by stating that in my judgment the committee has fashioned a balanced, prudent bill to expedite decisions on critical energy projects. The specific provisions on judicial review, enforcement of deadlines, waiver of substantive law, and the so-called grandfather clause were debated extensively in a number of markup sessions. I believe that in these areas of controversy the committee-reported bill represents a good compromise and should be supported in principle by the Senate.

I thank the Senator.

Mr. DOMENICI. Mr. President, will the Senator yield before he concludes his remarks?

Mr. HATFIELD. Yes.

Mr. DOMENICI. I want to say to my good friend from Oregon, the ranking Republican on this committee, and I mean this in all seriousness, the statement which the Senator has just given is precisely the kind of statement, the kind of careful analysis and balancing, that we can always expect from the Senator as our leader on the Energy Committee. I commend the Senator for it.

I think the Senator is saying it is not an easy decision to go with an expediting process, but that in the interests of trying to solve a very, very major American crisis the Senator has found this is a good balance and all substantial interests are going to be protected in this process, and yet there is a chance of expediting some major projects. Is the Senator from New Mexico correct?

Mr. HATFIELD. The Senator is correct, and that is what I have tried to do in my attempt to find a compromise. I appreciate this overflattering and complimentary remarks.

I do want to say to the Senator he is in a position of leadership on this bill at my request because of his long involvement in this matter and in his own legislation that has been introduced into this Congress and upon which a major part of this bill really rests and depends. The Senator has been most active in this area, and I am very grateful for his taking the leadership at this time on this particular bill.

Mr. DOMENICI. I thank the Senator again for his superb remarks in support of the bill.

May I say to the Senator from Louisiana, that from what I know so far as speakers are concerned, Senator BELLMON would like a few moments to make a statement. He said he would be back shortly. He is the only one I know of, of the committee, who wants to speak at this time.

Mr. JOHNSTON. Mr. President, I frankly think, candidly think, that this amendment is very, very clear in what it does. I mean, to use again a tired and trite phrase, it guts the bill, and I understand that it does so.

Frankly, I think we have the votes to beat it and that, after all, is the bottom line. So what I propose to do and, frankly, I would like to do it right now, Mr. President, but I want to withhold for a short period of time because I know some of my colleagues want to be heard on this amendment, but I would like to move to table this amendment sometime in the next, well, let us say, by 2:30 or at such earlier time, if no one else is here to be heard, and I want to give that notice so that any colleagues who have something to say will have a chance to come over and say it.

We need to get on with the legislation and get it passed. I know there are a number of amendments pending and, Mr. President, if we cannot pass this kind of legislation to speed up the process of building energy projects we might as well find it out now. We might as well have Senators stand up and even endorse the status quo, which has been delaying, which has been killing, projects or not. We might as well let the people get on line on the issue.

As I said the other day, Mr. President, when we were debating the question of the breeder reactor, it seems that it is impossible in this country to build anything any more.

I do not want to overstate the question. I do not want to get carried away with semantics. But, Mr. President, I think it is palpably clear that in these United States of America we have lost something we had for decades, that made us great, and that is that "can do" attitude that says, "By gosh, let's go to the moon, let's make synthetic rubber; whatever it is, we as Americans are can-do people, and let's get out there and do it."

We have lost that, Mr. President, in project after project. Now we are specialists in bureaucracy. We are specialists in this country is mushrooming. When I

graduated from law school, I think there were 40 people in my class. Now that same law school is graduating over 10 times that many, and the number of people has not increased 10 times.

What we have become is a litigious society, where the law school becomes an object that justifies itself, where, with public interest laws, both on the corporate side and on the consumer side, environmental laws with environmental impact statements, permits of all kinds required, we cannot do anything anymore, and we are slipping behind. We are over 10 years behind the French in breeder reactors. We are falling behind in other technologies. We are sending $70 billion a year out of this country to pay for that imported oil, and all the while we go to court, we go to the local zoning boards, or we go to whatever other board it is, and let them twist us around and tie us up.

Mr. President, at or before 2:30 I am going to move to table this amendment, and I want to put all Senators on notice of that intention.

Mr. DOMENICI. Mr. President, I compliment my friend from Louisiana. I say to him, "While you were in committee I complimented you. You conducted most of the hearings. The minority compliments you for the fairness in this bill. You did not get everything you wanted; I think it is fair to say you consider this a compromise in terms of an expediting process."

There are those who have conferred with me, I say to my friend, who do not think the bill is strong enough because it will not move things as quickly as they think necessary. On the other hand, there are those who say it moves things too quickly and takes too many chances with other factors as important as producing energy.

Is it not true that there are a number of proposals the committee turned down, ultimately voting, all but three members, in favor of this proposal, that would have waived substantive law, that would have moved us in a much more expeditious manner than this bill? Is that correct?

Mr. JOHNSTON. The Senator is correct. First let me thank him for the kind words. Mr. President, this is very much a bipartisan bill. The Senator from New Mexico, as the ranking minority member of the subcommittee, has been one of the strongest leaders in this whole field of energy, not just on this Energy Mobilization Board, in which he played a key and critical part, but in the whole field.

This bill was a bipartisan effort to put together the best bill we could, with the broadest constituency both in the Senate and in the country. I think it does so, in such a way as to be passable in the Senate and to achieve something really substantial, but not at the same time raising these terrible fears about overriding substantive law.

Yes, we had an amendment that frankly I think we ought to pass, that authorizes the waiver of substantive law in those instances where health and safety are not involved and where the national interest looms great. But I withdrew that amendment, Mr. President, in the interest of unity and in the interest of getting a very broad consensus.

But having once compromised, if we went all the way over to the Muskie-Ribicoff amendment, I think the Senator from New Mexico can speak for himself, but I believe he would join me in opposing the whole bill, if that is what we did.

Mr. DOMENICI. There is no question about that. I would consider that an Energy Mobilization Board that, on its face, would probably take as long as or longer than existing law, with new untried procedures in terms of permitting and going to court, would be worse than what we have now. At least under the present law there has been some court clarification of many of the long delays.

Let me add one word to what the Senator has said. He said we have turned from being a "can do" to a "can't do" society; but there is one thing we have become very good at, and that is delays. Whenever we are not sure of something in this country, we delay. That seems to be just the way to do business. Everybody is protected, but no action.

If there is anything we ought to be capable of doing, it is to preserve the substantive law that protects us and still say there is going to be less delay. That is all the bill does. When you boil it down, what we are saying is that the application of substantive law, national, local, and State, has for some reason begun to take way too long, so we are going to narrow that down in this bill, only in energy projects of national significance, under a board that has to be confirmed by the Senate, charged specifically under this bill with preserving substantive law and setting reasonable time frames which can be challenged, all of which we attempt to expedite, to expedite the court procedures permitted under it, to expedite the time of the local and State governments to get their requirements complied with, and the National Government.

I submit that if we cannot do that, in the most significant time of crisis in this Nation's history short of the Great Depression, we ought to just give up.

I thank the Senator from Louisiana.

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

Mr. JOHNSTON. I do not have any time. Perhaps the Senator can get recognized.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. SCHMITT. Mr. President, I have a few questions now, and I am sure there will be more later as I examine this measure, and I hope all of our colleagues will. If the Energy Mobilization Board did not get my attention, the reference to going to the moon did.

I could not agree more with the two distinguished members of the committee that we must learn how to do things. The reason that we were able to do the kinds of things listed by the Senator from Louisiana was that we were capable of motivating young men and women to do them, to believe that it was the most important thing in their lives, whether it was going to the moon, digging the Panama Canal, building our weapons of war when we knew we needed them, when we were threatened by a totalitarian regime which was doing the same thing.

My question is whether this measure would motivate these who are going to build the projects to build them, whether it will truly expedite the process, or whether, in whatever form it ends up, it will just be another level of bureaucracy, subject to another level of litigation and further delay, rather than expedite the procedure.

Mr. JOHNSTON. Mr. President, I think the question is a good one, and I think the answer is a decided yes, with respect to the first part of the question, which deals with motivating people.

The big problem now, if you talk to industry across the board, whether it be those who are going to build synthetic fuel plants or electrical generators, or whatever they are going to build, is the uncertainty inherent in the present law, because they do not know how long it is going to take them to get to where they can build, and when they are risking their stockholders' or ratepayers' money, they have to have some degree of assurance.

Under this bill, they can get that kind of assurance.

First, they are assured that this is no ex post facto law, and that is very important, since, if that does occur, it can wipe out all their investment in building the facility, and that hangs very heavily over their decisionmaking process.

Second, it gives them the right to go in and get a schedule, a schedule they can rely upon, and they know if the State and local people do not meet that schedule, the Energy Mobilization Board will make the decision for them.

That is exceedingly valuable to the mindset of builders; that is, a schedule and a set of laws that they can rely upon.

I have heard, much more than once, people who want to build things say that it is really more important to have a decided policy, a certain policy, than it is to have an uncertain good policy, because a decided policy, even if it may be bad, is one thing they can rely upon and factor into their interest rates, their rate base, or their bank loans, or whatever.

Under the present law, there is no certainty. This gives that essential element of certainty.

Mr. SCHMITT. If the Senator will yield at that point, I am curious and would like to explore further later whether the certainty is really there. For example, has the committee made an estimate of the number of possible steps and the time required in those steps by which a particular decision by the agency—say, to step in ahead of a Federal or State or local agency—how many of those steps and how much time is going to be required before the decision is finally made and all litigation has passed?

Has the committee made a maximum worst case estimate of what that would be? Because the Senator knows as well as I do that somebody is going to find that worst case and utilize it.

Mr. JOHNSTON. We have not prepared a maximum worst case, but it is a pretty good case. For example, the designation as a priority energy project requires a decision from the Board within 60 days. We did not require a certain time frame for the decision process. We have report language, I believe, that speaks of 9 months. If we want to try to complete it within 9 months—excuse me; in no event, longer than 2 years. We decided not to put that 2-year language in the statute because we thought, frankly, that they could do it most times in less than 2 years. So we do not have an absolute time limit. But the Energy Mobilization Board is implored, mandated, to make the shortest possible time for decision.

If a local jurisdiction feels that the time allotted to it for decision is too short, then, within 30 days of the time that they are told the time is too short, they can appeal to the TECA court to get that extended. But they have only 30 days from the time they are told of the time limit to appeal. The appeal is limited to the question of reasonableness, and TECA should decide within a matter of weeks—we do not have a time limit on them, either. There is a time limit of 90 days on that.

Then, of course, they can appeal the substantive decision of the Energy Mobilization Board, but again, that goes direct to TECA, goes direct to one court. There is as much utility in this bill in the consolidation of appeals and in the expediting of appeals as in most any other section.

Mr. SCHMITT. Is there no appeal beyond TECA?

Mr. JOHNSTON. There is the appeal provided for, in effect, under the Constitution; that is, you can ask for a writ of certiorari in the U.S. Supreme Court. But those are quite rare.

Mr. SCHMITT. What about the interaction of State courts and the Federal courts?

Mr. JOHNSTON. Again, that is our very strong point here. Appeals from the local zoning board or from the local permitting agency go direct to TECA. They apply the decision criteria of State law, but the appeal goes direct to TECA. So you cut out the State court of appeals, the State supreme court, and all those intermediate steps. It goes direct to TECA.

Mr. SCHMITT. Would it be possible for the committee staff to prepare, maybe even in graphic form—if it is not in the report, and I admit, I am not finished reading the entire report—the normal flow and then what might be the diversion points in which legal appeal would be available and might prolong that flow? Is that possible?

Mr. JOHNSTON. I think they can do that. The Senator has to understand that the staff is here trying to guide a rather slow moving floor manager.

Mr. SCHMITT. It is merely a suggestion, obviously, not a request.

Mr. JOHNSTON. We can do that for the Senator. It is not one of the long, complicated processes that we have seen with the critical path that goes across the whole wall and all the little lines you cannot follow. This is rather a simple and clear-cut process.

Mr. DOMENICI. If the Senator will yield, on a timesaving policy, for example, I say to my colleague that we have a NEPA law which requires, in many cases, the way courts have interpreted things, more than one environmental impact statement for a major project. We all know that States have passed what have become known as little or mini-NEPA laws. Frequently, the State requires environmental impact statements.

For instance, in that regard, the bill provides the board with the option of seeing to it that all environmental impact statements for an energy project are consolidated into one and that a lead agency is designated, with the advice of the Council on Environmental Quality, to guide that single environmental impact statement for a major energy project.

We think that would, in many instances, be the difference between a project being doable or not, in the eyes of a private or public investing group. Because, as the Senator knows, we did not only have to prepare them, but courts interpreted them, then there was generic versus site specific; then there was Federal and State. Sometimes that took 3 and 4 years all by itself. I suggest that is a very worthwhile expediter in the bill.

Mr. SCHMITT. If there is conflict between State and Federal law with respect to NEPA, whose law would prevail? Is that a decision the Board can make?

Mr. JOHNSTON. We use the decision criteria of State law with respect to State permits and the TECA, the Temporary Emergency Court of Appeals—which, by the way, is not a temporary court any more. It was set up in EPA in 1973. That court would also use the decision criteria of the State law, much as the Federal courts do now on diversity cases under the doctrine of irreversible process.

Mr. SCHMITT. So if the State law were more stringent than Federal law, State law would prevail, is that correct?

Mr. JOHNSTON. Yes.

Mr. McCLURE. If the Senator will yield, on that one provision, I think the Board looks at the State law with respect to timetables and the Board has the authority to determine what the appropriate time frame is in which the State decision should be made. The State and the State agencies have the opportunity to make the decision under State law but within the time schedule established by the Board.

Mr. JOHNSTON. That is right. But when I say decision criteria, I mean both the State and the Board, the Energy Mobilization Board, as well as the TECA court use the decision criteria of substantive State law to decide whether someone is entitled or not entitled to a permit.

The Senator is correct on the question of time schedules. The State time schedules, which are procedural matters, would have to adhere to the Energy Mobilization Board time schedule.

(At this point, Senator HARRY F. BYRD, JR. assumed the chair.)

Mr. McCLURE. They would be given the opportunity at the local and State level to make this decision within that schedule established by the Board, and only in the event of their failure to do so would there by any Federal preemption of the decision. Then, if there were any Federal action to make the decision, it would apply the criteria of the State law, even though the State law might be of either greater or less stringency than the Federal statute. Then the appeal from that action, whether it be State action or Board action, would go directly to TECA.

Mr. SCHMITT. I thank the Senator. One final question and then I will yield the floor.

Has there been any estimate by the committee of the number of projects on an annual basis that the Board would be requested to deal with, say, looking at present activity and estimates of how activity might increase during the next few years?

Mr. JOHNSTON. No. We have not tried to estimate or limit it. What we do is mandate the Board only to consider the important projects because if they get every single energy project that comes along, then the designation does not mean anything. They will be so bogged down with the bureaucratic problems involved that they would not be able to expedite them.

Mr. SCHMITT. I submit that the number of priority projects submitted in order to begin to relieve a 50-percent dependency on imports of oil and a growing dependency on imports of gas is a fairly large number.

My concern is that it will be saturated. That is why I am wondering what the estimate might be and the level of activity the Board is required to accept, what size staff is required, and, of course, the cost of the operation.

Mr. JOHNSTON. We did not put a limit on the Ribicoff-Muskie amendment—it provides for a maximum of 24 at any one time—which we thought was best left to the Board, to make their own determination of how many met the criteria, and of that number how many they could handle.

Mr. SCHMITT. So the Board would be, in a sense, playing God with projects that might show about an equal promise, and they would have to make a decision based on how many they could handle.

Mr. JOHNSTON. I would not say they were playing God any more than the courts with these projects, any more than the Department of Energy. Somebody has to make the decision.

In that sense, sometimes there would be some arbitrary decisions made to accept this project and not to accept that one.

Mr. SCHMITT. But as of this time, the committee has no estimate of how many projects are conceivably in that reservoir from which they could select?

Mr. JOHNSTON. No. But we hope they will not take more than they can handle nor less than the country needs.

Mr. SCHMITT. I am saying that if they take what the country needs, I can envision that saturating a very large bureaucracy.

As the Senator knows, I voted against the Department of Energy because I thought its management structure was inadequate to solve the problems it was being asked to solve.

I think that clairvoyance has been proved out, at least so far.

My concern is that the Board, being small, having the kind of decisionmaking process that is required, is going to saturate at a fairly small number of projects.

I will come back with more questions on that subject.

I hope the staff can look at that before.

Mr. McCLURE. Will the Senator yield on that point?

Mr. SCHMITT. I am happy to yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

I only wanted to respond to say that the committee very early in its deliberations confronted the specific question the Senator is asking now about how many projects should be expedited, or priority energy projects.

The distinguished floor manager of the bill at that time offered, in essence, a kind of two-tier system, one with a very small number of very highly expedited projects and then a larger number of projects that would not be expedited so drastically.

I think had the committee agreed with the Senator from Louisiana's suggestion, it would have been possible for us to address that first very small group with even some substantive waiver in order to get them done rapidly and they would be very large, very important, very nationally significant projects.

But that failed in the committee. I voted for it. I thought the Senator from Louisiana was correct. But, nevertheless, it did fail in the committee.

Having gone past that point, then the committee said, "Well, we're going to have to be more careful because we're dealing with a much broader and less defined group of projects."

That was part of the reason we ended up in the committee with what I think may prove to be an inadequate procedure, but it is certainly an improvement over present procedure.

But there is no way to tell how many projects will be involved because the Board will have to make that determination.

Mr. SCHMITT. I hope the Senator will yield.

Mr. McCLURE. I am happy to yield to the Senator.

Mr. SCHMITT. I hope it would be possible before our final conclusion on this measure that some estimate could be made, because that is a very important part of my thinking, is this thing going to work, are they going to be so inundated with everybody's high priority projects that nothing happens?

Mr. McCLURE. I say to the Senator that the Senator from Idaho expects that that is the first problem the Board is going to confront, how to determine out of the mass of applications made to them which ones to entertain as priority energy projects and which ones to exclude.

The Board itself will have to wrestle with that determination because it is not defined in the legislation.

I do not think there is any way we can answer that except to say that the Board will have to make that determination. It will be based on its own estimate of its ability to digest all of the applications that come to it.

Mr. SCHMITT. I suggest the magnitude of the problem in this way. The bill excludes nuclear powerplants. But if it had included them, the number it would have to deal with right now is something on the order of 80 or 85. That is a big number. It would be very difficult to say one clear project was of less priority than another.

The only criteria might be, when could it come on line?

The same situation, I am sure, exists with respect to coal-fired plants, synfuel plants, and so forth.

I think the number is large and it will be extremely difficult for the Board to make those decisions.

Mr. McCLURE. I say to the Senator from New Mexico that the Board has the opportunity to look at some very large projects that would consume a great deal of its time and effort. It will have the opportunity to look at relatively smaller projects that either have great difficulty, and therefore exclude them because they simply cannot devote the time to it, or perhaps a smaller project that has very little potential for difficulty but would add to the Nation's energy supply, and expedite it.

So the Board will have rather large discretion under this statute.

I certainly agree with my friend that the task is very large. But I think in spite of that difficulty the opportunities for expediting some and to significantly gain time with respect to meeting our energy needs is enhanced by this bill as compared to where we are now, where every project, regardless of its significance, is equally bogged down in the redtape we have constructed at the local, State, and Federal levels.

Mr. SCHMITT. I hope the Senator is right. I will try to make up my own mind whether he is right.

Mr. McCLURE. I understand.

I yield the floor.

Mr. JOHNSTON. Mr. President, I yield to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, we debate in this body today the establishing of an Energy Mobilization Board. President Carter has characterized it as "an important ingredient in the battle to win our energy independence, a battle that all Americans must fight together."

We are debating this as the continuing crisis in energy continues to besiege us. The long lines at the filling stations are gone, for the present, but the ingredients that caused the gas lines and energy crisis, as a whole, in the United States of America are as real now, perhaps more real, than they were a few months ago.

In the section-by-section analysis of the report accompanying the Priority Energy Act of 1979 (S. 1308), the members of the Energy and Natural Resources Committee state that its primary objective is to increase the Nation's security by reducing its dependence upon imported oil. "The Congress is therefore justified in calling on all of its war powers as well as its powers to regulate commerce in order to reduce our dependence on foreign oil."

In my congressional career, I have worked toward common goals with my colleagues and my constituents with good and highly effective results. I believe others in the Senate generally feel accomplishment comes through cooperation.

I believe others in the Senate feel as I do: That accomplishments can come, not by polarization—polarization never settles any difference of opinion. If you are polarized and win the point, those who represent the other side, even though you have won your point, will constantly snipe at your legislative effort to break down what you have brought into existence.

What we do here today must be a cooperative effort. For too long we have had continuing rhetoric and inaction which stultify the Congress of the United States. This is the prevailing opinion, and properly so, of the American people. We toss measures back and forth consuming a great deal of time, but the necessary action has not been forthcoming.

I simply believe that accomplishment comes when we work very closely together, and we must accomplish final resolution on creation of an Energy Mobilization Board together.

With respect to the need for cooperation in the development of an Energy Mobilization Board, I have tried very much to avoid, as is known at the desk, a request for sequential referral of this legislation because I believe in saving time and trying to get approval, so that we can act, on a measure of high priority.

Senator BYRD, our majority leader, sensing the need for cooperation in the development of an Energy Mobilization Board, asked committee chairmen with jurisdiction over this issue to work together to avoid requests for sequential referral on this measure designed to compress the time it takes for Government approval or disapproval of high priority, nonnuclear projects including synthetic fuel plants, refineries, and pipelines.

Members of the Senate know that the National Environmental Policy Act, and other environmental statutes, are within the jurisdiction of the Committee on Environment and Public Works. I consented to this strategy of cooperation to try and expedite consideration of this energy legislation. Members of our committee, including Senator MUSKIE and Senator HART, who chaired the temporary subcommittee of the Senate Budget Committee to examine fast track energy proposals, felt the environment and public works committee should "move immediately to set hearings" because of our "major interest in and responsibility for these matters."

The regulatory procedures to be expedited under the Energy Priority Act of 1979 are within the jurisdiction of our committee. These include the National Environmental Policy Act already mentioned, the Clean Air Act, the Federal Water Pollution Control Act, the Endangered Species Act, and others.

I believed it necessary to hold full committee hearings because, as indicated in the majority leader's August 27 letter to Chairman JACKSON—

I (Senator BYRD) requested Senators RANDOLPH, MUSKIE, PROXMIRE, and RIBICOFF to direct the staffs of the committees they chair to work with the Energy Committee staff during the recess. It is my hope that this type of common effort will be effective and will lead to early consideration of this critical legislation.

Mr. President, I wish these efforts had been more effective. On September 5, an eight-page memorandum was sent to the Energy Committee staff from the staff of our committee. That document supported the concept of expediting the construction and operation of new energy projects. It also contained recommendations to limit the power of the Board so that procedural delays could be eliminated, and that is the feeling of Senator JOHNSTON, without undermining the advances in environmental protection that have been achieved. This memorandum contained recommendations on designation and definition of priority projects, expediting environmental impact statements, waiver of substantive law through grandfathering, judicial review, and other suggestions contained in S. 1308 relating to formation of an Energy Mobilization Board. Senator JACKSON, on September 14, assured me in a letter that his committee staff had communicated to all members of his committee the views of the Environment and Public Works members and staff, but that communication obviously does not insure total agreement.

During markup of S. 1308, Energy Committee members approved changes in the powers to be granted to the Emergency Mobilization Board, we had strong reservations and had so indicated. When we are indeed asking the Congress to call on all of its war powers as well as its powers to regulate commerce, all committees with legitimate jurisdiction affected should participate.

Mr. President, I cannot support in its entirety either the Priority Energy Project Act (S. 1308) or the Energy Redtape Reduction Act (S. 1806) which will be discussed during this debate. This Nation needs to streamline its regulatory procedures so we can develop alternative domestic energy sources without duplicative, cumbersome, and uncoordinated Government processes. But we must be sure we understand exactly what the Energy Mobilization Board will do, whether it is absolutely necessary, and whether it is wise to give it complete power to preempt most State and local authority. Remember, there was reason for establishing the procedures in the Clean Water Act, the Clean Air Act, the Surface Mining Act, and the Endangered Species Act, and they represent preservation of certain rights and values in our country.

If a grandfather waiver is granted now to a facility and it is later seen that such a waiver was a clear mistake because of the significant environmental impact created by the plant, what recourse would be available? Could the Government take away the waiver? Or would this be deemed a taking without due process of a right that had been bestowed by the Government and would therefore require some compensation? Members of the Senate must have adequate information and input to assess the impact of an Energy Mobilization Board. This Senator will try and collect essential facts during our debate.

Mr. President, in closing, to say that the action we take on this legislation will not only determine, to a large extent, the direction of the President's program, but also have much to do with its ultimate success or failure. This Senate and this Congress will have to make that decision in the next few days.

One issue confronting us in this bill is how to expedite the development of synthetic fuels and alternative energy sources, as Senator DOMENICI, not just a layman but an expert in this field, has stated, without incurring unacceptable costs in terms of money and of possible damage to our ecology.

Other aspects of the President's energy package must be measured by the same criteria, as a basis for determining whether or what changes may be needed in their form and substance.

I have thought much about this subject matter. Recently, I prepared an article for the Constructor magazine, the September issue, in which I have given a look at the background of the chaotic dilemma in which we find ourselves. As the poet has said, "The past rises before me like a dream." I can say to my colleagues that the way we have handled our energy matters over a period of years, both within the Congress and the administration, causes the past to rise before me like a nightmare. Absolutely. That is the situation for one who has labored in this field since 1942, who held hearings in 1943 and 1944 from which came the Synthetic Liquid Fuels Act, and then labored to assure that appropriations under that act were used for the pilot project plant in coal gasification, the development of oil shale and even agricultural and forestry products and waste.

That all was allowed to die after World War II, when what happened? The U-boats that had been patrolling our eastern waters and New England waters went home. The war was over. I say to those Members who are in the Senate today that everyone after the war said, "Let us go back to doing business as usual."

Of course, you could not do business as usual in World War II. We were faced with a shortage of petroleum products flowing into the United States. We were not then, however users of petroleum products to the degree that we are today. But there was a suspension of shipments of petroleum products into the United States of America. And so what happened? The only law ever placed upon the books to date on synthetic fuels was allowed to die.

I was not here, in the House or in the Senate. I was unable, because of being outside in private business, to do what I wish I might have been here to do. We never even used the amount of money that had been appropriated for the program. It was returned to the Treasury of the United States.

Well, we act after the fact, do we not? So very often we do, rather than act before the fact.

Because this article, which I call "A Crisis and a Challenge" is not just another article, I ask unanimous consent that it be printed in the RECORD at this point.

There being objection, the article was ordered to be printed in the RECORD, as follows:

[From the Construction, September 1979]

A CRISIS AND A CHALLENGE

(By Senator JENNINGS RANDOLPH)

A few months ago I attempted to assess the shape and nature of problems which might confront the Congress and the Administration this year. It was my general conclusion that they would encompass at various times the "three E's"—energy, economy and environment—with each demanding some type of high-priority attention.

Even viewing the situation from that relatively short-range perspective, however, I did not anticipate that the prediction would prove quite so accurate quite so quickly or that we as a Nation would already be confronted with a situation posing serious and interlocking problems simultaneously involving all of those three areas.

Yet that is precisely where we are today.

It is not over-stating the case to suggest that, short of war, we have faced few situations more critical than that created for us by reliance on foreign fuel and energy sources. By the same token, the crash program for synthetic fuel development and related measures being proposed by the Administration as a way of escape from that economic stranglehold could well become the most ambitious and costly federal spending program in peacetime history.

There appears now to be no way of avoiding the issue, with development of alternate fuel sources the obviously preferable course to continued long-range dependence on foreign oil.

That change of course is, in fact, already overdue and could have been achieved much more smoothly and with far less cost if the signs and portents of the future had been more generally recognized and needed when they first became evident.

The concept of synthetic fuels is not new. It is only the fulfillment that is still to be realized.

I recall with mixed feelings, my introduction in 1943 of a bill [H.R. 3209] which authorized the Secretary of Interior, through the U.S. Bureau of Mines, to build and operate plans to produce liquid fuels from coal and other substances.

In urging its adoption I observed that: "we certainly do not want to let ourselves be panicked into emptying our natural petroleum reserves of every drop while waiting for satisfactory coal liquefication methods to be developed."

President Roosevelt provided additional initiative when he signed in 1944 our bill mandating development of new technologies to produce ethanol, methanol, and other liquid fuel from coal, oil shale and agricultural wastes. The program was terminated 11 years later after an outlay of $82 million because at that time the synthetic fuels could not compete economically with petroleum and natural gas supplies. (Unfortunately, while the decision was understandable on that basis, it resulted in loss of data which could have formed the basis for a

sound synfuel program. That data would have been immensely valuable now, allowing the vast sums presently being proposed for such ventures to be used for advanced technologies rather than being devoted in part to further basic research to rediscover the evidence which had previously been compiled.

That would apply particularly in the areas of coal liquefaction and gasification. I am persuaded these offer the greatest promise for practical reshaping of the energy program in the relatively near future. The raw resources for these fuel innovations are already available in ample supply.

I had very much hoped that we would be well along that road long before now. I was not in Congress when the first synthetic fuels program was terminated, but I began working on a national fuels and energy program again shortly after my election to the Senate in 1958.

In 1961 I observed in testimony before the Senate Interior Committee: "Every year that passes in which we become more and more dependent on foreign oil to buttress our national economy and security perhaps is one year nearer to disaster. We are gambling on our Country's future."

Evidence suggests following that course has been a losing proposition in the intervening years and that the mounting risk is no longer acceptable.

There is no need to dwell further on what might have been, except to the degree that it helps chart a new national course for the future.

And that is the task which challenges Congress and the Administration now.

It must be recognized at the outset that the dimensions of the Administration's new energy plan are awesome and its provisions complex and potentially controversial.

That is inevitable in any proposal which envisions a $142-billion outlay—$88 billion of it for synthetic fuels—and creation of two new federal entities armed with sweeping powers to operate the program.

Each of the steps being proposed for reaching the program's ultimate goal—a reduction of oil imports by 4.5 million barrels a day by 1990—will demand close scrutiny and carefully-crafted enabling legislation if it is to effectively serve the intended purpose.

Measures already being proposed in this area suggest that, while there is general consensus on the objective of the alternative fuel concept, there may be a disparity of views on how to achieve it.

Among those differences is the question of how much authority should be given to the operating agencies in carrying out the program, how they should be structured, and what their precise mission should be in the process of synfuel producton to replace oil and natural gas.

A key issue which could prove the most troublesome of all is the question of program financing and what action Congress will take with respect to the oil industry windfall tax on which the President is relying to pay for the massive alternate fuel undertaking.

Those questions will not be resolved speedily, nor should they be. The stakes are too high and the issues too critical to permit any hasty judgment.

A significant start toward that goal is possible, now, however, even while the parameters of the long-range effort are being established. All that is needed is an Administration commitment to, and effective use of, some key provisions of existing law and policy.

That applies particularly to the potential for greater coal utilization over the next two to three years.

It is there that failures to capitalize on available possibilities have been most evident and most damaging from an energy standpoint.

A case in point is the Federal Non-Nuclear Energy Research and Development Act adopted in 1974 and financed in 1977. It established a loan guarantee program for commercialization of synthetic fuel production—in effect making the federal government a partner with private industry in coal liquefaction and gasification efforts, oil shale utilization, solar and geothermal energy research, and examination of other renewable source technologies.

The Department of Energy, given responsibility for operation of the program, has fallen far short of the Congressionally-mandated target.

The same kind of failure is evident in implementing other provisions for coal utilization provided by existing law.

For example, the proposed Department of Energy budget request for coal research and development in fiscal year 1980 eliminates certain demonstration projects which could be used immediately and allocates money to more complicated coal projects which will take years to perfect. The small gasifiers program will receive no support in 1980, although Congress in 1976 called for a transfer of DOE funds from another program to build 24–26 additional small gasifiers. These small gasifiers can be utilized to fill energy requirements for individual buildings, shopping complexes, and industrial parks. Full exploitation of this concept could possibly result in enormous energy advances in a relatively short period of time. But these systems are apparently being ignored by the Department of Energy.

Another largely-unrealized potential for oil use reduction is coal conversion. Admittedly this effort has been hampered to some degree by a flood of conflicting and complex regulations. There is no question as to the need for better coordination and flexibility in those control efforts.

Yet the President's Coal Commission, on which I serve, has located more than 60 existing coal-capable electric utility plants now burning oil which should be reconverted to coal. These plants also could meet existing sulphur emission limitation standards in that changeover.

That reconversion, the commission reported on July 12 to the President, would save 400,000 barrels of oil a day by 1985.

The commission also recommended replacement of oil and gas-fired boilers (which do not have the capacity for conversion) with new coal-fired units. It is estimated that such replacement would save 500,000 barrels of oil by 1985 and a million barrels daily by 1990. Finally, the report urged that no new large industrial boilers be permitted to burn oil or natural gas.

In combination, those three recommended actions would result in a saving of 1.3 million barrels daily by 1985 and 2.3 million barrels by 1990. This represents a 25 percent reduction in oil imports by that date and accounts for half of the goal the President has established.

The fact that there have not been more conversions already is simply the result of delays and inaction on the part of the Department of Energy. At last count DOE had issued orders for only seven of 30 facilities certified by the Environmental Protection Agency for the changeover.

That is not a satisfactory record. It is essential that this DOE performance be substantially improved without delay so that the benefits of these already authorized programs can be realized to the degree intended by Congress. I have stressed to President Carter on several occasions the need for a greater commitment to these ongoing efforts. It is particularly true now as we seek a base from which to embark on a full-scale alternate fuel exploration. It could also be an important factor in the forging of a coalition of Congressional and Executive initiatives needed to produce a consensus on the form and substance of such a program.

It is too early to predict how closely the final product will resemble the President's energy package unveiled in mid-July.

It is already possible, however, to anticipate with some degree of certainty the sort of results which any undertaking of this size and nature may have.

And that is the point at which the "three E's" come into the picture together.

There will, first of all, be environmental problems and issues associated with synthetic fuels production which must be anticipated and addressed by Congress in fashioning legislation for full-scale program development. We must insure that any measure we adopt provides safeguards against possible hazards stemming from the altered approach and not covered by existing legislation.

Many questions are certain to arise during the course of that consideration but some are obvious at the very outset. Among those which we must ask ourselves are:

How severe is the trace element problem often produced as a byproduct of many synthetic processes such as nickel, benzene, hydrocarbons and lead? To what extent will these elements be spread throughout the environment? In addition, will the fact that synthetic fuels create twice as much carbon dioxide as direct coal burning require intensive reforestation efforts to absorb the excess?

Should a large synthetic fuel effort be linked to mandates to limit fossil fuel use, including reduction of gasoline sales?

Can effective environmental control be built into commercial plants to protect the health of workers and others living near synthetic fuels plants?

What will be the cost of a full-scale environmental control plan for a synthetic fuels industry?

It has been recognized that final and definitive answers to some of those questions can be secured only through construction and testing of actual commercial size plants.

By anticipating environmental requirements in advance at each stage of the program development process, however, it may be possible to eliminate, or at least minimize, problems which might otherwise delay or jeopardize the undertaking.

To be most effective, that "from the ground up" environmental involvement would figure in design and evaluation of synthetic fuel facilities. It would also be taken into account in assessment of water requirements and site selection needs for such facilities and in judgments on the economic and social impacts on affected communities.

I hope that through this approach it will be possible to develop a synthetic fuel industry which can make the Nation more energy self-sufficient without degrading its environment or creating new and serious health hazards.

Any concept which fails to meet both goals would, in my judgment, be unacceptable as a solution to the National dilemma we face and I would oppose its adoption.

Any assessment of the alternate fuels plan, I would stress, must also recognize its farreaching economic implications.

With double-digit inflation already a grim reality the addition of a $142-billion new enterprise—with predictions in some quarters that the total could be much higher—is bound to have some tremendous reverberations in our financial structure. Such a venture into new energy areas will certainly translate into higher costs and higher taxes for business, industry and the consumer for many years to come.

It will involve the taking of some very significant technological risks to determine whether, or how soon, new and sophisticated fuels can be produced in sufficient quantity to meet demands at an economically feasible price. There will certainly be some failures, perhaps dramatic ones, before there are successes. And they will be expensive.

New fuels will also require new distribution methods, facilities and techniques, resulting in some serious disruption in established systems and in patterns of consumer energy use.

Here again, the costs of change are going to be high, perhaps astronomical.

That imposes a special responsibility on Congress to examine every facet of the proposed program at each stage. We must assure, as far as is possible, that the vast investments which the program would require are justified, that they will be earmarked for the correct purposes, and that they can be reasonably expected to bring the Nation to a new energy era.

I believe the plan must, and should, be judged on that basis and accepted, rejected or modified to the degree necessary to achieve those goals in a reasonable and practical way.

Finding the right formula to resolve this energy crisis may be the most difficult of this or any other recent Congressional year. It will require our best efforts and those of the Administration in formulation of a program and all the innovative enterprise and ingenuity of American business and industry to carry out its mandate.

That is the shape of the opportunity and the challenge inherent in this crisis situation.

It is a test we cannot afford to fail.

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. RANDOLPH. I yield to my able colleague.

Mr. DOMENICI. Let me first commend the Senator for his tremendous remarks here today. Obviously it must be very difficult for him, having seen the problem of America being without alternatives in terms of energy, and yet having so much coal and other resources, to be unable to act, when he knows we had a chance to bring those technologies into fruition years ago. It must be enormously frustrating for him.

In the Senator's honest opinion, does he believe that we could bring onboard 8 or 10 synthetic fuel plants—and I say 8 or 10—the 3 major conversions, with 8 or 10 technologies, 50,000 barrels a day or so for each conversion. Does the Senator think we could bring them onboard with business as usual in terms of the regulatory process in this country?

Mr. RANDOLPH. Absolutely not.

Mr. DOMENICI. So whether this Mobilization Board says synthetic fuels or not, if they happen to end up being energy projects, it is the Senator's opinion that without an expediting procedure, they will not be built, is that correct?

Mr. RANDOLPH. That is my feeling. I have so said and I am glad to reaffirm it now.

Mr. President, I yield the floor.

Mr. JOHNSTON. Mr. President, I simply want to thank the distinguished Senator from West Virginia for putting this whole matter into context, particularly in historical context. As he says so very eloquently, if we do not change this law, if we stay with business as usual, then, by the time that I have been in this body as long as the distinguished Senator from West Virginia has been in Congress, we shall still be talking about synthetic fuels and the opportunity we missed back in the late 1970's.

I thank the Senator for putting it so well in the context of his leadership.

Mr. DOMENICI. Does the Senator from Louisiana really think he is going to be here that long?

Mr. RANDOLPH. Mr. President, I have served for and with eight Presidents. You know, Presidents come and go. It is a privilege to be here with all of the Senators.

Mr. JOHNSTON. Hope springs eternal, I say to the Senator from New Mexico.

Mr. DOMENICI. I am sure the Senator's people will continue to exercise their good judgment and continue to bring him here. But we hope we do not have to make that hindsight observation.

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

Mr. RANDOLPH. I yield.

Mr. JOHNSTON. I thank the Senator for his comments

The question of committee jurisdiction is a sensitive one, and all of us, to the maximum extent, should try to accommodate it, not just by the strict text of the rules but also by the spirit of what the rules provide.

I say to the Senator that I had an amendment in committee which would have waived substantive law, and that was really the key amendment, it seems to us, which might go right up to the edge of the jurisdiction of the Committee on Environment and Public Works.

The first thing we did was to check with the Parliamentarian on the question of whether that, in fact, would encroach upon the jurisdiction of the Senator's committee. We were advised that so long as the Energy Mobilization Board would make the decision for the local boards or for the Federal boards, it would not, in his judgment, encroach on the jurisdiction of the Senator's committee.

Nevertheless, we determined in our committee that, in the event we were able to agree to that amendment in the committee, we would present it on the floor as a committee amendment and not present it as part of the bill—that is, to keep from encroaching on the jurisdiction of the Senator's committee.

As it happened, we compromised the whole issue and withdrew any waiver of substantive law and came up with this joint bill, which we do not feel and which we hope does not encroach on either the letter nor the spirit of the jurisdiction of the Committee on Environment and Public Works.

But the Senator has been a strong leader in this whole field and a strong leader on the consolidated approach. I recall he was the coauthor, and in fact the principal author, of Senate Resolution 45, where we studied this whole energy thing and had a joint committee effort.

Mr. RANDOLPH. Senator JACKSON and I and many others worked together.

Mr. JOHNSTON. I hope we have achieved a proper respect for the various committee jurisdictions. To the extent that we have not—and I hope the Senator agrees that we have—but to the extent that we have not, I, for one, will certainly redouble my efforts to continue to work with the Senator from West Virginia in this area in the future because it is a sensitive one and I respect not only his committee's jurisdiction but the distinguished Senator from West Virginia has been a great leader in this whole field, as well as the distinguished Senator from Maine and others on the committee.

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

Mr. RANDOLPH. Yes; I yield.

Mr. MUSKIE. This colloquy, I think, offers an appropriate opportunity to discuss the procedure for disposing of this legislation on the floor. The fact is that most of the substantive legislation impacted by the pending bill is within the jurisdiction of the Environment and Public Works Committee. We agreed prior to the August recess to not insist on sequential referral in order to make our contribution to the shape of this legislation and agreed that as a substitute we will try to work at the staff level on a consultative and cooperative basis in order to expedite this legislation.

The staffs did consult, and I gather the staff of the Energy Committee was cooperative in the sense that they received suggestions from our staff and communicated them to the members of the Energy Committee. What I find happened is the members of the Energy Committee, without our background in the substantive law, produced a result that to me does not sufficiently reflect the substantive problems that we see emerging.

The Energy Committee has undertaken to try to make a distinction between substantive and procedural law.

It has been a long time since I was a law student; not quite as long as when I was a lawyer. But I remember an admonition of my law professors that a substantive right without a remedy is no right. It is not quite that easy to separate substantive law from procedure. I think the pending legislation has problems in that respect that we seek to address.

Not having had an opportunity, as members of the Environment and Public Works Committee, to make our impact on the pending legislation we have worked informally and included in our group members of the Governmental Affairs Committee because of Senator RIBICOFF's, Senator ROTH's, and Senator PERCY's very great interest in these issues to try to develop a common approach to the problems that we see.

Senator RIBICOFF took the leadership in shaping the substitute which has been offered. I think the substitute that has been offered is a good piece of legislation and it moves, I think, effectively in the two directions of expediting regulatory decision and also protecting important issues of substantive law.

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

Mr. MUSKIE. I yield.

Mr. RIBICOFF. I am pleased the majority leader is in the Chamber. Before

the recess the majority leader, because of his deep concern to move the President's energy program, called to his office the distinguished Senator from Washington, the chairman of the Energy Committee, the Senator from Maine (Mr. MUSKIE), of the Public Works Committee, myself of Governmental Affairs, and Mr. PROXMIRE of the Banking Committee. He asked us to cooperate together in such a way as not to delay this bill. All of us promised the majority leader that we would try to work this out, not have sequential referrals, since we wanted to expedite the legislation, and that during the recess the staffs would meet for substative discussions and then after the recess they would come back to the distinguished Senator from Maine, the Senator from Wisconsin (Mr. PROXMIRE), and myself, for further discussions to see whether we could have an input coming out of our varied jurisdictions.

There were some desultory conversations between the staffs, but little of substance was changed by the members of the Energy Committee. All of us from the other committees devoted many hours to try to fashion this legislation to have meaning. All of us had an interest in this legislation and we were, for all purposes, willing to give up our jurisdictional rights so that we would satisfy the request of the majority leader to have something of substance and in which we could all have an input.

It is very interesting that here we have as cosponsors of the substitute five chairmen of major committees. We came in here this noon. We discussed with the distinguished Senator from Washington and the Senator from New Mexico the possibility of working out a time agreement of some 6 hours for a discussion of this substitute so we could have a full debate on major issues and then we would have a vote. There was no intention to either filibuster or to have a delay. But there were so many Members of this body who wanted to have an input in the debate that we felt that 3 hours on a side was a minimum and that we would debate most of the day with votes coming early tomorrow. It was to my amazement that I find now that the distinguished Senator from Louisiana, who was not part of this agreement, now intends to move to table this legislation without giving an opportunity to really discuss this measure in its entirety.

This legislation is of such substantive meaning for the entire Nation. There is an alternative that has the support of many organizations. Every governmental group—the Governors, the counties, the cities—and every environmental group is in favor of the substitute and yet there is not any opportunity for a discussion.

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

Mr. RANDOLPH. I yield to the Senator.

Mr. JOHNSTON. I simply say to the distinguished Senator from Connecticut, as I told the distinguished Senator from Maine, I do not want to cut off Members who have important statements to make. At the time I talked about the motion to table there was virtually no one on the floor and we were speaking to ourselves. At least that is one way to get the attention of those who wish to speak. As long as there is someone who really wants to speak and has a substantive statement to make, we will certainly allow that.

Mr. RANDOLPH. That is exactly what I am doing.

Mr. RIBICOFF. Mr. President, if the Senator will yield for a second, the majority leader is here. There was a willingness, apparently, for a time agreement and there is still willingness on our side for a time agreement where we could have a full debate and then have an opportunity to vote. I thought as we discussed this with the members of the Energy Committee that there was this understanding. I had cleared this with the distinguished Senator from West Virginia, the Senator from Maine, and the Senator from Delaware, Mr. ROTH. All of us had come to what we thought was agreement for a 6-hour time limitation.

On a bill of such major importance I do not think that that is too much time to discuss this.

Mr. JOHNSTON. May I say to the Senator that is fine with our side. We are willing to go along with any time agreement that you wish.

Mr. ARMSTRONG. Mr. President, we cannot hear.

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

Mr. RANDOLPH. I yield to my majority leader.

Mr. ROBERT C. BYRD. I would like to make this observation to what the distinguished Senator from Connecticut has said. On a time agreement, I was approached with the idea of having a 6-hour time limitation on the substitute and 1 hour on any amendment. I understood in talking with the minority there were some problems over on that side at that time. However, it was indicated that we might proceed and yet be able to arrive at some kind of a time agreement, and I hope we can.

So, if at the moment, as I have listened to the distinguished Senator from Louisiana, and where I have gathered from what he has stated that he does not intend to press a tabling motion immediately so that the debate can go forward, we can reach a conclusion on the matter or we can get a time agreement hopefully that will be fair to all sides, that may be accomplished.

Mr. MUSKIE addressed the Chair.

Mr. RANDOLPH. The Senator from West Virginia now has the floor.

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

Mr. RANDOLPH. I will yield; yes, sir.

Mr. MUSKIE. You know, it is one thing to be given time at the sufferance of the floor manager of the bill, to decide when and if he will offer a tabling motion. It is another thing to have time as a matter of right.

I understand the Senator from Louisiana is a generous man, but if I were in his shoes floor-managing a bill, controlling time at my own will as to when I will make a tabling motion, I could use that pretty arbitrarily, and I think those who support Senator RIBICOFF's substitute have a right to sufficient time to make the case.

What we wanted to do was to use that time, rather than a series of amendments, and I have 40 amendments at the desk which I would be glad to call up one at a time in order to get the time. But what we prefer to do would be to have an adequate time to cover the range of issues indicated so that Senators could be informed and then make a decision.

I have no objection to that. I have no desire to prolong this debate. I am not a natural filibusterer.

Mr. JOHNSTON. I would be willing to go along with anything the Senator wishes.

Mr. MUSKIE. Would 6 hours do it?

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. JOHNSTON. That is agreeable to me. If the minority agrees, 6 hours are fine with me.

Mr. DOMENICI. Let me say to my good chairman he knows that from early this morning I was unable to get agreement, because some Members are absent, to a time certain, but I have clearly indicated that I do not want to be part of cutting anyone off from debate. I told Senator JOHNSTON that you wanted to speak and Senator RIBICOFF wanted to speak, and he knew you were coming down here. He is of the opinion that we eventually ought to have a motion to table, and I think you agree that is certainly an acceptable procedure. From our standpoint, even though we cannot agree to 6 hours, 3 hours, or 2 hours, you have our assurances that we in no way intend, at least I do not as the floor manager for our side, to hurry the matter up and to deny you, or any of those who support the substitute, time.

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

Mr. RANDOLPH. I yield to my majority leader.

Mr. ROBERT C. BYRD. Why do we not use this approach so that all Senators will know when a vote will occur: I suggest that, perhaps, we agree that a vote occur, say, tomorrow in respect of the substitute at a given hour, say, at 2 o'clock, and in the meantime there be a time limitation on any amendments thereto of, say, 1 hour. That would give ample time to debate the matter—or make it 3 o'clock—ample time to debate the matter, and Senators would know when there was going to be a final vote.

We could leave intact a Senator's right to table if he wished, but in any event we would know that there would be a showdown on the amendment or on a tabling motion at a given hour tomorrow. Would that be agreeable?

Mr. DOMENICI. Mr. President, reserving the right to object, let me say to the distinguished majority leader that I cannot agree to any time limit. I want my friends to know that this bill is in a very complicated parliamentary position. Your bill is a substitute to a substitute. We have amendments that are not drafted to the substitute but drawn to

the original bill, a very important water amendment, and they do not know whether it belongs on yours or it belongs on this, and those are all very natural things, and they have asked that we not agree to a time limitation. I think it will evolve that we will vote on your proposal before the day is out. I am willing to be here and it will come about. You said you do not want to filibuster, is that not right, I say to my good friend from Maine?

Mr. MUSKIE. I never found that skill.

Mr. DOMENICI. You do not know of anyone on your side who intends to?

Mr. MUSKIE. There are a number of Senators, and the number seems to grow as the Senators focus on the implications of the legislation, who want to speak. There are a half dozen of us who have been involved in the Ribicoff substitute, including the distinguished chairman of the Public Works Committee (Mr. RANDOLPH), and he has amendments of his own to which he will address himself before too long, but if we could have some assurance—it does not necessarily have to be a time agreement—someone else may come here and make a motion to table—but if we can have some assurance of 6 hours——

Mr. RANDOLPH. I yield to the Senator from Louisiana.

Mr. JOHNSTON. Perhaps it will help the debate if I say I will not move to table before, say, 6 o'clock or before—or unless we have the opportunity to have a unanimous-consent agreement in the meantime.

Frankly, at 6 o'clock if somebody has to have more time, then I would be inclined to go along with that. But there is one thing about a motion to table hanging over one's head and that is it does get people over on the floor to debate.

Mr. MUSKIE. I would rather be holding it up.

Mr. JOHNSTON. I will tell the Senator from Maine, if it will suit him, that I will not move to table before 6 o'clock. Will that satisfy the Senator?

Mr. MUSKIE. Make it 7.

Mr. JOHNSTON. I would hope that we could be through by 7.

Mr. MUSKIE. Make it 7.

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

Mr. RANDOLPH. I yield to my majority leader.

Mr. ROBERT C. BYRD. I hope, if it is going to be beyond 6 o'clock, that it will be tomorrow.

Mr. JOHNSTON. I think the Senator makes a good point.

Mr. MUSKIE. Yes; I think he does.

The PRESIDING OFFICER (Mr. MELCHER). The Senator from West Virginia (Mr. RANDOLPH).

May we have order? The Senator may proceed.

Mr. ROBERT C. BYRD. Mr. President, I think somebody ought to thank my senior colleague (Mr. RANDOLPH) for his patience and good nature and courtesy in yielding so many times, and I personally want to thank him.

Mr. RANDOLPH. I thank the majority leader. It is my desire always—and I said it during the remarks I made—it was my desire to work very closely with all the individuals and committees concerned on this important matter because we are not leaving an energy crisis, we are in it, and perhaps will be even more deeply in it in the months and years ahead.

(Further remarks by Mr. RANDOLPH and a colloquy in connection therewith are printed earlier in the RECORD at the conclusion of Mr. RANDOLPH's previous statements.)

Mr. STAFFORD. Mr. President, as the Senate begins consideration of S. 1308, I wish to make a few observations regarding the need for this legislation and some of its specifics.

Let me say at the outset that there is considerable doubt in my mind as to exactly to what kinds of projects the Energy Committee intends this bill to apply. I shall go into more detail on that in a minute, but I am puzzled, since this legislation was first proposed, as this Senator understands it, to help build synthetic fuel plants that would lessen our dependence on foreign oil. But I now understand that this bill will probably be used for projects like deep-water oil ports or refineries, and that these ports or refineries could very well be used to refine crude from overseas sources.

Frankly, I am helpless to understand how a deepwater oil terminal to unload foreign crude in the Delaware Bay will lessen the death-grip which other countries have on our energy supplies and our economy. That kind of policy is not avoiding disaster, but inviting it. It is possible, I concede, that I am misreading this bill, and if so, I shall be glad to have the distinguished chairman and ranking minority member of the Energy Committee assure me that these kinds of projects will not be expedited under this bill.

Setting that issue to one side for a minute, I should like to make one other preliminary observation. That concerns the bill's underlying premise that if the Nation needs energy, the legitimate concerns of State and local citizens and their government must be overriden.

Quite aside from the specifics of S. 1308—by that I mean the particular Federal, State and local laws which it will affect—I am concerned about the precedents which it establishes for preemption of State authority and the delegation of legislative power.

Section 6 of S. 1308 in describing the "Power and Authority" of the Energy Mobilization Board states:

> (h) The Board may alter Federal, State and local law only as authorized by sections 13, 17, 18, 19, 21, 22, 28, 31, 34 and 36 of this Act.

The sections enumerated deal with the National Environmental Policy Act, agency deadlines, agency procedures, judicial review and substantive requirements of law developed or implemented in the future to protect the public from hazards not effectively addressed by present requirements. Section 6(h) sets forth an unprecedented delegation of authority by Congress to an executive agency—not simply to administer or implement the laws but to "alter" the laws. Not a particular law, but any law—Federal, State, or local.

Section 6(h) makes it clear that S. 1308 is designed to empower the Board to use its authority to affect Federal, State and local agencies' administration of substantive laws. The Board would exercise legislative, executive and judicial functions over Federal, State and local agencies alike. Such a concentration of power is unprecedented and far in excess of what is either necessary or desirable to expedite energy projects.

In addition, S. 1308 empowers the Board to take over Federal, State and local agency functions. Section 17 of S. 1308 authorizes the Board to set a schedule for Federal, State and local decisions and to impose procedures on Federal agencies. If State Governors fail to cooperate with the Board, the Board would be empowered to "instruct [State or local] agencies directly," (section 16(b), and see section 17(c)). Section 21 of S. 1308 states:

> (a)(1) If any Federal, State or local agency has failed to make a decision or take an action within the time required by a Project Decision Schedule, the Board may make the decision or perform the action.

Although the Board would be required to apply the "decision criteria" that would have been applied by the agency, it would not be required to comply with agency policies or procedures.

This provision may very well cause delays and bad decisions, since the agencies the Board would displace have specialized expertise and experienced staffs. Whatever their failings, they are better qualified to perform the functions assigned to them by law than the Board would be. Any agency that failed to meet a deadline would already have months of work invested in data collection and analysis. The Board would be compelled either to develop its own record and expertise, a time-consuming exercise, or to render an ill-informed, poorly justified decision that would be vulnerable to litigation. Within a few years, with dozens of projects designated, the Board would require an enormous staff to process decisions taken over from a variety of Federal, State and local agencies involving expertise from land-use planning to toxic waste disposal. The members and chairman would be entangled in the net of their own power, unable to carry out all of their functions. The Board would become the ultimate unresponsive bureaucracy.

Finally, the Board's mission is to get projects built, not to protect the public. The Board would inevitably bring that outlook to decisions taken over from agencies, rendering decisions reflecting its own specialized set of priorities, not those set by the statutes administered by the displaced agencies.

I find it hard to believe that the national need for energy is inconsistent with the fundamental principle of Federalism upon which the Nation is based. Although the principle may be honored more in the breach than respect these days, it nevertheless remains a sound integral part of the United States. Each of the 50 States is a sovereign entity of

the United States. Where the national security or some other interest is of paramount importance and where the national interest is inconsistent with State exercise of authority, the principle of federalism must yield. But that should be used only sparingly and only where absolutely necessary. At a time when the individual States have shown more willingness to develop energy resources than the U.S. Government, at a time when the bulk of the energy resources of this country are owned by the Federal Government and not the States, it seems inconceivable to me that they should be preempted in such a blanket fashion.

I think that such an approach is objectionable as a matter of policy and foolhardy as a matter of practice. If the Members of the Senate believe that a project can be forcibly jammed down the throats of an objecting public, they are deceiving themselves. People who object to a project will fight it every step of the way, from construction through operation. Those who doubt the simple truth of this proposition need look only to the Boston Tea Party two centuries ago or Seabrook demonstrations a few weeks ago. The essential character of the American people has not changed in all that time, nor has their response to a dictatorial and central government. Federal force will not expedite projects, it will delay them. But again, perhaps I misread this bill and its potential.

Having expressed those two general concerns, I would like to move on to some specifics. First, I think the Members should understand some of the general health, safety, and environmental problems which could be associated with the projects this bill will place on the so-called "fast track." Second, I think the Members should be alerted to a more personal concern of mine regarding the presumption of the Energy Committee in directly and indirectly amending statutes under the jurisdiction of other committees.

IS THERE A NEED FOR S. 1308?

When it became apparent several weeks ago that the Senate would soon be considering either S. 1308 or something very much like it, I asked the Library of Congress to provide me with several case studies of energy projects. The case study review was to ascertain the causes of delays in the selected energy projects for the purpose of determining whether a "fast track" bill was necessary.

Mr. President, the report was printed in the RECORD last Thursday.

The Library selected the following energy projects for review:

1. Kaiparowits—a large, coal-fired, minemouth electric generating facility located in Utah, originally proposed in 1962 and finally abandoned in 1976.

2. Dickey-Lincoln—a hydroelectric project, originally authorized in 1965, on the St. Johns River in Maine; bills both to fund construction and to deauthorize the project are pending before Congress.

3. Eastport refinery—proposed in 1973 to be built in Maine, the project at present is stymied, in part because of EPA's rejection of certain permits.

4. Hampton Roads refinery—proposed in 1975 to be built in Virginia, the project is at present awaiting a decision by the Corps of Engineers.

5. SOHIO pipeline (PACTEX)—proposed in 1975 as a route for transporting excess Alaskan crude oil to the Gulf States area, the project was abandoned in 1979 after delays in approval reportedly pushed its completion date beyond the time when costs could be expected to be recovered, based on expected oil supplies.

6. Oil shale—leasing programs began in 1971, but progress has been slow and commercial production is not expected before 1983.

These six cases were chosen by the Library of Congress for reasons of convenience, familiarity, and diversity.

Despite their readily apparent differences a review of the case studies points to two basic conclusions: First, that it is difficult to attribute the delay or foreclosure of construction of energy development facilities solely to substantive Federal environmental protection laws; and second, that usually it appears that a general lack of consensus on the need for the project, at least as proposed, underlies the difficulty promoters of the projects have faced in trying to obtain necessary regulatory approvals.

For each of the six case studies, factors other than environmental statutes were important in causing delays.

For Kaiparowits, changing environmental requirements, particularly air pollution control requirements, did substantially disrupt planning; however, at the same time changes in the economy and energy demand were also important.

For Dickey-Lincoln, present delays can be attributed to congressional hesitation to authorize funding for the project; it may be that some of that reluctance stems from environmental considerations, but it is Congress which is in a position to decide whether it should go ahead.

For the Eastport refinery, the proposal is at present stopped because of the rejection of a permit on the grounds that approving it would violate the Endangered Species Act; however, there is every reason to believe that numerous other probable roadblocks to the project exist, including international considerations that would transcend domestic environmental protection constraints.

For the Hampton Roads refinery, the proposal is at present awaiting a final decision on a key permit.

For the SOHIO pipeline (PACTEX), the working out of new air pollution regulatory procedures was a major cause of delay; however, at the time the project was abandoned these had been overcome, and it appears that environmental requirements would not have foreclosed construction; this, then, is a case where delays caused the economics of a project to cross a threshold of unacceptability.

For oil shale development proposals, the issue is one of developing new technologies; environmental controls are but one of the uncertainties affecting their development.

In short, although environmental considerations have been important constraints on the proposers of these projects, they have not been the sole constraints. In fact, the case studies suggest that the regulatory delays and obstacles suffered by these projects most often arose from underlying doubts about the projects, and that these doubts have often found their readiest expression in regulations based on environmental considerations.

In some of the cases, the underlying uncertainty arises from the fundamental question of whether the project is needed at all; in others it arises from uncertainty about siting, about alternatives, or some other aspect of the proposal. Of course, for virtually any proposal, someone will have objections or criticisms: but the more that this type of uncertainty is present, the more objectors there are likely to be and the greater their legitimacy. Most importantly, the greater the doubts, the more likely it is that critics will find sympathetic ears among decisionmakers. This, combined with the multitude of regulations and of governmental interests involved, increases the probability that a veto or holdup will occur at one or more of the numerous decision points.

Two of the case studies shed light from different angles on the nature of this source of delay: The PACTEX proposal illustrates that when consensus on the need for a project exists, it does move ahead; the Dickey-Lincoln project illustrates that when consensus does not exist, the absence of regulatory holdups does not mean it will automatically go ahead.

The Sohio pipeline proposal was widely perceived as being in the national interest. Much of the delay concerned how to implement new procedures, but some hardline objectors existed, too. However, the general consensus that the project should go forward was reflected in a number of ad hoc efforts to clear roadblocks; and a bill passed the California legislature to resolve litigation challenging approval of the project. It appears that the underlying consensus in favor of the project was sufficient to get most of the roadblocks cleared (albeit too late for the economics of the project to be sustained).

In the Dickey-Lincoln case, the roadblock is legislative, not regulatory. And in this congressional arena where, presumably, action by consensus would be possible without the project having to run the regulatory maze, funding is still doubtful. It appears, then, that consensus for or against the project is lacking, so it languishes.

This illustrates that where an underlying consensus is lacking, projects will not necessarily go forward even if there are no significant regulatory hurdles; or put the other way, the delays of the regulatory hurdles generally seem to reflect a genuine uncertainty about the proposal. Indeed, when clear agreement on the national essentiality of any particular project is lacking, achieving final approval becomes exceedingly difficult—in either the regulatory or the legislative arenas. But once a critical level of consensus is reached relief is forthcoming. The opportunity for Congress to clear the way for energy projects is illustrated by the enactment of the TransAlaska Pipeline Act.

The studies clearly indicate that the real need in this area is not a new bureaucracy, but leadership. Perhaps the Energy Mobilization Board will provide that, although I personally would prefer to see such a function performed by one elected to lead, such as the President of the United States. Whether this Board will be able to confer a consensus of need on projects is doubtful in my mind. I honestly question whether a group of three political appointees who enjoy no particular expertise or public confidence can, by fiat, persuade the citizens of a State or local government that a project is vitally necessary to the national security. In many cases, the stakes to these people will be not energy, but a way of life for them, their families, and their children. The proposals to develop synthetic fuel programs illustrate this very well.

HEALTH AND ENVIRONMENTAL PROBLEMS ASSOCIATED WITH SYNTHETIC FUELS

SUMMARY

We can fully expect a wide variety of health, safety, and environmental hazards to be created by nonconventional energy projects. Their exact nature will not be known until a few commercial-scale facilities are actually constructed and placed in operation. Indeed, one purpose of constructing the first generation of these facilities is to identify with certainty the risks they create. If these projects are exempted (or "grandfathered," to use a popular term) from later-imposed laws or regulations, there will be no way to eliminate the hazards discovered in operating them. Although it may seem unlikely that public pressure could not force remedial action, it is worth remembering that industry, or even the Government itself, will have invested literally billions of dollars in projects which could be made unprofitable through the implementation of a single law or regulation. The incentive to escape the grasp of remedial effort will be tremendous.

One special problem believed to be associated with all synthetic fuel projects is worthy of special mention. Oil shale, coal liquefaction, and coal gasification programs all essentially modify naturally occurring organic compounds by adding some elements (notably hydrogen), and removing others, usually under great heat and in the absence of oxygen. As such, they are in effect creating a wide array of new synthetic organic compounds. These compounds will vary from one place to another because geology does. Many of these mineral-bearing strata also contain heavy metals such as cadmium, lead, nickel, et cetera.

A massive synthetic fuel program could result not only in localized releases of these chemical unknowns, but also nationwide distribution of these new compounds, which, coincidentally, are energy sources. In these respects, synthetic fuel programs are very different from conventional energy facilities.

BACKGROUND

Three types of nonconventional energy technologies are prime candidates for the Energy Mobilization Board "fast track." They are oil shale conversion, coal liquefaction, and coal gasification. Immediate emphasis is likely to be placed on oil shale and coal liquefaction, because liquid fuels are in the most demand in this country and are most vulnerable to interruption by foreign suppliers. However, with dependence on foreign gas also increasing, projects to gasify coal are also likely to be placed in a priority status.

The health, safety and environmental consequences of each of these technologies are unknown at present, but research indicates that each may produce unusual or even unique problems. Many of these problems, especially those of a regional or local nature, cannot be determined without constructing one or more commercial scale plants.

A commercial shale oil shale project, for example, is expected to consume 50,000 acre feet of water per year. These plants would be constructed in the arid regions of Colorado, Wyoming, or Utah, where experts believe the ground water supplies will be adequate—but just barely—to meet the ultimate oil shale needs. However, if the experts are wrong and the water drawdown by oil shale plants causes an increased salinity level in the Colorado River—a possibility that is considered very real by some hydrologists—the grandfather clause could preclude later laws or regulations to solve this problem. An increase in the salinity level of the Colorado is subject to treaty. Comparable questions arise with respect to the emissions, effluents, and wastes produced by these plants.

The exact nature and extent of the consequences cannot be determined by further debate, however. Answers must come from construction and operation of commercial scale facilities. It is only after, for example, an oil shale plant is built and operating that its impacts on ground water supplies and salinity concentrations can be determined. Similarly, only the construction and operation of commercial scale coal liquefaction and gasification plants will tell us what health, safety, and environmental hazards they pose.

Despite the general lack of knowledge, potential problems have been isolated.

OIL SHALE FACILITIES

Oil shale projects produce a form of liquid crude by heating oil-bearing shale and, in effect, sweating the fluids out. This can be done in two ways: First, mining the rock and heating it in a separate vessel called a retort; or second, tunneling extensively through the shale formations, dynamiting the rock to underground rubble, then heating it and drawing off the produced liquids and gases. The first method is commonly referred to as "surface retorting" and the second as "in situ" retorting.

In addition to mining and retorting facilities, an oil shale project may also require associated refining capacity (to refine the produced liquids and gases) and new electric generating capacity (about one coalstrip-sized plant for every eight surface retorts).

The environmental questions concerning oil shale facilities have been summarized as follows:

First. How much groundwater will be intercepted during mining?

Second. What will the quality of potential discharges be?

Third. Can groundwater quality be protected during and after in situ retorting?

Fourth. Can processed shale be disposed of properly without degrading ground or surface water quality?

Fifth. Will revegetation of processed shale be successful over the long term?

Sixth. What are the concentrations of various sulfur species in retort off-gas streams?

Seventh. What will be the air quality and visibility impacts on existing areas?

Eighth. What are the expected trace element concentrations in air, water, and solid waste residual streams?

Ninth. Is conventional pollution control technology directly applicable to oil shale residuals?

Tenth. What is the expected population growth associated with the development of an oil shale industry?

COAL LIQUEFACTION

Coal liquefaction is the process of converting pulverized coal to synthetic liquid fuels, also known as syncrude. Coal liquefaction processes include some technologies which are well established and others which are still in the demonstration stage. The most well established process is currently employed by South Africa in its SASOC plant.

Since coal liquefaction plants are already operating on a commercial scale elsewhere in the world, it is likely that some SASOL-type proposals would be included as priority energy projects in the first round of Energy Mobilization Board designations. If proposals for projects utilizing the other technologies were not included in the first round of designations, they would almost certainly soon follow.

With the possible exception of the SASOL-type process, the health, safety, and environmental hazards posed by coal liquefaction processes are uncertain. Since many of the intermediate steps are similar to those utilized in coal gasification, the charts which I shall insert in the RECORD will help indicate possible problem sources for liquefaction as well.

COAL GASIFICATION

Coal gasification is the production of gaseous fuel from pulverized coal. The processes are divided according to whether the gas they produce has a high, low, or medium energy content. The energy content is measured in Btu's, so the projects are referred to high-, low-, or medium-Btu.

Of the three, low-Btu gasification is the most well established commercially, followed by medium-Btu technology. Each of these is adequate for some types of business or industrial processes, but not as a substitute for naturally occurring gas. Natural gas has a high Btu content, and in order to raise synthetic gas to that energy level, considerable processing is required. It becomes quite similar to coal liquefaction, both in terms of the technologies employed and the health, safety, and environmental consequences.

I ask unanimous consent that tables identifying the health, safety, and environmental problems which may be associated with coal gasification projects be printed in the RECORD at this point.

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

DISCHARGES FROM LOW AND MEDIUM-BTU GASIFICATION OPERATIONS [1]

| Waste stream source and waste stream | Description | Remarks |
|---|---|---|
| COAL PRETREATMENT OPERATION | | |
| Storage, handling, and crushing/sizing: | | |
| Dust emissions | Air emission from coal storage piles, crushing/sizing and handling will consist primarily of coal dust. The amouht of these emissions will vary from site to site depending on wind velocities and coal size. | Asphalt and various polymers have been used to control dust emissions from coal storage piles. Water sprays and enclosed equipment have been used to control coal handling emissions. Enclosures and hoods have been used for coal crushing/sizing. |
| Water runoff | The data on dissolved and suspended organics and inorganics in runoff water produced for coal storage piles and dust control or suppression processes are minimal. | Proper runoff water management techniques have been developed. More data on the characteristics of this waste water need to be obtained to determine the need for treating this effluent. |
| Solid wastes from crushing and sizing | This stream consists of rock and mineral matter rejected from crushing and sizing coal. There are few data concerning the trace components in this stream and the potential of these components to contaminate surface and ground waters is not known. | This waste has been disposed of in landfills. Leaching data need to be obtained to evaluate the potential environmental impacts associated with this solid waste. |
| Coal drying, partial oxidation and briquetting: Vent gases | This emission will contain coal dust and combustion gases along with a variety of organic compounds liberated as a result of coal devolatilization reactions. There are currently few data on the characteristics of these organic species. | The organic compounds need to be characterized to determine whether this discharge stream needs to be controlled. Afterburners in addition to particulate collection devices may be required. |
| COAL GASIFICATION OPERATION | | |
| Coal feeding device: Vent gases | There are currently no data on the characteristics of these gases. These vent gases may contain hazardous species found in the raw product gas exiting the gasifier. | Vent gases from coal feeders can represent a significant environmental and health problem. Control of these emissions is required; however, the characteristics of these gases need to be determined to implement an adequate control method. |
| Coal gasifier: | | |
| Start-up vent stream | There are currently no data on the composition of start-up vent stream. Depending on the coal feedstock, there may be tar and oil aerosols, sulfur species, cyanides, etc., in this stream; therefore, control of pollutants generated during start-up is required. | This stream can be controlled using a flare to burn the combustible constituents. The amount of heavy tars and coal particulates in this stream will affect the performance of the flare. Problems with tars and coal particles can be minimized by using charcoal or coke as the start-up fuel. |
| Fugitive emissions | There are no data available on these emissions. They can be expected to contain hazardous species that are in the raw product gas such as hydrogen cyanide. | These emissions will determine the extent of workers' exposure to hazardous species and define the need for continuous area monitoring of toxic compounds and personnel protection equipment. |
| Ash removal: | | |
| Vent gases | There are currently no data on the characteristics of this discharge stream. This stream may contain hazardous species found in the raw product gas and may require control. | Many sources of contaminated water may be used for ash quenching. Therefore, volatile organics and inorganics may be released in these vent gases. Characterization of emissions is needed to define control technology elements. |
| Spent ash quench water | There are limited data on this discharge stream which will contain dissolved and suspended organics, and inorganics. This stream will require control. | Characterization of this waste stream is required to define control technology requirements. Further treatment of this stream is essential. |
| Ash or slag | There are limited data on the characteristics of the ash and slag, especially concerning the amount of unreacted coal, trace elements, and total organics. | Leaching tests need to be done on this solid waste to determine whether further treatment is necessary before ultimate disposal. The organic content of the liquor used to quench the ash may affect the final disposal of the ash. |
| GAS PURIFICATION OPERATION | | |
| Particulate removal: Collected particulate matter | There are few data on the characteristics of this solid waste stream, which will contain unreacted carbon, sulfur species, organics and trace elements. | Characterization of this stream is needed to determine whether it can be used as a byproduct or whether further treatment is necessary before disposal. Current data indicate that there is a significant amount of unreacted carbon in this stream and it may be used as a combustion fuel. |
| Gas quenching and cooling: Spent quench liquor | There are few data on the composition of this stream; however, current data indicate that there are significant quantities of suspended and dissolved organics (primarily phenols) and inorganics present. | Characterization of this stream will determine the type of water pollution control techniques required to treat the spent quench liquor. These techniques will vary depending upon the quantity and composition of this effluent stream. |
| Acid gas removal: | | |
| Tail gases | There are few data on the composition of these tail gases, which will contain sulfur species and hydrocarbons. | These gases are the primary feedstock to the sulfur recovery and control processes. Trace constituents such as hydrocarbons, trace elements, and cyanides will affect the performance of these sulfur recovery processes. |
| Spent sorbents and reactants | No data have been reported on these streams, which will contain hazardous species such as cyanides, heavy metals, and organics and will require further treatment before disposal. | Characterization of this stream is required if it is to be treated using on-site pollution control devices. |

[1] Source: "Environmental Impact of Synthetic Fuels Development", Chemical Engineering Process, June 1979.

Mr. STAFFORD. Mr. President, although only low- and medium-Btu projects are described, similar hazards may be posed by high-Btu projects. We are less sure of these, however, since the technology for high-Btu gasification is at a much less advanced stage.

I ask unanimous consent to have printed in the RECORD other tables and charts indicating the types of hazardous constituents which may be associated with synthetic fuel production.

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

POTENTIALLY HAZARDOUS SUBSTANCES SUSPECTED PRESENT IN COAL CONVERSION PLANT PROCESS STREAMS [1]

| Chemical classification, compound | Phase |
|---|---|
| Acids and anhydrides: | |
| Maleic acid | Liquid. |
| Cresylic acid | Liquid. |
| Sulfuric acid | Liquid. |
| Anthraquinone disulfuric acid | Liquid. |
| Alcohols: | |
| Aliphatic alcohols | Liquid. |
| Aromatic alcohols | Liquid. |
| Amines: | |
| Diethylamines | Gas. |
| Methylethylamines | Gas. |
| Ammonia | Gas/liquid. |
| Inorganic salts: Ammonium sulfate | Liquid. |
| Carbonyl compounds: | |
| Ketones | Gas/liquid. |
| Aldehydes | Gas/liquid. |
| Combustion gases: | |
| Carbon monoxide | Gas. |
| Sulfur oxides | Gas. |
| Nitrogen oxides | Gas. |
| Heterocyclics: | |
| Pyridines | Gas/liquid. |
| Pyrroles | Gas/liquid. |
| (Mono) benzofurans | Gas. |
| Hydrocarbons: | |
| Bezene | Gas/liquid. |
| Toluene | Gas/liquid. |
| Xylene | Gas/liquid. |
| Aliphatics | Gas. |
| Olefins | Gas. |
| Phenols: | |
| Phenols | Gas/liquid. |
| Dimethyl phenol | Liquid. |
| Cresols | Gas/liquid. |
| Xylanols | Gas/liquid. |
| Phenyl phenols | Gas. |
| Alkyl phenols | Gas. |
| Alkyl cresols | Gas. |
| Polynuclears: | |
| Anthracenes | Gas. |
| Benzo(a)pyrene | Gas. |
| Benzo(e)pyrene | Gas. |
| Perylene | Gas. |
| Benzo (g, h, i) perylene | Gas. |
| Coronene | Gas. |
| Phenanthrene | Gas. |
| Fluoranthrene | Gas. |
| Chrysene | Gas. |
| Benzo(a)anthracene | Gas. |
| Acridine | Gas. |
| Benzo(a)anthrone | Gas. |
| Dibenzo(a, l)pyrene | Gas. |
| Dibenzo(a, n)pyrene | Gas. |
| Dibenzo(a, i)pyrene | Gas. |
| Methyl pyrene | Gas. |
| Indeno(1, 2, 3-c, d)pyrene | Gas. |
| Benzoacridine | Gas. |
| Sulfur compounds: | |
| Sulfides | Liquid. |
| Sulfonates | Liquid. |
| Mercaptans | Gas. |
| Thiophenes | Gas/liquid. |
| Hydrogen sulfides | Gas/liquid. |
| Methyl mercaptans | Gas/liquid. |
| Carbon disulfides | Gas. |
| Carbonyl sulfide | Gas. |
| Methyl thiophene | Gas. |
| Trace elements: | |
| Vanadium | Gas/liquid. |
| Nickel | Gas. |
| Lead | Gas. |
| Cobalt | Gas. |
| Molybdenum | Gas. |
| Strontium | Liquid. |
| Beryllium | Gas. |
| Selenium | Gas/liquid. |
| Cadmium | Gas. |
| Mercury | Gas. |
| Antimony | Gas. |
| Arsenic | Liquid. |
| Phosphorus | Gas/liquid. |
| Manganese | Gas. |

Footnote at end of table.

| Chemical classification, compound | Phase |
|---|---|
| Organo-metallics: | |
| Nickel carbonyl | Gas. |
| Cobalt carbonyl | Gas. |
| Fine particulates: | |
| Sulfur particulates | Gas. |
| Catalyst fines | Gas. |
| Coke | Gas. |
| Coal dust | Gas. |
| Cyanides: | |
| Hydrogen cyanide | Liquid. |
| Ammonium thiocyanate | Liquid. |

[1] U.S. Energy Research and Development Administration. Synthetic Fuels Commercialization program. ERDA-1547. December 1976. p. IV-19.

TRACE ELEMENTS RELEASED DURING COAL GASIFICATION [1]

| Element | Concentration (in raw coal parts per million) | Portion emitted during gasification process (percent) |
|---|---|---|
| Antimony | 0.15 | 33 |
| Arsenic | 9.6 | 65 |
| Beryllium | .92 | 18 |
| Cadium | .78 | 62 |
| Chromium | 15 | 0 |
| Lead | 5.9 | 63 |
| Mercury | .27 | 96 |
| Nickel | 12 | 24 |
| Selenium | 1.7 | 74 |
| Tellurium | .11 | 64 |
| Vanadium | 33 | 30 |

[1] Data are for the Hygas process using Pittsburgh No. 8 coal. Ibid. pp. IV-17.

Source: A. Attari, Fate of Trace Constituents of Coal During Gasification,: EPA-650/2-73-004, Environmental Protection Agency, Research Triangle Park, N.C., August 1973.

SPECIFIC PROVISIONS OF S. 1308

Mr. STAFFORD. In addition to my general concerns about the possible adverse consequences of massive synthetic fuel development, I have some specific questions I would like to raise regarding S. 1308 itself.

Composition of the Energy Mobilization Board—S. 1308 provides for a three-member Board appointed by the President and confirmed by the Senate. Board members would serve only part time and would not be subject to conflict of interest laws. Is there any good reason why a board member should vote on a project in which he has a financial stake?

DESIGNATION OF PRIORITY ENERGY PROJECT

S. 1308 requires that a project not be designated unless the Board finds that it is likely to reduce directly or indirectly the Nation's dependence on foreign oil. This is an extremely loose criterion and the designation decision is not judicially reviewable. Therefore, even a tightening of the criterion would seem to be meaningless because the Board is not accountable for justifying its decisions once a designation is made.

I prefer that the Board be required to make a finding that a project will contribute a 50 percent reduction in the use of imported oil by 1990, the President's goal, and that it needs the fast-track system to make that contribution to the goal. This is much preferable a set of criteria in that it provides a specific measuring rod against which the project can be evaluated, and it provides more guidance to the Board in the designation decision. The designation should also be judicially reviewable, which will deter the Board from abusing its discretion in this area.

DEADLINES FOR AGENCY ACTION

S. 1308 requires the Board to promulgate a project decision schedule with binding deadlines for every agency action relating to a priority energy project. That deadline may be no longer than 2 years from the date of designation, unless the Board determines that a longer period is necessary. This kind of arbitrary deadline has no reference to the particular requirements of any statute, which may be longer or shorter than a uniform deadline imposed for every action. The 2 years includes the time during which the applicant submits his permit application and the agency determines exactly what must be contained in the application. This process in itself has proved time-consuming; the actual analysis by an agency once an application is complete can, in most cases, be made expeditiously. A 2-year deadline for the entire permit process may be too short in some cases and, therefore, trigger the provision in S. 1308 authorizing the Board to make the permit decision in lieu of the agency.

A preferable approach would require the Board to set deadlines binding on agencies which must perform actions relating to the approval of a priority energy project. That deadline would be no longer than 1 year after the completion of a permit application by the applicant. This approach provides the flexibility absent in a uniform deadline. It also provides an incentive to both the applicant and the agency to determine the contents of an application and to complete the application as soon as possible.

WAIVER OF PROCEDURAL REQUIREMENTS

S. 1308 authorizes the Board to adopt special procedures for Federal agencies governed by the deadlines set by the Board. The bill provides that such procedures must be consistent with all statutes, rules, and regulations promulgated by the agencies with enumerated exceptions. The exceptions permit the consolidation of the proceedings with other agencies, the establishment of permit requirements to eliminate unnecessary duplication, the substitution of legislative-type hearings in lieu of trial-type hearings, and shortening the specific time periods required by statute, regulation or rule for agency actions. This approach is questionable, in the opinion of this Senator, because the Board may impose such special procedures on an agency without any regard for the particular statutory requirement that the agency is implementing and the particular procedural needs associated with it.

ENFORCEMENT OF DEADLINES

S. 1308 authorizes the Board to perform any agency decision in lieu of an agency which has missed its deadline. This approach is objectionable for a number of reasons. First, in making a substantive decision for another agency the Board has only one mission in mind, and that is to expedite construction of the priority energy project; second, it requires a duplication of expertise in the Board as well as a duplication of analysis already partially complete by an agency; and third, this approach is more time consuming in that the Board must begin its analysis after the agency has missed its deadline.

S. 1308 also authorizes the Board to seek a court order compelling agency action once the deadline has been missed, as an alternative enforcement mechanism. This is such a preferable approach that it should be the only one available.

GRANDFATHER PROVISION

S. 1308 contains a grandfather provision authorizing the Board to waive the application of any Federal, State or local statute, regulation or requirement enacted or promulgated after the commencement of construction of a priority energy project. Commencement of construction is broadly defined to include any activity from site clearance through to operation of the facility. This approach fails to recognize that new requirements are often enacted or promulgated as specific remedial responses to problems which were unknown or unknowable at the time a project was initially approved. As I have indicated earlier, such a prohibition would effectively prevent corrective action needed to protect public health or the environment. In addition, the Energy Committee has not provided any information indicating that this sort of substantive waiver is, in fact, necessary as a result of past problems.

THE NATIONAL ENVIRONMENTAL POLICY ACT

Finally, S. 1308 amends the National Environmental Policy Act by authorizing the Energy Mobilization Board to designate a lead agency before preparation of an environmental impact statement. The Board is also authorized to determine whether a Federal action requires an impact statement. This changes the the existing procedure substantially, although it has been satisfactory. In addition, the Board is authorized to consolidate Federal, State, and local impact statement requirements into one Federal consolidated statement. The one single statement must, however, cover the matters required in any State or local statement.

JURISDICTION ISSUES

I will not discuss the merits of the changes which S. 1308 proposes to make in the National Environmental Policy Act, because that provision raises the serious question of what authority the members of the Energy Committee have to amend laws which in the opinion of many Senators lie within the jurisdiction of many committees. That matter has been discussed earlier this afternoon in the Senate.

When the matter of Senate consideration of S. 1308 first arose in July, the leadership of the Energy Committee agreed to abide by an informal referral process. That also has been discussed earlier here in the Senate this afternoon.

I think, Mr. President, that I had discussed matters that have concerned me long enough. I hope that the members of the Energy Committee recognize the serious precedent they are setting. Environmental laws may not be very popular these days with some segments of the society, but neither is the Department of Energy.

I say, though, that I agree that steps must be taken to expedite our entry into the synthetic fuels area as rapidly as we can and for that reason I have joined as a cosponsor with the distinguished Senator from Maine (Mr. MUSKIE), the distinguished Senator from Connecticut (Mr. RIBICOFF), and several others in cosponsoring S. 1806, which we believe, moves us forward along the Energy Mobilization Board tract effectively but without creating some of the unknown dangers which we perceive in the committee bill.

Mr. President, I am glad to yield for a question to Senator MELCHER.

Mr. MELCHER. Mr. President, I thank my friend from Vermont. I listened with a great deal of interest to his very thoughtful and excellent analysis of S. 1308.

I do wish to make one point clear and I hope the Senator has not missed it, and this is the purpose of my question.

In discussing whether or not an oil board or refinery or some energy project should be built within a State, I hope the Senator has not missed the point that is extremely important to me, and that is that S. 1308 does not interfere or dilute a State's right under its own law to say no, a flat no.

I hope the Senator has not missed that point because it is absolutely essential, I think, that that be maintained in this law, if it is enacted by Congress, and that we preserve that.

I hope the Senator is very cognizant of that point in S. 1308.

Mr. STAFFORD. I will say to my distinguished friend that he may well be satisfied on this point, but that the Senator from Vermont would have to examine it further to make sure he agreed with the Senator from Montana.

Mr. MELCHER. I ask the Senator from Vermont or any other Senator to alert me to any construction or interpretation of the bill which either dilutes or interferes with or waives the State's right to say "no" to an energy project in a particular State under their own law, because I would have serious trouble with the bill if that were the case.

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

Mr. STAFFORD. I yield to my distinguished friend from Maine.

Mr. MUSKIE. May I say to my distinguished friend from Montana that I intend to cover that at some length because I do not believe it is quite so clear-cut as the Senator now believes, and I hope to get into that in quite an extensive discussion because Governors, State legislators, and administrators of State and local programs in this field are very much concerned about that very point.

I will try to cover it. But at the moment I simply want to express my appreciation to the distinguished Senator from Vermont for his excellent presentation. He has covered significant points in the pending legislation and in the substitute, which I hope will be useful to the Senate. I expect to expand on some of those, hopefully usefully, before the afternoon is over. At this time I simply want to compliment him on his contribution.

Mr. STAFFORD. I thank the distinguished Senator, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont yields the floor. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, I simply want to say that we are very close to getting an agreement on a time, an agreement the substance of which, when we ask for it, will be that the vote will occur tomorrow on the Muskie-Ribicoff amendment at 12 noon. We would go today until 6 o'clock, and we would come in tomorrow at 10 and vote at 12 noon and, hopefully, we would not have any amendments in the meantime to vote on.

I have a technical amendment which I do not believe anyone will object to, and which probably will not require a rollcall vote. But I just want him to understand on the floor, and I want to make this announcement on the floor, that that is the direction in which we are moving, and we should be in a position to ask for that unanimous-consent very shortly, I believe.

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

Mr. JOHNSTON. I yield.

Mr. MUSKIE. I understand those talks are going on. That result would be agreeable to me and, and I hope, to other Senators who are interested.

UP AMENDMENT NO. 586

Mr. JOHNSTON. Mr. President, at this time I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) proposes an unprinted amendment numbered 586.

Mr. JOHNSTON. 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 140, line 7, insert "priority energy project" in place of "critical energy facility".

On page 140, line 12, insert "project" in place of "facility".

On page 140, amend lines 18 to 19 to read: "construction" means that the applicant has obtained all necessary preconstruction ap-".

On page 140, line 22, insert "project" in place of "fa-".

On page 140, line 23, delete "cility".

On page 141, line 3, insert "applicant" in place of "owner or operator".

On page 141, line 4, insert "project" in place of "facility".

On page 140, lines 8 to 17, strike all after "such waiver.".

On page 141, line 8, insert the following after the word "continuous.":

"(c) Any waiver pursuant to this section may be conditioned on the imposition of a less stringent requirement or other alternative to the requirement which is to be waived.

"(d) (1) No waiver of any requirement pursuant to this section shall take effect unless the Chairman and two of the three members of the Board find, after taking into account any terms or conditions imposed upon or accompanying such waiver, that the waiver is necessary to completion of the priority energy project in a timely fashion.

"(2) No waiver of any requirement pursuant to this section shall take effect unless the Chairman and two of the three members of the Board find, after taking into account any terms or conditions imposed upon or accompanying such waiver and after consulting the agencies responsible for implementing the affected laws, that the waiver will not result in any condition which may reasonably be anticipated to unduly endanger the public health or safety.

"(e) No waiver pursuant to this section shall modify in any way—

"(1) any law, regulation or rule of law governing labor management relations, pensions, working conditions (including health and safety) or minimum wages and maximum hours of employment;

"(2) any law, regulation or rule of law guaranteeing equal employment opportunities or prohibiting discrimination on the basis of race, creed, sex, or national origin;

"(3) any law prohibiting any act similar to any crime at common law;

"(4) any antitrust law of the United States.

"(f) No waiver isssued pursuant to this section shall continue in effect after the last day of the fifth year after such waiver is issued or renewed unless the Board finds, after consulting with the appropriate agencies, that the conditions in subsection (d) of this section are satisfied at such time. If such conditions are satisfied the Board may renew the waiver with or without modifying any conditions on such waiver, and with or without adding any new conditions to such waiver.

"(g) The power of the Board under this section shall be transferred to the President or his designee on the day the Board is abolished.

"(h) The Temporary Emergency Court of Appeals shall have exclusive jurisdiction to review any waiver pursuant to this section in accordance with the procedures for review established by this Act."

Mr. JOHNSTON. Mr. President, this amendment simply makes clear with reference to the provisions of the grandfather clause that the waiver is very narrow. Let me tell you the sections of the amendment, and I do not believe anybody will have any objection.

It provides that any waiver pursuant to this section—that is the grandfather section—"may be conditioned on the imposition of a less stringent requirement or other alternative to the requirement which is to be waived." That is section (c). That means that if a State should come in with, in effect, an ex post facto law, that the Board in its judgment could condition the waiver of that ex post facto law based on a less stringent requirement.

Second:

(d) (1) No waiver of any requirement pursuant to this section shall take effect unless the Chairman and two of the three members of the Board find, after taking into account any terms or conditions imposed upon or accompanying such waiver, that the waiver is necessary to completion of the priority energy project in a timely fashion.

In other words, they have got to make that finding that it is a necessary waiver.

Section (d) (2) provides:

(2) No waiver of any requirement pursuant to this section shall take effect unless the Chairman and two of the three members of the Board find, after taking into account any terms or conditions imposed upon or accompanying such waiver and after consulting the agencies responsible for implementing the affected laws, that the waiver will not result in any condition which may reasonably be anticipated to unduly endanger the public health or safety.

So that is again a limitation on the power of the Board that the chairman and two of the three members must, in effect, make that finding that no health or safety requirements are being dispensed with.

Section (e) provides:

(e) No waiver pursuant to this section shall modify in any way—

"(1) any law, regulation or rule of law governing labor management relations, working conditions (including health and safety) or minimum wages and maximum hours of employment;

"(2) any law, regulation or rule of law guaranteeing equal employment opportunities or prohibiting discrimination on the basis of race, creed, sex, or national origin;

"(3) any law prohibiting any act similar to any crime at common law;

"(4) any antitrust law of the United States.

Section (f) provides:

(f) No waiver issued pursuant to this section shall continue in effect after the last day of the fifth year after such waiver is issued or renewed unless the Board finds, after consulting with the appropriate agencies, that the conditions in subsection (d) of this section are satisfied at such time. If such conditions are satisfied the Board may renew the waiver with or without modifying any conditions on such waiver, and with or without adding any new conditions to such waiver.

So they would have to come back in and get a renewal of the waiver after 5 years.

Next (g):

(g) The power of the Board under this section shall be transferred to the President or his designee on the day the Board is abolished.

Finally, (h):

(h) The Temporary Emergency Court of Appeals shall have exclusive jurisdiction to review any waiver pursuant to this section in accordance with the procedures for review established by this Act."

So there is court review to TECA under the grandfather clause amendments.

In effect, Mr. President, this amendment narrows and clarifies the scope of the grandfather clause. There is, to my knowledge, no objection to it, and I ask for its consideration at this time.

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

The amendment was agreed to.

Mr. JOHNSTON. I might add, Mr. President, that this amendment responds to many of the concerns of the distinguished Senator from West Virginia (Mr. RANDOLPH), and I think it would go a long way toward satisfying anyone who has any concern about the grandfather clause waiver being too broad.

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

Mr. JOHNSTON. Yes, I yield.

Mr. DOMENICI. I ask unanimous consent that I be shown as a cosponsor, original cosponsor, of that amendment as it was introduced.

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

Mr. DOMENICI. I will indicate from this Senator's standpoint that this is a clarification because we never intended the ex post facto provisions to apply to labor-management relations, pensions, minimum wages, which are the exclusions that are clearly identified in the amendment. We certainly did not intend a waiver where the public health or safety was involved, and that is another clarification.

So I commend the Senator for offering, and I am delighted to be part of it.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I am pleased to join with my distinguished chairman of the Governmental Affairs Committee and with my former chairman of the Intergovernmental Relations Subcommittee as a principal sponsor of the substitute amendment.

Our amendment makes substantial reforms in our regulatory process while at the same time preserving the constitutional powers of our States and local governments. It expedites our critical energy projects, it brings certainty and accountability to energy regulation. It gets our country moving toward energy independence.

On the other hand, I want my colleagues to see S. 1308—the bill our amendment would be a substitute for—for what it really is: A serious erosion of the rights of State and local governments.

The Energy Committee bill empowers the Energy Mobilization Board to substitute its own decision for the decisions of State and local governments on such strictly local issues as zoning, land use planning, and building permits. It would permit the Federal Government to ride roughshod over local zoning boards, county commissions, city councils, and State agencies in order to get an expedited decision on energy projects.

I am concerned that S. 1308 would not be limited to energy projects which reduce our dependence on imported oil, but would also allow the Board to ramrod through deep water ports, pipelines through the coastal zones, refineries, and other projects that would not reduce our imported oil one drop.

As a matter of fact, Mr. President, one of my greatest concerns is the very broad definition given energy facilities, to include:

Any physical structure, including any structure which incorporates active and/or passive solar devices, any equipment, building, mine, well, rig, pipeline, transmission line, processing facility, transportation device, manufacturing facility, or installation, or any combination thereof, which will facilitate energy conservation or invention, exploration, research, development, demonstration, transportation, production, or commercialization of any form of energy other than atomic energy, including, but not limited to, any facility owned or operated in whole or in part by Federal, State, or local government or any combination thereof;

It is my understanding, Mr. President, that a priority energy project can be determined by the Board, by a majority of the Board, without any judicial review; and I think that the language "energy facility" is so broad, so all inclusive, that it would be——

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

Mr. ROTH. Yes, I am happy to yield.

Mr. JOHNSTON. The designation of a priority project requires the concurrence of three, the Chairman plus two members of the Board.

Mr. ROTH. Yes, three of the four members would have to approve it. But the fact remains that the language is so broad, so all inclusive, that it seems to me we are going very, very far in permitting the Federal Government to intrude upon what have been considered traditional State and local rights.

We are not talking about just synfuel plants. We are not talking about just energy facilities that would reduce our reliance upon foreign oil. It could very well refer to facilities that expedite, as I understand, the utilization of imported oil.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. ROTH. I am happy to yield.

Mr. JOHNSTON. The grand compromise of this bill is that it deal with the very concern the Senator just mentioned, that is, the intrusion upon State and local rights.

Some of us on the committee frankly wanted to waive discriminatory State statutes such as the North Carolina State statute with specific reference to the refinery at Piney Point, which just flatly says, "You cannot build it here." We thought that was discriminatory.

However, we came to the grand compromise, or great compromise, you might say, which provides that substantive law of the State, local community, or subdivision cannot be waived except in the case of the grandfather clause, and that is the ex post facto law. All that can be done is to set a time schedule for the State or local subdivision to decide itself, and we are assured that that time schedule would be reasonable, and if it is not, they can appeal the reasonableness of it.

It is only where they fail to decide within the time limit, as extended by the court, that the Energy Mobilization Board can decide on a time limit, and even then, they must use the decision criteria of local law, and there is an appeal from that decision to the temporary court of appeals, which is also mandated to use the decision criteria of local law.

So I submit to my distinguished colleague that this is not an intrusion on local rights, but rather an upholding of local rights. It is simply the recalcitrant State or local subdivision which refuses to decide, and which is delaying the project, where the Board may decide for it.

Mr. ROTH. I would say to my distinguished friend and colleague from Louisiana that the point that I am raising at the present time is not specifically as to the power of this Board, as to what it can do, but as to the breadth or scope of the legislation.

I was just pointing out that as I read the language, it not only applies to energy facilities that would reduce our dependence upon foreign oil or imported oil, which, of course, is our principal concern, but could be used in other circumstances, including, as I say, refineries or deepwater seaports that were built for the purpose of utilizing foreign oil.

I am, I would say to the distinguished Senator, very much concerned that, in effect, what we are saying in this legislation is that the Chairman of this Board can substitute his judgment when the local or State government is, as he says, recalcitrant in its approach to these problems.

As a principal advocate of sunset and regulatory reform legislation, I am convinced the States are not the major cause of energy project delays.

By trying to make the States out as bad guys and the Federal bureaucracy as good guys, the administration is turning our Federal system upside down.

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

Mr. ROTH. I will be happy to yield later, after I have concluded my statement.

There is no question that all regulatory processes—State and local, as well as Federal—need to be streamlined and expedited if we are to get going on our critical energy projects. There is no question we need certainty—a quicker yes—or no, if you will—at all levels of government on energy projects if we are to achieve energy independence. But I strongly oppose the notion we need the Federal Government to ride roughshod over local governments in order to get an expedited decision on these projects.

I was interested that a member of the Energy Committee, the Senator from Wyoming (Mr. WALLOP), in a very interesting minority report, pointed out that:

Throughout the consideration of this legislation, it has been assumed, but not demonstrated, that state laws and regulations have presented substantial impediments to energy development. This assumption is subject to challenge. My own state stands as testimony to the opposite conclusion, that energy development has taken place and can continue to take place without an Energy Mobilization Board. In spite of stringent environmental and industrial citing laws that Wyoming has enacted, the State's resources are vigorously being developed. Wyoming is fifth in the nation in crude production; seventh in natural gas production; first in uranium production; coal production has tripled since 1974 and may soon lead the nation; the thermal generating capacity has increased by 50 percent in the last five years; and the state is perhaps undergoing the most ambitious oil and gas exploration and development program in the history of the lower 48 states. And all of this without an Energy Mobilization Board substituting its judgment for state and local governments!

Mr. President, in contrast, the amendment sponsored by Senators MUSKIE, RIBICOFF, and myself preserves State and local rights without affecting the powers of the Board to expedite priority energy projects. Section 19 provides that, if a State or local government fails or refuses to make a decision according to the deadline set by the Board, the Board, by means of expedited action in State or Federal court, can order the State or local government to make the decision. This method of enforcing the deadlines set by the Board respects—and I think this is an important difference—the constitutional boundaries in our Federal system, unlike S. 1308, which allows the Federal Government to substitute its decision for that of the State and local governments.

In short, if my colleagues like national land-use planning done by an unelected, unaccountable board acting outside the sunshine laws, they will like S. 1308. But if my colleagues want an Energy Mobilization Board which will expedite our national priority energy projects while, at the same time, preserving State and local rights, our substitute amendment is the answer.

I think it is most significant, Mr. President, that the National Governors Association, the National Association of Counties, the National League of Cities, the Conference of Mayors, the National Conference of State Legislatures, the League of Women Voters, and Common Cause have all endorsed our amendment and oppose the Energy Committee bill. In my judgment, it is most important, as we approach this problem of energy, that we have the wholehearted cooperation of the other levels of government. I think that that is the great deficiency of the Energy Committee bill.

I think it is worth repeating, Mr. President, what the chairman of the National Governors Association Committee on Natural Resources and Environmental Management, Governor Lamm, wrote to me as well as to other Members who have been supporting the substitute amendment, and I quote:

The nation's Governors are deeply troubled by several provisions contained in S. 1308, the Senate Energy Committee's version of the Energy Mobilization Board. These provisions raise profound constitutional questions and threaten to undermine state and local decision-making processes. Specifically, we are concerned about:

(1) Sec. 21(a)(1) which empowers the EMB to intervene and make decisions in lieu of a state or local agency that has missed a decision deadline. This provision threatens to disrupt the basic system of federalism and raises serious constitutional issues that are certain to be litigated by the states. Reliance solely on the court order approach in Sec. 21(b)(1) would avoid these problems while offering effective enforcement.

(2) Sec. 23 does not insure adequately that the exercise of state water laws will be exempt from EMB interference. Decisions on the appropriation of water are quasi-judicial decisions and as such cannot and should not be subject to the Project Decision Schedule or the enforcement mechanisms of this bill.

(3) Sec. 36 allows the EMB open-ended authority to waive any statute passed after commencement of construction of a designated energy facility. On matters of such gravity, only the Congress should make the decision on a case-by-case basis. Such broad waiver authority should not be granted to the EMB.

Given these serious reservations concerning S. 1308 the National Governor's Association supports the passage of S. 1806, the Ribicoff-Muskie-Roth substitute as the alternative that best meets our concerns. I urge you to support S. 1806.

Mr. President, I point out that this concern has been voiced eloquently, not only by the National Governors Association but by other groups as well, such as the National Association of Counties. Bernard Hillenbrand, the executive director, wrote to Senator RIBICOFF that—

The National Association of Counties supports the concept of an Energy Mobilization Board and supports expediting the Federal permitting procedure.

We feel that State and local governments should work in close consultation with a federal board to develop concurrent reviews, joint hearings, consolidated data collection efforts and other methods of reducing "red tape."

While we support an Energy Mobilization Board we feel very strongly that state and local governments should retain authority over the final determination of decision deadlines as it relates to our laws and procedures. In addition, we feel that we should retain our authority over siting and permitting decisions without fear of federal preemption. Consequently, we oppose any structure which would allow an appointed federal body to substitute its judgment for that of state and local decisionmakers.

We have reviewed S. 1806 as introduced by yourself and others and we feel that of the Energy Mobilization Board proposals currently under consideration by the Senate it strikes the best balance between protecting state and local prerogatives while insuring that decisions will be made quickly.

We commend you for your efforts in this area and offer our assistance on behalf of passage of this or a similar proposal.

Again, Mr. President, we heard from the National League of Cities, who wrote:

The central justification for an Energy Mobilization Board (EMB) is to force authorized local, state and federal decision makers to act expeditiously. We believe the Ribicoff-Muskie bill does this. And S.1806 does it without running afoul of the historic and constitutional rights of state and local governments.

By permitting the EMB to set enforceable schedules and deadlines for local, state and federal decision makers, S.1806 guarantees that decisions on priority energy projects will be made in a timely manner by the duly authorized decisionmakers. By requiring that all decisions be made within a year of project application, S.1806 guarantees an expeditious decision making process at all levels of government. And by allowing the EMB to monitor decision making schedules and to obtain court orders forcing compliance when the schedule is violated or final deadlines are missed, S.1806 guarantees effective and efficient enforcement while avoiding serious constitutional problems that could embroil the EMB in litigation and keep it from exercising its power.

Equally important from the cities' point of view, S.1806 envisions a cooperative process for expediting priority energy projects. Municipal officials want to cooperate in the national energy effort. They welcome the opportunities this bill presents for involvement. Requirements in the bill, such as consultation with state and local officials in designating priority projects, will encourage a cooperative and workable relationship among all levels of government.

Unfortunately, this rational approach to the EMB is missing from S.1308, the Senate Energy Committee's bill. Many municipal officials have indicated to NLC their anxiety about just the kind of powers that S.1308 grants the EMB. We are strongly opposed to Senate passage of S.1308 as reported by the Energy Committee.

Mr. President, I could refer to other letters, but I think the point has been made that other levels of government are unified in their opposition to the bill as proposed by the Energy Committee and in support of the substitute amendment, because they see it accomplishing the same goals—first by providing a procedure to set a schedule for energy projects,

and then by providing the means by which to enforce them.

Our amendment is only the beginning of a national energy policy; the hard questions are still to be answered. The Energy Mobilization Board only gets us a quicker "Yes" or "No." Considering the depths of redtape to which we have descended, I would say that alone is a significant accomplishment.

Our amendment and the Energy Committee bill are no different in that respect: They both streamline the regulatory process at the Federal level, and that, we all agree, is a good thing.

But I warn my colleagues against passing the buck to an Energy Mobilization Board to ramrod energy projects down the throats of our State and local governments.

Such a steamroller approach will only divide our Nation, provoke open revolt by the States, lead to endless litigation, and shatter any consensus we achieve by designation of our priority energy projects.

The buck stops here, Mr. President. Until we in this Congress resolve the conflicts between our environmental and energy goals and achieve a consensus on what kind of environmental quality and economic growth our Nation wants for its future generations, we will never truly have a national energy policy.

I urge my colleagues to vote for the substitute amendment to get our country moving toward energy independence without destroying State and local rights.

Mr. PROXMIRE. Mr. President, I am opposed to S. 1308, the Energy Mobilization Board bill, as it was reported by the Committee on Energy and Natural Resources. While I agree that some provision may be necessary to insure that priority energy projects are not subject to unnecessary bureaucratic footdragging, I believe that S. 1308 may go too far in its efforts to remove such obstacles.

One of my concerns is that S. 1308 sets no limits on the number of energy projects which can be designated for priority treatment. Strict limits should be set, to be sure that only those projects of the utmost urgency will be eligible for special treatment. Otherwise, we run the risk that designation as a priority project will become the norm.

The Banking Committee, which has oversight responsibility over the Defense Production Act, has noticed an analogous tendency with regard to the national defense priorities system. A procedure which was intended to apply only to the most urgent national defense procurements has gradually been accepted as the regular means of doing business. Now, defense planners have no way to distinguish between routine procurements and those which genuinely require priority consideration. The result could be the same with regard to energy projects unless we establish limits at the outset.

I am also concerned about the fact that S. 1308 would permit all directors of the EMB other than the Chairman to be part-time employees of the EMB. We should make sure that the persons given such extraordinary powers do not have private sector jobs that would detract from their attention or cause possible conflicts of interest.

I am also concerned about the provision which allows the EMB to step in and take over decisionmaking responsibility from other Federal agencies. If fast-track legislation is to be adopted, we should make sure that agencies perform their duties within the prescribed deadlines, but I question the need to allow the EMB to take over these responsibilities.

Finally, although I am pleased that S. 1308, as reported, does not provide blanket authority to waive Federal laws, I am concerned about the waiver provisions. S. 1308 gives the EMB authority to waive applicable Federal laws enacted after the commencement of construction of a priority project. This provision ignores the fact that the environmental and health consequences of these new technologies are unknown at this time. Our experience with nuclear power has shown how unexpected consequences may become known only in the light of operational experience. After all, what is the purpose of the synthetic fuels development program? A primary purpose of the first phase of the synthetic fuels development programs is to gather knowledge about these health and safety effects, and it would smother the benefits of this program if we exempted all energy projects in advance, before we know what effect they might have.

This provision is particularly objectionable in light of the bill's failure to set limits on the number of projects which would be eligible for priority treatment. In its deliberations on the synthetic fuels bill, the Banking Committee was aware of the need to provide some protection to project developers against capricious changes in Federal law or regulations, and I know that the Energy Committee print of S. 932 also contains a provision for limited "completion guarantees." I believe that S. 1308, which provides for complete waiver of new laws, goes entirely too far, particularly in light of the Energy Committee's completion guarantee provisions in S. 932.

In short, S. 1308 is substantially improved from the original version of the fast-track legislation. However, because of the concern I have outlined, I cannot support this bill.

This is the reason I support the Muskie-Ribicoff substitute. I think it would be far preferable to S. 1308. If that substitute is not adopted, I feel I cannot support the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, this agreement has been cleared on all sides.

I ask unanimous consent that with respect to the amendment offered by Mr. RIBICOFF and Mr. MUSKIE, there be an agreement as follows: That a vote occur tomorrow at the hour of 12 noon on a tabling motion, that time between this point today and 6 p.m. today and again beginning at 10:30 a.m. tomorrow and 12 noon tomorrow be equally divided between Mr. RIBICOFF for the proponents and Mr. JOHNSTON for the opponents, with the proviso that no amendments be in order other than amendments with respect to the Ribicoff amendment that are satisfactory to Mr. RIBICOFF and Mr. MUSKIE, which would, therefore, be accepted by them and, in essence, constitute a modification of the amendment by the authors, and with respect to the committee substitute that no amendments be in order up until 12 noon tomorrow that are not acceptable in the same way, to wit, acceptable to Mr. JOHNSTON and Mr. DOMENICI, which, in essence, would constitute a modification by the authors of the committee substitute.

The PRESIDING OFFICER (Mr. BUMPERS). Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, the majority leader, of course, is correct. We have conferred at length on this agreement. It is a suitable arrangement as far as I can ascertain on our side.

I have one inquiry, the amendments that might be dealt with between now and tomorrow noon would be only those amendments which the proponents of the substitute would be willing to accept?

Mr. ROBERT C. BYRD. That is correct. The substitute, in each instance.

Mr. BAKER. Mr. President, I have no objection to the request.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, I think it would be understood that these amendments we have referred to would be germane, is that correct?

Mr. ROBERT C. BYRD. Yes.

Mr. DOMENICI. I think that would have been understood. But we made it a subject of each sponsor, and that it further be germane.

Mr. ROBERT C. BYRD. Let us accept that. In any event, they would not be acceptable to the authors of the committee substitute and the Ribicoff substitute, respectively.

Mr. DOMENICI. Reserving the right to object, I would like to make one further inquiry of the Senators that have been party to the understanding.

I think we are all aware that sometime tomorow Senator STEVENS has to leave. He had a pending substitute. I wonder if we could agree that in the event the Ribicoff-Muskie-Roth substitute is tabled that Senator STEVENS could proceed with his immediately thereafter.

Does anyone have any objection to that?

Mr. JOHNSTON. That we proceed——

Mr. DOMENICI. With Senator STEVENS. He has a pending substitute. That would not be in order until and unless the substitute offered by Senator RIBICOFF and Senator MUSKIE is disposed of.

I was asking, would there be any objection there, in the event it is tabled, to proceed next with Senator STEVENS' amendment. He has asked that I ask the Senate this request, and I see no problem with it, myself.

Mr. MUSKIE. Reserving the right to object, I would have no objection myself. I am not sure I am in a position to agree to making that a part of the agreement. I would personally have no objection, but ought to reserve——

Mr. ROBERT C. BYRD. Let us not include that in the agreement then. Then the Senator would have no objection.

We will have that as part of an understanding, that Mr. STEVENS will be able to proceed with his amendment.

That is not an order of the Senate, and perhaps——

Mr. DOMENICI. I do not understand the difference. Is the Senator saying that those of us who are here would understand that, but it is not binding as a matter of unanimous consent?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Mr. President, I am perfectly willing to go with the request as it was made.

I think the majority leader would indicate his intention to join us to see that Senator STEVENS has that opportunity tomorrow. So far as I am concerned, that is as good as an order. That would satisfy me.

Mr. DOMENICI. I say to the Senator from Maine that that is the same, is it not?

Mr. MUSKIE. Mr. President, reserving the right to object, the one question I have with respect to what is proposed is this: If the substitute is defeated by a close vote, there may be an amendment that builds on that close vote to amend the committee bill in a narrower way, and I would not want to bind myself to losing whatever momentum I have at that point.

Mr. DOMENICI. I say to the Senator from Maine that I do not know how we can put that into a unanimous-consent agreement. Yet, I agree with him that that is a legitimate concern, and I would not push the other as a matter of accord.

However, I ask the majority leader and the minority leader if they would express, on behalf of Senator STEVENS' request, that they would do what they could to see that it is the next matter after the disposition of the Muskie amendment, if it is disposed of.

Mr. ROBERT C. BYRD. We have to recognize that the majority leader and the minority leader cannot guarantee that that would be the case. So I would not want any of us to go into this with our eyes closed. If it is an order of the Senate, it is one thing; but if it is not, we can have a sort of gentlemen's understanding. But that does not keep some Senator tomorrow from wanting his amendment called up in contravention of the understanding.

Mr. BAKER. I think we have a good agreement, and I believe it would be adequate for Senator STEVENS' purposes if there were a general understanding that if the Muskie-Ribicoff substitute is tabled, we will try to accord the Senator from Alaska an opportunity to offer his substitute.

As the distinguished majority leader points out, nobody can guarantee that. But if that is our general intention and purpose, I think that will be satisfactory to Senator STEVENS, who understands the circumstances.

Mr. ROBERT C. BYRD. That would not be binding. The Senator from Alaska has some circumstances governing his situation that make it necessary for him to leave at a reasonably early hour tomorrow, and we would like to accommodate him.

Mr. BAKER. I see a representative of Senator STEVENS on the floor, and I understand that that is a satisfactory arrangement; but I believe there will be no objection.

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

The text of the agreement follows:

*Ordered*, That on Wednesday, October 3, 1979, during the consideration of S. 1308 (Order No. 344), a bill to set forth a national program for the full development of energy supply, and for other purposes, the time between 10:30 a.m. and 12:00 noon be equally divided and controlled by the Senator from Connecticut (Mr. Ribicoff) and the Senator from Louisiana (Mr. Johnston).

*Ordered further*, That no amendment to amendment No. 488 be in order during that period, except those that are accepted as germane modifications by the Senator from Connecticut (Mr. Ribicoff) and the Senator from Maine (Mr. Muskie).

*Ordered further*, That no amendment to the reported amendment in the nature of a substitute be in order during that period, except those that are accepted as germane modifications by the Senator from Louisiana (Mr. Johnston) and the Senator from New Mexico (Mr. Domenici).

*Ordered further*, That a vote on a motion to table amendment No. 488 occur at 12:00 noon on Wednesday, October 3, 1979.

Mr. ROBERT C. BYRD. Mr. President, I take it that there will be no more rollcall votes today, based on the agreement that the Senate has reached, so I think our respective cloakrooms can so notify Senators.

Mr. JOHNSTON. Mr. President, a question has been raised by at least two Senators with respect to the legality of the Energy Mobilization Board displacing State and local decisions. I know that the distinguished Senator from Utah (Mr. HATCH) had a question and the distinguished Senator from Delaware (Mr. ROTH) had a question on this.

I would like to read a couple of paragraphs from a memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, on this question, because I think it is quite clear and precise. The amendment reads, in part, as follows:

Congress may preempt local decisionmaking altogether and totally deprive local government from exercising its sovereign power. Preemption of State and local laws which interfere with Federal energy policy is commonplace. See, for example, section 6(b) of the Emergency Petroleum Allocation Act.

The critical distinction under the case law is between removing decisionmaking from State and local authorities, on the one hand, and forcing State and local authorities to implement Federal programs, on the other. This distinction is made clear by the Court of Appeals cases that considered constitutional challenges to the Clean Air Act and the Environmental Protection Agency's implementing regulations.

So what the Attorney General is saying is that the legal approach of the Muskie-Ribicoff amendment is illegal, under Supreme Court decisions, because it requires, as they state here, that forcing State and local authorities to implement Federal programs is not constitutional, according to this amendment. It is constitutional, as the Attorney General says, to preempt State and local laws which interfere with Federal energy policy.

Mr. President, this is a long memorandum, which discusses this precise point of the board substituting its decision judgments where the State or local bodies fail to make the decision on time. I commend this memorandum to my colleagues, because I believe it answers this legal question precisely and definitively. I think it is eminently correct, and I hope the Senator from Maine will take that into consideration in amending his amendment.

I ask unanimous consent to have this memorandum printed in the RECORD.

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

MEMORANDUM FOR THE HONORABLE STUART E. EIZENSTAT, ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS AND POLICY

Re Constitutionality of the Energy Mobilization Board Proposal.

For the past several weeks this office has been providing your staff with legal advice regarding the Administration's proposal to create an Energy Mobilization Board ("EMB"). The purpose of this memorandum is to expand on and memorialize that advice.

The EMB, which would be established in the Executive Office of the President, would be comprised of three members appointed by the President with the advice and consent of the Senate. The Board's central purpose would be to expedite the completion of designated "critical energy facilities"—projects that would reduce the nation's reliance on imported oil.

Expedition would be achieved by the Board's establishment of a Project Decision Schedule ("Schedule"), which would set a timetable for all federal, state, and local decisionmaking necessary for the completion and operation of a critical energy facility ("CEF"). If any agency failed to render a decision within the time provided by the Schedule, the EMB would be empowered to make the decision. In doing so, it would apply the federal, state, or local law that the supplemented agency would have applied. In establishing the Schedule, the EMB would be authorized to waive federal, state, and local procedural decisionmaking requirements, such as requirements relating to timing and the methods of decisionmaking. While substantive environmental and other standards could not be changed, the EMB could either: (1) designate a lead agency to prepare a single comprehensive environmental impact statement ("EIS") for a CEF, or (2) waive federal, state, and local EIS requirements, provided that it adopt another method of evaluating the environmental impact of a CEF. The EMB would also be authorized to waive federal, state, and local laws and regulations enacted or promulgated after the commencement of construction of a facility if the new requirement hindered expeditious completion of the project and so long as grant of a waiver would not unduly endanger public health or safety.

The Administration's proposal also seeks to put CEFs on a "fast track" by limiting and expediting judicial review. Decisions by the EMB designating a CEF and establishing a Schedule would not be subject to review. All other actions of the EMB and relevant agencies would be subject to review only in a federal court of appeals. Parties challenging agency action would have 60 days from the completion of the permitting process to

bring suit unless the EMB determines that earlier review is necessary to expedite completion of the process or to assure fairness. In reviewing decisions by agencies, or the EMB acting instead of an agency, the courts of appeals will apply the appropriate federal, state, and local substantive law.

The EMB proposal raises constitutional questions of first impression which it is the purpose of this memorandum to resolve.

I. EMB DECISIONMAKING AUTHORITY

The purpose of the EMB is to expedite completion of energy projects that will reduce national dependence upon foreign sources of oil. Effectuation of the important national interests of reducing oil imports and increasing domestic energy production is within Congress' broad power under the Commerce Clause of the Constitution, Art. I, § 8, cl. 3. But the Supreme Court has recognized limits on the exercise of Congressional power under the Commerce Clause when legislation interferes with the exercise of traditional state functions. *See National League of Cities* v. *Usery*, 426 U.S. 833 (1976). The proposal is subject to challenge on this ground because it empowers the EMB to: (1) set decision schedules binding on state and local agencies; (2) waive state and local procedural decisionmaking requirements; and (3) supplant state and local decisionmakers. We will treat these challenges in order.

*A. Scheduling*

Under the proposal, all state and local agencies that make decisions related to approval of a CEF would be required to forward to the Board a proposed timetable for such actions. The Board would set a deadline for each decision, which could be shorter than the deadline set by state or local law in cases of "exceptional national need."

It could be argued that Congress would exceed its power under the Commerce Clause by authorizing a federal agency to order a state or local agency to make a decision by a certain time. This argument takes on force when one considers the possibility that such decisions may be made by local units of government—*e.g.*, town councils.

In *National League of Cities* v. *Usery*, *supra*, the Court invalidated extension of the Fair Labor Standards Act's minimum and maximum hour standards to state and local governments. The Court's opinion, written by Justice Rehnquist, found that the federal requirements had a significant impact upon the functioning of the state and local governments, forcing localities to forego governmental activities and displacing local policies regarding the manner in which governmental services would otherwise be supplied. *Id.*, at 847–48. Thus, the statute was found to "impermissibly interfere with the integral governmental functions" of States and localities. The Court concluded that "insofar as the challenged amendments operate to displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, § 8, cl. 3." *Id.*, at 852.

The reasoning of the Court's opinion provides the framework for the analysis of the constitutionality of the Administration's EMB proposal. It may forcefully be argued safety are traditional state functions and that local decisions on land-use, health and that federal shortening of deadlines is an intrusion into the decisionmaking process—one that "may substantially restructure traditional ways in which local governments have arranged their affairs." 426 U.S., at 849.

Notwithstanding these arguments, it is our opinion that the scheduling mandate of the EMB is not contrary to the holding in National League of Cities. First, the Court's opinion stresses the financial burden that the FLSA imposed on States and localities. Here, Congress would not be imposing a burden that will alter fiscal policies, curtail traditional state and local activities or regulate provision of traditional services. The federal government would not be directing the local governing bodies to decide a matter in a particular way; the localities are free to grant or deny the permits and licenses involved pursuant to state and local standards. Nor would the EMB require the localities to perform a new function; it would simply set a deadline for a decision which would otherwise be made at some time. We would emphasize that, analytically, state and local decisionmakers and procedures are not being displaced in fact because there is no power in the EMB to require such agencies to follow the schedule. The EMB cannot, for example, seek injunctive relief in the courts to require a state agency to meet the schedule. Rather, the situation here is analogous to several complex federal regulatory programs, such as the Clean Air Act discussed below, which lay down specific ground rules for state action and provide for preemption by federal agencies of the state role if those rules are not followed. Such programs have been sustained against constitutional challenges similar to those which we may anticipate being brought against a statute enacting the Administration's EMB program. We therefore believe that the EMB may be empowered to set reasonable deadlines for local decisions.

Moreover, Justice Blackmun joined the Court's opinion in National League of Cities on the belief that it "adopts a balancing approach, and does not outlaw federal power in areas such as environmental protection, where the federal interest is demonstrably greater and where state facility compliance with imposed federal standards would be essential." 426 U.S. at 856.

We believe that this balancing approach suggested by Justice Blackmun would sustain the authority of Congress to empower the EMB to shorten state and local deadlines. The seriousness of the energy crisis is apparent, and its impact on foreign policy, national security and international monetary policy will, we assume, be the major focus of congressional deliberations over this proposal. A CEF may be designated only if a project has been determined "to be critical in contributing to the reduction of the nation's dependence upon imported oil or petroleum products;" and state and local deadlines may be shortened only "[i]n circumstances of exceptional national need." We are persuaded that these interests would be sufficient to override a local agency's interest in deciding when to decide. The national interest in expedition seems strong enough to overcome state and local decisionmaking processes which, Congress finds, delay decisions necessary to the expeditious completion of CEFs.

*B. Waiver of State procedures*

For the same reasons discussed above, we believe that the authority of the EMB to waive state and local procedural requirements is constitutional. Since substantive standards such as those regarding the environment, land use, health and safety are specifically excluded from the waiver, the authority does not threaten the provision of traditional state and local services. Waivers impose no financial burden on the States or localities; if anything, they are likely to conserve state and local resources. Again, we believe that the critical national interest at stake outweighs state or local interest in any particular decisionmaking procedures. This conclusion, however, is subject to two qualifications. First, the waiver power of the EMB is subject to due process limitations. Since it is likely that private rights will be at stake when property is taken or a particular land-use permitted, wholesale waiver of procedures could deny injured persons due process rights. Second, wholesale waiver may obstruct a local agency's ability to make a rational decision or to carry out a traditional function. For example, total waiver of state and local environmental impact requirements might make it impossible, in particular cases, for a State to evaluate adequately the impact of a facility and thus could hinder its traditional function of protecting public health and safety.[1] But these are problems of degree, not kind. The possibility that a court might find that a particular instance of waiver denied a party constitutional rights or unconstitutionally interfered with a State's performance of its sovereign functions does not void the waiver provision as a whole. So long as the Board applies a procedural waiver reasonably and "in circumstances of exceptional national need," we believe such action would be constitutional.

*C. Displacement of State and local decisionmaking*

The proposal provides that if a state or local agency fails to meet a deadline established by the Schedule, the EMB may make the decision in lieu of the agency. Obviously, this provision intrudes on authority presently exercised by state and local officials. Indeed, it could be argued that supplanting decisionmaking strikes at the heart of state and local sovereignty. Nothing is a more integral governmental function than government itself.

However, the constitutional power of Congress to supplant local decisionmakers is well established. Under the Commerce Clause, Congress may preempt local decisionmaking altogether and totally deprive local government from exercising its sovereign powers. Preemption of state and local laws which interfere with federal energy policy is commonplace. *See, e.g.*, § 6(B) of the Emergency Petroleum Allocation Act, 15 U.S.C. § 755(b).

The critical distinction under the case law is between removing decisionmaking from the state and local authorities on the one hand and forcing state and local authorities to implement federal programs on the other. This distinction is made clear by the court of appeals cases that considered constitutional challenges to the Clean Air Act, 42 U.S.C. § 1857, *et seq.*, and the Environmental Protection Agency's implementing regulations. That Act gives States the opportunity to establish plans implementing federal air pollution standards. If a State fails to develop an adequate plan, the EPA is authorized to promulgate a plan for the State. 42 U.S.C. § 1857c-5(c)(1)[2] EPA adopted regulations which would have subjected States to an injunction or criminal penalties for failure to implement the EPA-promulgated plan. The States challenged the constitutionality of the regulations, claiming that Congress could not authorize the EPA to compel state enforcement of federal programs. Three Courts of Appeals suggested that the EPA regulations exceeded Congress' power under the Commerce Clause by invading state sovereignty. *Brown* v. *EPA*, 521 F.2d 827, 834–40 (9th Cir. 1975); *District of Columbia* v. *Train*, 521 F.2d 971, 992–94 (D.C. Cir. 1975); *Maryland* v. *EPA*, 530 F.2d 215, 225–28 (4th Cir. 1975).[3] The courts of appeals

[1] This problem is mitigated by the proposal's requirement that in each case of waiver, the Board shall establish alternative procedures for the assessment of environmental impacts of the facility.

[2] The Federal Water Pollution Control Amendments, 33 U.S.C. § 1313(b), contain a similar provision.

[3] The judgments of the three courts of appeals were subsequently vacated and remanded by the Supreme Court based on a concession by the EPA that its regulations went beyond the power granted to it by the Clean Air Act. *See EPA* v. *Brown*, 431 U.S. 99 (1977).

found a constitutional difference between federal regulation of commerce and federal regulation of state regulation of commerce. To the extent the EPA regulations forced state legislatures to enact laws or be subject to penalties, those regulations impermissibly intruded upon state sovereignty. The District of Columbia Court of Appeals found that EPA was "attemping to commandeer the regulatory powers of the states, along with their personnel and resources, for use in administering and enforcing a federal regulatory program. . . ." 521 F.2d, at 992. The court stated that the EPA could seek state cooperation; if it did not receive cooperation, the "recourse contemplated by the Commerce Clause is direct federal regulation of the offending activity and not coerced state policing of the details of an intricate federal plan under threat of federal enforcement proceedings." *Id.*, at 993. Similarly, the Fourth Circuit noted the difference between inviting a State to administer regulations and compelling administration under threat of injunction and criminal sanctions. While questioning the constitutionality of the EPA regulations, it had no problem with the "time honored and constitutionally approved device of threat and promise. . . . The threat is a federally imposed regulation with federal administration; the promise is the invitation for Maryland to enact a suitable implementation plan and administer it with state employees, thus avoiding federal interference." 530 F.2d at 228. None of the courts of appeals suggested that the authority of the Administrator to promulgate compliance plans for States that failed to comply was unconstitutional.

The distinction drawn by these cases strongly supports the constitutionality of the proposed EMB procedures. We believe that Congress on an adequate record could preempt all state and local law that interfered with the construction of a critical energy facility. The Administration's EMB proposal, however, does not go so far; it seeks to achieve state and local cooperation without altering state and local law. The proposal sets a deadline for state action, inviting the States to act; if that deadline passes, the EMB is empowered to make the decision for the state or local agency. There is no conscription of state or local personnel or services; there is no compulsion of state or local action. States and localities are given the opportunity to act within a certain time or they lose their ability to act. Such a scheme seems clearly to fit within the "time honored and constitutionally approved device of threat and promise." *Maryland* v. *EPA*, supra, 530 F.2d, at 228. In fact, the proposal is less intrusive than a scheme of total preemption because the EMB will apply the substantive law of the States and localities [4] and its decisions will be subject to judicial review under the relevant state and local standards.

II. JUDICIAL REVIEW OF STATE AND LOCAL DECISIONS

As outlined above, review of EMB actions and decisions by federal, state, and local agencies under the Schedule would be lodged exclusively in the federal courts of appeals. The reviewing court would apply the federal, state or local law governing the challenged decisions. This proposal raises the questions whether Congress may oust state courts of jurisdiction and whether federal courts are capable of receiving such jurisdiction under Article III of the Constitution.

*A. Divesting State court jurisdiction*

Congress has clear authority to vest exclusive jurisdiction of cases within the purview of Art. III of the Constitution in federal courts. *Bowles* v. *Willingham*, 321 U.S. 503, 511–512 (1944); *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 429–30 (1867). And federal courts may entertain state cases, applying controlling state law, if Congress so provides. *The Mayor* v. *Cooper*, 73 U.S. (6 Wall.) 247 (1867) (civil removal); *Tennessee* v. *Davis*, 100 U.S. 257 (1879) (criminal removal). Nor is it unusual for federal courts to apply and intepret state law. Since *Erie RR. Co.* v. *Tompkins*, 304 U.S. 64 (1938), federal courts sitting in diversity have applied substantive state law. Federal courts also apply state criminal law under the Assimilative Crimes Act, 18 U.S.C. § 13, and under removal statutes. *See Tennessee* v. *Davis*, 100 U.S. at 271–72; *Miller* v. *Kentucky*, 40 F.2d 820 (6th Cir. 1930). And cases brought under the Federal Torts Claim Act are governed by state tort liability standards. 28 U.S.C. § 1346(b).

Thus, we see no constitutional impediment to vesting exclusive jurisdiction in federal circuit courts or in having those courts apply the appropriate state or local law. The question that remains, however, is whether the courts of appeals are constitutionally empowered to decide such cases—that is, whether challenges to state and local permitting decisions come within Art. III.

*B. Jurisdiction in the courts of appeals*

Under the Administration's EMB proposal, decisions made by the EMB in lieu of state and local decisionmakers would be subject to review in the courts of appeals. The basis for federal jurisdiction in such cases is clear because a suit challenging the EMB's decision would be a suit in which the United States is a party.

If, however, a state or local agency renders a decision within the time limit prescribed by the Schedule, the basis for jurisdiction in a federal court of appeals is less certain because the state or local agency's decision will not have necessarily involved decisions on issues of federal law.[5] In such a situation, the question would be presented whether such cases would "arise under" federal law and thus could be made subject to federal jurisdiction under Art. III.

Before examining the possible bases for Congress' conferring on federal courts jurisdiction to review state actions governed by state standards as provided in the Administration's proposal, we believe it would be useful to focus on the context in which such litigation may arise.

First, state court jurisdiction is being preempted under the Administration's proposal because of the critical need for expeditious judicial review of state and local (as well as federal) decisions which affect the planning, construction and operation of CEFs. This judgment, which was not reached lightly, necessarily reflects a belief that the state courts cannot be relied on to reach decisions as promptly as required in order to meet the national objectives established for CEFs.

Second, the federal government will have substantial interest in virtually all approval decisions rendered by state and local agencies. As proposed by the Administration, the Energy Secruity Corporation would be a government-sponsored enterprise which would have broad range of powers to shape the overall development of CEFs and to become directly involved in the sponsorship of CEFs through direct grants or loans, or, indeed, through construction of a limited number of CEFs. More importantly, the decision to bring a specific energy project under the federal umbrella provided by the Administration's EMB proposal by designating it as a CEF triggers a range of actions open to the EMB which further illustrates the federal interest present in any approval decision by a state or local agency.

Third, as a practical matter judicial review of most decisions made by state and local agencies may generally be expected to present at least some substantial federal questions. Where, for example, the EMB has granted a waiver to a state agency of state procedural requirements in order that the agency might meet its deadline for decisions prescribed by the Schedule, the federal question of whether that waiver power was exercised arbitrarily by the EMB and whether the state agency's procedure comported with federal constitutional requirements might well be part of the litigation.

The Administration's EMB proposal as presently drafted provides neither for any overriding principle of federal law to control the interpretation of state substantive law nor specifically for incorporation of state law as a federal standard to be administered by state or local decisionmakers as federal law. Thus, when either the EMB or state and local agencies make approval decisions pursuant to state substantive law, they are applying that law qua state law. If Congress expressly incorporated state law as the federal law of decision by the EMB and state and local agencies, suits challenging those decisions would "arise under" the laws of the United States. *See Macomber* v. *Bose*, 401 F. 2d 545 (9th Cir. 1968); *Stokes* v. *Adair*, 265 F. 2d 662 (4th Cir.), *cert denied*, 361 U.S. 816 (1959); *Quadrini* v. *Sikorsky Aircraft Division, United Aircraft Corp.*, 425 F. Supp. 81, 87 (D. Conn. 1977); *Textile Workers Union* v. *American Thread Co.*, 113 F. Supp. 137, 140 (D. Mass. 1953). Cases establish not only that Congress may incorporate state law as the federal standard but that it may also leave to the States the authority to amend the substance of those state laws that are on the books when the federal statute effecting such incorporation is enacted. *See, e.g., United States* v. *Sharpnacks*, 355 U.S. 386 (1958).[6]

Assuming, however, that there is at least some symbolic reason to allow state decisionmakers to continue to apply state law qua state law, we believe that federal court jurisdiction under the so-called "protective jurisdiction" theory would be available.

At least in theory, there might be a 10th Amendment objection to federalizing the state law to be applied by state agencies even though federal law is substantively identical to the displaced state law. The objection would be that the state or local agency has, in effect, been instructed with regard to the

[4] We note that the incorporation of state and local laws as the federal standards for decisions made by the EMB in lieu of state and local decisionmakers is not novel. In the area of federal taxation, the Internal Revenue Service routinely interprets and applies state laws establishing property rights in determining the federal liability. *See, e.g., Morgan* v. *Commissioner*, 309 U.S. 78 (1940).

[5] We note that parties to the state or local agency proceedings may have raised before an agency or might raise before a Court of Appeals federal constitutional issues related to the agency's action which would be adequate to vest jurisdiction in the court of appeals at least over those federal issues. State claims arising out of the same agency decision would be cognizable in the federal courts under the doctrine of "pendent" jurisdiction. *See generally United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966).

[6] Incorporation would permit Congress to freeze state law standards as presently in force. The Administration's EMB proposal, however, does not seek to freeze such standards as may evolve, which would appear to us to suggest that there are no significant policy reasons to have state law directly incorporated here, except to the extent incorporation brings actions relating to a CEF within Art. III.

law to be applied by it and is therefore being required to administer a federal program without having any freedom to decline to do so. *See Maryland* v. *EPA, supra.*

In *International Brotherhood of Teamsters* v. *W. L. Mead, Inc.*, 230 F.2d 576 (1st Cir. 1956), the Court of Appeals upheld the constitutionality of § 301 of the Taft-Hartley Act on the theory of "protective jurisdiction." Under that theory, Congress is not required to displace totally (or presumably to incorporate) all otherwise applicable state law in its comprehensive regulation of a specific area of activity. Rather, Congress may leave issues to be decided by reference to state law but place litigation over those issues and others in Art. III courts. 230 F.2d, at 580–81.

In reaching its conclusion, the First Circuit relied on *Williams* v. *Austrian*, 331 U.S. 642 (1947), a case in which federal jurisdiction was held to exist in a bankruptcy suit in which only state law would be applied by a federal court.[7] The First Circuit appeared to suggest that some limits on the "protective jurisdiction" might be derived from Art. III, one such limit being the requirement of a high degree of overall federal regulation of an area before federal "protective" jurisdiction could be established. In this case, we think it clear that the Administration's overall CEF proposal would clearly meet that threshold test. We would add that the First Circuit's analysis received the explicit approval of Justices Burton and Harlan in *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957), in which the Court upheld the constitutionality of § 301 of the Taft-Hartley Act on other grounds.

Although we conclude that federal jurisdiction consistent with Art. III's "arising under" requirement may be conferred under either an "incorporation" or "protective jurisdiction" rationale, we would add that such jurisdiction could also be established by empowering the EMB to intervene as a party in any case brought in the Court of Appeals challenging an approval decision made by a state or local agency. In these circumstances, jurisdiction would be established as an Art. III matter by virtue of the United States or one of its instrumentalities being a "party" to the suit, *see United States* v. *San Jacinto Tin Co.*, 125 U.S. 273 (1888), having a judicially cognizable interest in the subject matter of the suit.

III. CONCLUSION

It is our opinion that authority may constitutionally be granted the EMB to subject state and local agency decisionmaking to the Schedule, to waive non-constitutional procedural requirements imposed on those agencies by state law, and to act in the stead of such agencies when they fail to meet the Schedule. If the Schedule is met, then state sovereignty is respected; if the Schedule is not met, then decisionmaking power passes to the EMB. We reach these conclusions acknowledging that these are novel questions of constitutional law for which there is no direct precedent either in judicial decisions or historical experience.

We also believe that jurisdiction may be vested in the federal courts to hear all challenges to approval decisions made by state and local agencies even in cases involving questions of substantive state law and that the EMB may be made a party to any such actions in order to assure that the interests of the United States are adequately represented and that the requirements of Art. III are met.

[7] See also *Shumacher* v. *Beeler*, 293 U.S. 367 (1934). See generally Mishkin, *The Federal "Question" in the District Courts*, 53 Colum. L. Rev. 157, 195 (1953).

Mr. MUSKIE. Mr. President, I would like to step back with respect to the details of this legislation for just a moment and make a few observations which may have been obscured in the past few months since the President sounded the call for energy mobilization.

First, the President proposed the creation of a new executive agency, an Energy Mobilization Board, to carry out a portion of his national energy program, a new executive agency, a concept that generally would be subject to extraordinary scrutiny by the Senate, particularly the Committee on Governmental Affairs.

However, this was not just a new Federal entity, as is clear from the debate that has taken place thus far this afternoon. It was one with extraordinary powers to alter Federal, State, and local laws relating to energy facilities. Most specifically targeted were laws such as environmental protection.

I was concerned 3 months ago, as I remain today, about the rush to create this new body, with little of the thorough and searching examination usually accorded to such major legislative initiatives. I am not opposed to the development of synfuels to reduce our dependence on imported oil. I am not opposed to increased use of coal to reduce our dependence on foreign oil. I am not opposed to expediting the review of energy facilities to achieve the President's goal of a 50-percent reduction in the use of imported oil by 1990.

What I do oppose is a headlong rush to create a powerful, new Federal entity, without consideration of alternate, perhaps existing, mechanisms to expedite energy facility review, the failure to identify the specific problems associated with energy development which the Senate must address, and the failure to agree on the purpose for which the legislation is being enacted.

As a product of that concern, which obviously was shared by other Members of this body, including Senator RIBICOFF, the principal sponsor of the substitute; Senator ROTH, the principal cosponsor of the substitute; and other Senators, S. 1806 was developed.

Frankly, I think it is superior legislation in its entire structure, apart from issues raised by the committee bill which the substitute seeks to address. I simply think it is a sounder piece of legislation.

So we have tried today to make one last attempt to focus the attention of the Senate on the magnitude of the implication of S. 1308, the Federal, State, and local laws especially as they apply to environmental matters at the State, Federal, and local level.

We must continually remind ourselves during this debate that the original goal of this legislation was to reduce our dependence on foreign oil. The President presented us 3 months ago with a manyfaceted plan to reduce our dependence on foreign oil by 50 percent by the year 1990. One mechanism he proposed to achieve this goal was the creation of an Energy Mobilization Board to expedite consideration and review of proposed energy facilities to replace imported oil. Yet the Energy Committee has chosen to give expedited treatment and substantive and procedure waivers to any energy facility which the Board finds could directly or indirectly reduce the Nation's dependence on foreign oil.

I ask my colleagues, can they think of any energy project which could not claim that it indirectly reduces our dependence on foreign oil through some sort of convoluted reasoning?

Surely, we cannot assume that the Board will exercise the restraint that has not been shown by the authors of the legislation.

And is the Board accountable to anyone in deciding which facilities receive special expedited treatment? That is an important question, Mr. President, because the Board puts in place a loose, ambiguous test, the only one in the committee bill, as a criteria and then gives to the Board the power to decide which projects go on the fast track. The Board's decision is not reviewable in the court or anywhere else.

There is no judicial review available of the decision to fast-track any number and any type of nonnuclear energy facilities.

This legislation is targeted obviously on environmental laws, and most specifically the Clean Air Act, but including others as well. Yet there is no requirement in this bill that in deciding whether or not to fast-track a project the Board should at least identify the environmental considerations, values, and risks that are involved.

It will make a nonreviewable decision to fast-track a project only upon its own notion of the projects that need to be built for energy purposes, without consideration at that point of the environmental implications.

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

Mr. MUSKIE. I am glad to yield.

Mr. JOHNSTON. The Senator does understand that we did make the decision on the committee, and the bill reflects it, not to waive any substantive law. The only thing it waives here is a time limit so that the State, local, and Federal decisionmakers must comport their decision time to the decision schedule. But all of the substantive requirements of the Clean Air Act or the Clean Water Act or all of these acts to which the Senator refers that do involve environmental values are all preserved; and, indeed, when the Board finally decides for the recalcitrant agency, it must use the decision criteria of that particular agency—State, local, or Federal. The Senator does understand that provision?

Mr. MUSKIE. I understand it, but I am not impressed by it.

I have been in the business of writing environmental laws since 1963 and I have come to understand the importance that procedural requirements and procedural safeguards have with respect to protecting the substantive law itself, a lesson I learned in law school years ago, as I started to say earlier this afternoon: Substantive rights can be destroyed by a denial of procedural rights. And time schedules we found in environmental laws are all too often too short

to present either the interest of those who would be regulated by environmental legislation or those whose interests are designed to be protected.

What we have here is a board which would be waiving procedural safeguards and requirements, shortening deadlines in some instances, extending them in other instances, without the kind of appreciation for the substantive implications of those decisions. That is what troubles me.

On the face of things the language to which my good friend refers indicates an intent on the part of the committee to separate substantive and procedural law. I just do not think it is going to work, especially when what you have, in effect, is an across-the-board deadline setting mechanism instead of a deadline setting mechanism that to the maximum extent possible reflects the differences in deadlines and their importance in different laws. It is just an across-the-board, I will not use the word "meat-ax," but an across-the-board sweeping kind of deadline setting that may or may not adequately protect the substantive values involved.

Mr. JOHNSTON. Mr. President, will the Senator yield further?

Mr. MUSKIE. Yes, I yield.

Mr. JOHNSTON. I invite the Senator's attention to two other provisions of the bill. That is not only the protection which I have just referred to. That is that no substantive law is waived, except in the case of the grandfather clause, but also the fact that if the time limit set is unreasonable then that decision itself is appealable to the TECA court. So if a State or other litigant is not able within the time limit to perform those procedural steps that are essential to protecting the substance, then he has full remedy to go to the Temporary Emergency Court of Appeals. Moreover, we do not supplant the right of the State, local, or the Federal people to make their own decision. They still have the right to say no.

Mr. MUSKIE. Yes. I have heard that argument. But let me ask my good friend a question.

I will let the Senator finish his point while I find the document I was looking for.

Mr. JOHNSTON. I also invite the Senator's attention to page 39 of our report which makes this description which, I think, is very accurate. It says:

> Although the deadlines and procedures established by the Board could be binding, they do not authorize agencies to ignore any other statutory requirements in their efforts to meet their deadlines. Agencies must still comply with such laws in every respect.

So it is a balancing, on the one hand, when you set deadlines, but reasonable deadlines subject to appeal.

On the other hand, all of the substantive criteria must, as the report says, comply with such laws in every respect.

So I fail to see the Senator's concern, given the elaborate safeguards of the bill, of how it would be possible to roll over the substantive requirements so carefully built into the law by the Senator from Maine and others in this body.

Mr. MUSKIE. Well, Senator, in this agency, whose primary responsibility is to expedite energy projects, you would not for a moment suggest that that body is as qualified to consider the administration of the Clean Air Act as those now in charge.

Mr. JOHNSTON. No, absolutely not.

Mr. MUSKIE. If I may complete my thought, and the whole bias is going to be to push energy projects and to minimize obstacles. That is the word that will be used "obstacles."

I am not one, having struggled to write the Clean Air Act for all these years, who regards the Clean Air Act as an obstacle. I regard it as a protector of public health. But those whose primary responsibility is to build energy projects will be inclined to look on safeguards of the Clean Air Act and the Clean Water Act as obstacles standing in the way of the performance of their primary responsibility, and they are going to look upon those who raise such questions as aggravating and undesirable interferers in the discharge of their responsibility.

Moreover, they are not going to have at their disposal, unless what is contemplated is a bureaucracy the size of which is not projected in this legislation, the expertise or the background in dealing with the problems encountered in the administration of the Clean Air Act or the understanding of the implications of the legislative language and the regulatory language that is in place, that the administrators of the Clean Air Act have accumulated over the year.

So whether it is deliberate or intended by the pending bill or simply the product of unfamiliarity, ignorance, lack of expertise, or whatever, the Board will be making procedural decisions which could have significant substantive impacts. I think examples of that could be listed in ways that would take a week to cover them all.

Mr. DOMENICI. Mr. President, will the distinguished Senator yield for an observation and a discussion with him?

Mr. MUSKIE. Of course.

Mr. DOMENICI. I do not want the floor, but just to share a few thoughts.

I think you know that two of the Senators who spoke before, and who are on the committee, Senator McCLURE and myself, while we have not struggled nearly as long as the Senator from Maine with either the Clean Air Act or the Clean Water Act, both of us went through two conferences, saw one of our bills killed on the floor in the waning hours, and then had to go through it all again, as the Senator will recall, and the Senator had the support of both of us, Senator McCLURE and myself, and, in fact, I think the Senator will recall that one of the Members who is on this report, Senator McCLURE, as I recall the Senator's words, for the first time asked that a report be subject to committee scrutiny in detail.

Mr. MUSKIE. That is right.

Mr. DOMENICI. And we made more than 150—I ask him today—changes in the report because we were so concerned that it is difficult to write into a statute the things you want to write into it, and we were even having a report helping to interpret the second Clean Air Act.

Mr. MUSKIE. The Senator is making my argument better than I am.

Mr. DOMENICI. I will say this: We did not get on this bill thinking we were substituting this Board for the substantive environmental laws of this land. In fact, I can tell the Senator that what I have assumed was this, and I will give the Senator a simple hypothetical, knowing full well that he can find very complicated issues in terms of clean air.

But before I give you my example I want to say that I, for one, having been part of all that, do not assume for one moment that there are not delays in that process that are uncalled for, that could be constrained without in any way changing the substantive law, meaning the mandate of performance in terms of clean air in a factory, in a pipeline or refinery or whatever it is. So I assumed the following: That if one of these projects was going to be fast tracked that this Board would not determine compliance with the Clean Air Act either the United States or New Mexico, but rather New Mexico's EPA will, and the United States will, and if there is not compliance they will say "No."

The only thing we are saying is we are going to, within reason, set the time within which you say, "You are in compliance," or, "You are not in compliance." In no way would you be saying to either EPA or New Mexico, using my State, that they need to say to this Board, "You, Board, take over for us and dictate to us the standards of clean air required by some kind of construction."

I do not know how else we can do it, but that is the intention from this Senator's standpoint. Yet I want to see it expedited as much as possible.

Mr. MUSKIE. Let me say to my good friend from New Mexico that if we had followed a similar process of assumptions or good intentions in writing the Clean Air Act the clean air law would be much shorter, much simpler, much clearer. But among those Senators who insisted that you could not make such assumptions, in order to protect the interests with which they were concerned, the law had to be made more complicated, clearer as to its safeguards, clearer as to the rights of judicial review. I mean a lot of the complications in the Clean Water Act are written in to protect those who are regulated, and the members of the committee would accept no assumptions that the bureaucracy would not abuse businessmen trying in good faith to comply or industries trying in good faith to comply. They wanted it written into the law.

We are told that we have written an overcomplicated law, that the bureaucracy uses that overcomplicated law to delay and stretch out decisionmaking. I mean if we could write a law the way the Senator describes he wrote this one we would not be here, because I would have made sure that we wrote crystal-clear objectives in the law and assumed that with the Administrative Procedure Act the rights of interested parties would be protected.

Now you tell me that I do not have to fear a similar approach of yours. That the shortening of a deadline—there cannot be anything wrong with shortening a deadline—who on the face of it can object to the shortening of a deadline? Well, the Senator knows the kinds of discussion and deliberation and disagreement that went into establishing the deadlines in the Clean Air Act and Clean Water Act in the first place. There were some who said they were too long, too far in the future. Others said they were too short. Why did that arguing go on? Because those offering either one or the other argument knew that their substantive rights could be affected if a deadline was too short, and those who were interested in implementation of the law feared a deadline too far in the future would not protect the public interest.

So when you tell me changing a deadline has no substantive impact, I am not impressed, Senator. I am not impressed. I have been hearing that argument since 1963. I am not the one who offered the deadline, or who originated it.

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

Mr. MUSKIE. So if the Senator tells me, "Look, we are only asking to shorten deadlines and that that surely has no substantive effect," baloney. That is not the fact.

Mr. DOMENICI. Let me say this to the Senator. If the Senator would just give me a moment——

Mr. MUSKIE. Well, it is my time, and I will yield it to the Senator when I have finished, and I will be glad to at that point.

Mr. DOMENICI. If the Senator is saying to me and to the American people that the Clean Water Act and the Clean Air Act have not caused any delays that could be cured without doing any violence to the health of these people, then I am not impressed, because you know they have.

Mr. MUSKIE. I have yielded for a question and not for a diatribe, but I have not said any such thing.

Mr. DOMENICI. You said you were not impressed about any delay.

Mr. MUSKIE. I am suggesting that this additional bureaucracy you would create could produce more delays, and if you tell me and the American people it will not, then you are disabusing the American people.

You are talking here about a process that will put you in confrontation with State and local agencies and with Federal agencies, which after all, do have a duty, and they are not dreamers.

They are charged with doing what? Protecting two other scarce resources.

You emphasize energy. How about air? How about air? There are many cities in this country today that do not have enough clean air or enough air of sufficient quality to protect public health; and that quality is being protected by what? By deadlines requiring people to do something about it by a certain time.

You tell me that deadlines have nothing to do with substantive rights or the health of people or the quality of our water or the state of our economy?

I am tempted, you know, perversely tempted to suggest that those of us who have questions about this legislation just sit down, be quiet, let the proponents have their way and write this into law, so that after 15 years of arguing for legislation and regulation to protect the public health, those who find them a burdensome kind of regulation can have their way to go ahead and expedite these projects, without limit. There is no limit in the bill. These projects can be rubber-stamped—50, 100, 150, or 200, it does not matter.

Let them have their way and build these synthetic fuel plants. After they have turned the first shovelful of earth, you grandfather them, so that no matter what you learn about danger to the air, while it is under protection, we are forbidden to do anything about it.

Then just let these pollutants discharge into the air and begin finally to destroy the atmosphere, without which combustion of your energy is not possible, and then the first city becomes unlivable for a day, for 2 days, for a week, and then you will have to explain why you impressed this kind of a law on the American people. Then I can say, "I told you so."

That would be a nice feeling, except that I do not want to see that day come. I mean, what is wrong with having the decision on the fast track judicially reviewable? What is wrong with that? Those who seek to advance the issues of big business want judicial review wherever they can write it into the statute books. You bet your boots they do.

Mr. JOHNSTON. Will the Senator yield?

Mr. MUSKIE. I want to finish my argument first; then I will yield.

But, no, you designate the fast track with nothing in the statute requiring that you even take a look at the environmental implications, without any limitation on the numbers of facilities, and without any real demonstration that the decision will contribute to a reduction of our dependence on foreign oil by 50 percent by 1990. Not even that is written into the law.

Of course you do not want it judicially reviewable; there is nothing to review. Absolutely nothing to review.

So, having made that start, for which the only consideration is that it be just any project, any old project having anything to do at all with energy, it can be put on the fast track. I have been told that deepwater ports which receive foreign oil are being considered, or at least are lining up as candidates for designation. I do not know what is going to prevent them from receiving preferred treatment. There is one in my State that will be a candidate. From the beginning of its design, almost a decade ago, the whole thing was premised on importing foreign oil. It is lining up to get on the fast track, and I do not see anything in the criteria of this bill that will prevent or prohibit an administrative decision that will permit it to do so.

All the environmental considerations that are of concern to Canada as well as to my State, impacting on the air as well as the water which are being adjudicated in the courts and administrative agencies, none of those would amount to a hill of beans, because they are going to be on the fast track. And let me say this to my good friend from New Mexico: Here is another fact. You know, you put a project on the fast track and a signal is sent through the bureaucracy, Federal, State, and local, that this project is a project the country needs, because Congress has said so. That is a green light for all such projects.

Just what kind of consideration will an environmental agency give to a fast track project? They are going to give it the green light. They are going to give it minimal consideration, at least that will be the pressure: "Push this thing through, or you will be hauled up before a congressional committee, or the GAO will be sicced on you," or whatever.

Once they give it the green light, there is nothing in the criteria that sends up any red flags about the environment—no criteria, except that a Board whose opinion is not going to be second-guessed by anybody says this is a fast track project. This means it has got to be built, hell or high water. Once you turn the first shovelful of earth, anything you learn about its environmental effects, however toxic, dangerous, or damaging to the health, goes by the board. You cannot do anything about it. That is the grandfather clause; you cannot do anything about it.

When an environmental agency gets the signal that an energy project has gotten that kind of a blessing from the Energy Mobilization Board, what inclination will it have to discharge its principal obligation, which is protecting the health of people and protecting the quality of the environment?

Mr. President, it is possible—and this is what frustrates me about this whole thing—the substitute makes possible the expediting of the regulatory process with respect to environmental law in a sound way. You know, what the writers of this legislation overlooked is the enormous ingenuity which groups and individual citizens in this country have found, in such a public policy, to delay, to have court tests, and to do whatever we do to try to write laws to prevent it. You think you have eliminated judicial review of the designation of fast track projects. I would be willing to make a small bet that somebody will find a way to get you in court on that. Somebody is going to find a way to get you in court, and not just once. By denying judicial review to that decision, you are just going to trigger efforts on the part of environmental groups and other groups to get that decision into court.

There is no way that you can guarantee what the courts will decide with respect to it. I have my doubts that you will succeed in keeping that issue out of court. But by writing it in, you almost guarantee time-consuming delay and frustration at the new level of administrative bureaucracy that you are creating with this bill.

They will get you into court. You can bet your boots they will. We have tried as have other committees to cut down on the litigation on issues involved in poli-

cies that we have established by legislation. It just is not the name of the game any more.

When you start to cut off the State agency and to assume its decisionmaking powers because it has failed to meet your deadline, whether failing to meet it was for good cause or not— this bill assumes that the delay by the State agency was completely without justification. When a Federal bureau comes in to make that decision under State law, without the expertise, without the background, the whole State will rally against the Federal bureaucracy. You are going to find yourself caught up in a tangled web of litigation when you try to substitute the Federal administrative agency's judgment in the administration of State or local law for that of the State or local agency.

It is not going to stand up; it is not going to last. It is just not the kind of thing that the American political system will accept. And to hear it proposed by people who come from areas of the country that I have always identified with strong support for States rights as against the Federal bureaucracy, I find myself somewhat stunned. The fact is that you can argue the details of your language and your provisions, but what you are doing here is creating an agency that can alter substantive law. As a matter of fact, the bill says that. The bill says in section 6, "The Board may alter Federal, State, and local law."

The amendment that was offered a little earlier narrowed its application to environmental legislation. As far as I can tell from my present analysis, until that amendment was offered, the Board could alter any law—civil rights, labor laws. To that, apparently, the proponents of the bill, having been alerted to the dangers of that language by the opposition that we have raised and the allies that we have acquired along the way in opposition to it, have offered a modification.

The fact that they have stricken some of these laws from its application does not mean that the application is any wiser or any sounder with respect to what is left. If it was bad law with respect to labor-management relations, pensions, working conditions, minimum wages, maximum hours of employment; if it was bad law with respect to State civil rights laws; if it was bad law with respect to State criminal laws; if it was bad law with respect to the antitrust law of the United States, then it is bad law with respect to environmental laws. Is there something peculiarly abhorrent about environmental laws that they should be set aside in this way?

Suppose that laws dealing with labor-management relations do, in fact, delay the construction of an energy project. Why is that delay any different than a delay attributable to environmental laws? If a civil rights law, in fact, because of threatened practices at the project or in the vicinity, results in a delay of the construction of the project, why is that delay any different than a delay generated by environmental laws?

So, I think it is a bad, bad precedent. The sponsors of the legislation recognize it in the amendment they offer. If it is bad there, it is bad with respect to environmental legislation.

Mr. President, the bill undertakes to modify the National Environmental Policy Act. I am one of the authors of the National Environmental Policy Act. Congress enacted that law because of the mistakes being made by Federal officials, who obstinately refused to consider the consequences of their actions for the human environment. The Senate report on NEPA states it very well:

> Environmental problems are only dealt with when they reach crisis proportions. Public desires are seldom consulted. Important decisions concerning man's future environment continue to be made in small, but steady, increments which perpetuate rather than avoid the recognized mistakes in previous decades.

There is nothing to suggest, Mr. President, that anything but NEPA stands between the more or less informed decisionmaking of today and the tunnel vision of a decade ago. The problem at that time was not rooted in the intransigence of individuals or individual officials but in the nature of institutions. If the mission of an institution is to get something built, it inevitably looks on all considerations other than how to complete that mission as obstacles to be overcome, not essential issues to be addressed.

What were the examples before us when we wrote NEPA? The Corps of Engineers, which was created to build projects; the Department of Interior in the reclamation program, created to build projects.

My good friend from Louisiana is a principal advocate of water projects. I believe in their development.

The Defense Department, involved in construction. So every Federal agency that was involved in building something before NEPA paid absolutely no attention to environmental considerations. Witness after witness came before us in the Environmental Pollution Subcommittee in those days and said, "Well, now, you have a nerve, asking us in business and private life to meet certain standards and then you refuse to meet them in Federal activities, Federal programs, Federal agencies and departments."

So NEPA was written for that purpose. The purpose is to broaden the vision of governmental officials to make them think before they act, to look before they leaped. It was more than a mandate to stop and think. It contained a set of procedural requirements for agencies to follow, and the reason is simple. As Senator JACKSON, principal architect of NEPA, said:

> [R]ealistically what is needed in restructuring the governmental side of this problem is to legislatively create those situations that will bring about an action-forcing procedure the departments must comply with. Otherwise, these lofty declarations are nothing more than that.
>
> (Senator HENRY JACKSON, Hearings on S. 1075, S. 237 and S. 1752 Before Senate Committee on Interior and Insular Affairs, 91st Cong., 1st Sess. 116 (1969).)

So now we are going to reverse that, go back to the pre-NEPA period, tell these agencies the only thing they have to be concerned about now is energy, energy projects of any kind, whether they affect importation of oil or not.

The purpose of all of the procedural requirements set forth in section 102(2) of NEPA is to structure environmental analysis into Federal decisionmaking—to force Federal officials to obey the law. The purpose of the written record required in an EIS is, in short, to prove that the law has been obeyed.

S. 1308 preserves the form of NEPA but abandons the substance. While an EIS will be written on most priority energy projects, S. 1308 renders that EIS a meaningless exercise. The Board would choose the agency to write the EIS (S. 1308, section 13(e)) and could order that agency to proceed "without requiring assistance from any other Federal agency" (section 13(g)) including, I suppose, EPA, the principal agency that could advise the Board on the environmental implications.

So we are going to have an environmental impact process, the lead agency picked by that Energy Board, and that Board can order the lead agency to proceed without requiring assistance from any other Federal agency.

The Board could then "[n]otwithstanding any other provision of law" require that the statement prepared in isolation by a single agency—

> be *used* for any or all Federal agencies to *satisfy* [NEPA] and by any or all State or local agencies to *substitute* for any comparable statement required by State or local law. S. 1308, section 13(d) (emphasis supplied).

The result would be a heavy book describing environmental issues, but it would have nothing to do with the thinking of agency decisionmakers. The decisionmakers would be released by S. 1308 from the NEPA requirement that they consider the environmental consequences of their actions. There is no purpose in writing EIS's for show, their only function is to force Federal officials to demonstrate that they have analyzed the impact of their decisions on the human environment.

When we have an EIS ordered by an Energy Board, written by a lead agency, not skilled with background in environmental issues, with environmental agencies excluded, as the Board can order from any consideration of environmental issues, of what value would that be?

I can hear the supporters saying that they do not mean it to come out that way. Well, then they should not have written it that way.

The Ribicoff-Muskie substitute preserves the substance of NEPA while streamlining the process. It permits agency compliance with NEPA to be reflected in a single EIS (S. 1806, section 12 (d)(1)), and requires that that compliance be completed within deadlines set by the Board (S. 1806, section 12(f)). There is no language in S. 1806 purport-

ing to authorize the Board to alter NEPA.

Mr. President, there is one final subject I would like to address before I yield the floor. I have referred to it already, and that is the "grandfather clause."

S. 1308, unlike the Ribicoff-Muskie substitute, permits the Board to set aside laws and regulations yet to be written.

Section 36 of S. 1308 empowers the Board to—

waive the application of any Federal, State or local statute, regulation or requirement enacted or promulgated after the commencement of construction of a priority energy project.

That has been modified by the amendment offered today, as I described, and as the sponsors described it earlier. But the grandfather clause still applies to environmental laws.

The only conditions for the exercise of this "grandfather waiver" authority are that the Board must find the waiver necessary to "insure timely and cost-effective completion and operation of the project" (section 36(a)(1)) and that the "waiver will not unduly endanger public health or safety" (section 36(a)(2)). Thus the Energy Mobilization Board would have authority to balance industry's dollars against the health of the public.

The energy technologies most often suggested as candidates for environmental "grandfathering" are new synthetic fuel technologies. It is because they are new that the dangers to public health that they present and the means for their control have not yet been evaluated. Yet it is known that oil shale and coal liquification processes generate toxic wastes and carcinogens. The health and safety statutes to which such technologies would be subject were enacted by Congress with full consideration of which provisions should permit the application of rules to new sources of pollution only and which warranted application to existing sources. Virtually all of those statutes provide for agency consideration of costs and benefits. That function should not be transferred to the EMB. The prospective grant of "grandfather" authority to the EMB implies that we neither can nor should learn from experience. Imagine the situation today if an EMB had been in existence to waive the control and cleanup requirements related to the disasters from PCB's polyvinyl chloride, kepone, and Three Mile Island.

The new energy technologies, because they are new, involve dangers that have not been assessed. As the data to assess these dangers become available, the power to respond should be left with the agencies created by Congress to make such judgments, agencies whose responsibility is to protect the public and whose expertise renders them competent to do so.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BAUCUS). The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the Senator from Maine is eloquent, persuasive, and has done a magnificent job of tearing down some strawmen which we did not erect.

I am sure he has unintentionally misconstrued some of the provisions of the bill, and I will be very brief, just to set the record straight.

I do not want to keep arguing and repeating some various things, but just to set the RECORD straight and make a couple of things quite clear.

First of all, the Senator read from a section of the bill. He read this statement:

The Board may alter Federal, State, and local law.

The bill does say that in subsection 6(h) on page 31. Unfortunately, the Senator did not read the rest of the sentence which says:

only as authorized by sections 13, 17, 18, 21, 22, 28, 34, and 36 of this Act.

Mr. MUSKIE. Will the Senator yield.

Mr. JOHNSTON. That refers to the so-called grandfather clause. It was, as a matter of fact, an amendment put in by the Senator from Arkansas (Mr. BUMPERS) who wanted it to be crystal clear in this act that there was no implied waiver, that the only waiver of State law, really, was that which applied to the project decision schedule with respect to time limits and to the grandfather clause.

So he put that amendment in, not to broaden the effect of the argument, but to make it very clear there was no implied waiver.

The report makes it particularly clear in discussing this section 6, on page 36 of the report, as follows:

The intent of section 6(h) is to make it clear that the Board could alter Federal, State and local law only as authorized by the enumerated sections. The provision is included to eliminate any doubt about the scope of the Board's powers. The Board does not have any implied authority to alter Federal, State, or local laws.

Another section of the report, in section 17, on page 39, also makes it clear, as follows:

Although the deadlines and procedures established by the Board would be binding, they do not authorize agencies to ignore any other statutory requirements in their efforts to meet their deadlines. Agencies must still comply with such laws in every respect.

So all I am saying, Mr. President, is that there is a waiver of State law in a very limited way, and that is principally with deadlines, where the Board can set the deadlines for State, local, and Federal decisions, with the procedure being provided for expanding those deadlines where they are unreasonable, with access to the courts and the grandfather clause, which prevents States, particularly States or local subdivisions, from coming in with this kind of after-the-fact, discriminatory law which says, "Yes, we know you spent 7 years and $50 million getting all these permits, but now we have changed our minds, and now we have a new requirement for you."

We say they can make that new requirement if it deals with health and safety. But if it is another of those laws the State of North Carolina passed, which says, "We changed our minds; no refinery at Piney Point, North Carolina"—yes, that is prohibited by the grandfather clause, but it is a very narrow grandfather clause indeed.

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

Mr. JOHNSTON. Let me finish these points, and I will yield.

Mr. President, there is also a statement here about the EIS, about the fact that the Board does not have to consult with respect to the EIS.

One of the problems with building energy projects has been the proliferation of environmental impact statements—separate statements required by more than one Federal agency and more than one State and local agency—and they are all to serve the same decisionmaking process. They all involve precisely the same interests, the same values.

So, in discussing this legislation with the committee—by the way, we had a proliferation of hearings and 15 markup sessions—we said, "Let's consolidate this."

So the scheme is this: The Board, after discussion with the Council on Environmental Quality and before making this project schedule, shall designate the lead agency. After that lead agency is designated, it has what we call "scoping" meetings. The purpose of the scoping meetings is to identify the issues, to establish the content of the environmental impact statement, and to determine whether and how responsibilities should be apportioned among the Federal agencies.

Mr. President, that only makes sense, to designate a lead agency and not have a committee with no centralization of authority and that the work be scoped so that it is all moving together with some sense of direction, rather than proliferated, without any sense of direction or responsibility.

However, it specifically provides that any comments, opinions, or materials submitted by Federal, State, or local agencies shall be considered by the lead agency and made available to the public.

So it is absolutely clear here that any Federal board or any State agency has the right to have its comments, the facts it wants to adduce, any other material which it wants to provide—it has a right to have that considered by the Federal agency, and that, in turn, shall be made public.

So, Mr. President, not only is there no intent to cut off any Federal agency or State or local agency from having its material considered; to the contrary, the right of such agency with respect to Federal, State, or local law is guaranteed, that they shall have that considered.

Two other quick points:

First, we get these doomsday pictures of the Clean Air Act and all its values and all its injunctions and all its protection for the public somehow being thrown out the window. That is a compromise we made in this bill early on. There is no surrender—let me repeat—there is no surrender of any requirement

of the Clean Air Act, of the Clean Water Act, or any public law, whether it deals with toxic substances or any other Federal law, save in two respects: First, the right of the Board to make a project decision schedule; second, the grandfather clause, which says you cannot change the rules of the game after companies have relied upon permits and spent a considerable amount of money, except for purposes of health and safety. If those purposes are served by the ex post facto laws, then ex post facto laws are legal.

Not only do we require that every provision of Federal, State, or local law be adhered to in terms of the decision criteria for all these decisions—every one of those criteria must be adhered to—but, also, there is an appeal; and in addition, there is the right to say, "No." We are not telling the State, local, or Federal people how to decide. We are not telling them, "You have to give them the clean air permit." We are not telling them that they are entitled to a zoning permit or any other permit. But we are saying that there is a time for decision. Give us your yes or no, but make it timely.

Mr. President, I will close by saying this: I read into the RECORD a list of 20 or 30 projects, when I started my presentation this afternoon, that had been stopped by delay, by delay, by delay. I suppose that probably the most conspicuous example—at least, the most recent conspicuous example—is the Sohio pipeline.

Consider this, Mr. President: The Sohio pipeline people wanted to build a pipeline from California across the midpart of the country, terminating in Midland, Tex., as I recall. It was to handle the Alaskan oil which right now must go through the canal or all the way around the Cape. The extra cost of that to the consumers of this country is tremendous. To have to go all that distance, it was dollars and dollars on the backs of every American user of gasoline. So they were going to build this pipeline.

Do Senators know what they were faced with? They had 700 permits to file for. Seven hundred permits, Mr. President, and they spent 5 years applying for those permits; and they spent $50 million applying for those permits. Seven hundred permits, 5 years, and $50 million.

Do Senators know what happened during that period of time? The cost of the pipeline went from $500 million to $1 billion, and they never could get their permits, and they gave up.

We can talk about all these wonderful values of the Clean Air Act. That happens to be one law. But what do you do when you are trying to build a project to provide energy to get away from the Arabs, away from OPEC, to provide energy at cheaper prices for Americans, and get away from $1.05 a gallon of gasoline, and come up with something that says you have to have 700 permits and we will let you spend $50 million in 5 years, and we still are not going to give it to you?

If anybody on the floor of the Senate can defend that kind of action, I would be very surprised to hear any logical argument.

Why do we say that we object to the Muskie approach, that you go to court every time you want to enforce one of these deadlines? That makes the Sohio thing that much more difficult. I would rather have the present status quo than to have the Muskie approach. Do Senators know what we would have in the Muskie approach? We would have 700 permits, the same as we have now——

Mr. MUSKIE. Mr. President, will the Senator yield for a question?

Mr. JOHNSTON. I will yield in a moment.

Seven hundred permits, with the possibility of 700 lawsuits, some of them going through the Federal courts here, some of them going through one county court and another in another county court, some in the State court of appeals, some in the State supreme courts.

Mr. President, if that costs $50 million unsuccessfully by the time you put lawyers fees on top of the Sohio pipeline you might have a billion dollars in legal fees. Well, I guess that is an exaggeration.

Why do I oppose the Muskie amendment in going to court, Mr. President? It is because courts are the problem now.

Mr. MUSKIE. Let me answer.

Mr. JOHNSTON. I will yield in 1 minute.

Mr. MUSKIE. The Senator asked the question.

Mr. JOHNSTON. Courts and attorneys are the problem. And, oh, I used to love all these laws you know because as my dear departed father used to say when I came into law practice with him, "Son, the safety of the Republic lies in a well paid bar."

I took that to mind and to heart, at least while I was a lawyer, trying to prove the truth of that. Since I have gotten in the Senate I see the safety of the Republic lying in quite another aspect. I see the safety of the Republic literally lying in trying to get some energy for this country.

Unless we cut through some of this redtape and unless we eliminate some of the lawyers, some of the appeals, and some of the lawsuits, we are likely to be around here 10 years from now and still not have the Sohio pipeline built and still not have any of these refineries—this is the list of about 20 I read—that they have been trying to build on the east coast and certainly no synfuels projects and no oil terminals and no pipeline projects, and we will just be worse off, more into recession, more into inflation, with higher interest rates and all that goes with being dependent upon OPEC oil.

Let me say one thing and then I will yield. This will be very short. Just last week there was an article in the Washington Post that I would have thought would have shook this Nation to its very foundation. That article said that the SPOR project, the Strategic Petroleum Oil Reserve which this Nation, this Congress decreed as its first priority in dealing with the energy crisis—that was the program under which we were going to try to put over a billion barrels of oil in salt domes in Louisiana in case we have an interdiction of supply. It was very important and Congress voted it and provided for it. That article in the Washington Post said that the Executive had stopped that program because Saudi Arabia had objected. Because Saudi Arabia objected this country stopped doing what we considered and this Congress considered to be the most important thing we could do for energy independence.

Mr. President, we are being strangled in our economy, in our independence, in our foreign policy, indeed in the very essence of America we are being strangled by lack of energy. We better get this bill or something like it and get away from the lawyers, the lawsuits, and the delays. If we do not we are in bad shape.

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

Mr. JOHNSTON. Yes.

Mr. MUSKIE. I will not take more than a minute or two because I know Senator JEPSEN wishes to speak and Senator PERCY is also coming over to the Chamber to speak.

I find myself sort of at the wrong end of a shotgun. At least I implied from what the Senator said that I am responsible for Saudi Arabia's interruption of some project and that I am responsible for the Sohio problem, and so on. I wish to get the Senator's attention. I conclude from what the Senator had to say on my bill that his bill would eliminate the 700 permits and his bill would eliminate judicial review.

Mr. JOHNSTON. Mr. President, no. There would still be 700 permits. There would still be the 700 statutes.

Mr. MUSKIE. That is my point.

Mr. JOHNSTON. But what the Energy Mobilization Board would do is provide a project decision for the 700 permits, so they would not all be in sequence, so they would all be decided within a reasonable time and then on the appeal if they wished to take appeal all of those appeals would be consolidated and considered in one court, the Temporary Emergency Court of Appeals. Instead of going to 17 different county courts, different levels of State courts, and different Federal courts, it all goes into one court of appeals for a decision.

Mr. MUSKIE. The question I want to focus on is, first, you would not eliminate the 700 permits. If the Senator had answered otherwise he would have been getting into substantive law which is a source of contention between us.

Mr. JOHNSTON. The Senator is correct.

Mr. MUSKIE. So you would not eliminate the 700 permits but would put them on a rational time scale, something with which the substitute as well as the Senator's bill is concerned. So to suggest that we are not concerned about that problem is not an accurate description of the substitute.

Let me ask the Senator this about the 700 permits in the Sohio case: How many of them were appealed to the courts?

Mr. JOHNSTON. I do not know how many lawsuits were involved. Some of them never have been decided in a period

of 5 years. Perhaps staff has that information as to how many appeals were taken.

Mr. MUSKIE. In any case I agree with the Senator on that kind of problem. I do not want to take up too much time lest we take time away from Senator JEPSEN and Senator PERCY. That kind of problem is a legitimate problem to address. Whether or not such judicial review as there is should go into the temporary court of appeals or to the court of appeals of the district in which the project is located is a difference between the two bills. I prefer my own. But whether it is one court or the other, I do not know how lawyers are going to be constrained from doing whatever their clients want or what their clients may be permitted to do under either piece of legislation.

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

Mr. MUSKIE. Yes; of course.

Mr. JOHNSTON. Let me read from a memo on this project, which really focuses in. It says this:

Sohio has stated that even if all PACTEX—

Pactex is the pipeline in question.

permits had been granted immediately, pending and threatened litigation (primarily on environmental issues) would still significantly delay the initiation of the project, further endangering its economic attractiveness. All of the pending litigation relates to local or State actions, and has occurred in State courts. A suit challenging the adequacy of the basic California Environmental Impact Report (EIR) was pending in the California Supreme Court for a year. On March 29, 1979, the court remanded that case to a trial for hearing, meaning that the appeal process had to start over from the beginning. No construction can begin, moreover, until the EIR is declared adequate.

Mr. MUSKIE. Let me make the point. First, the Senator is talking about the 700 permits. It should be clear for the record that that involved legislation in the several States. I do not recall how many states through which the pipeline would go. And that created a problem because of the nature of our Federal system.

The Senator is not proposing to eliminate the Federal system, as I take it. As a matter of fact, he has said in rebuttal to my interpretation of the implications of his bill that the requirements of State and local law must be observed.

Mr. JOHNSTON. That is correct.

Mr. MUSKIE. So if a pipeline of this kind has to traverse several States and meet each of their requirements of substantive law, about all you have succeeded in doing, after court challenges, is the rationalization of deadlines. Whether or not this can be accomplished, given the diversity and the structure of these various State and local laws, I do not know. I have no view of that. But it is going to be a tremendous problem to rationalize and accommodate all these varying requirements, and there is a frustration. I concede that. Whether or not you can really do so and still retain the prerogatives of State and local governments is going to be an interesting test. I do not know.

Mr. JOHNSTON. It is a great compromise as we say in our bill because, on the one hand, we preserve the decisionmaking criteria, State and local law.

Mr. MUSKIE. I am not sure about that. That is the point of disagreement.

Mr. JOHNSTON. We do it in explicit language.

Mr. MUSKIE. That is the Senator's intent. I doubt he can achieve it.

Mr. JOHNSTON. Moreover, we give them an appeal on using the criteria—excuse me—in the first instance, the State, local, or Federal people have the right to make their own decision. They can say "no."

Mr. MUSKIE. If they do it within the deadline.

Mr. JOHNSTON. That is right or they can go to court and ask for an extension of the deadline based on unreasonableness. That is a first right to go to court and say, "Look, 1 year within which to make this decision is not enough time." They have that right to that appeal at that point. Then——

Mr. MUSKIE. They will be pushed and prodded by environmental groups and other citizen groups who will think, who will believe, who will argue the unreasonableness of the new deadline. You are going to be caught up in litigation just as expensive and as frustrating and time-consuming as that——

Mr. JOHNSTON. If the Senator please, this would go all to one court, you see, all through the TECA court, and the beauty of this mechanism is that it centralizes these appeals so that if you had conceivably 700 appeals on the question of time——

Mr. MUSKIE. One court is going to handle 700 appeals?

Mr. JOHNSTON. Yes, but all on this same subject.

Mr. MUSKIE. How could you? I mean, if the 700 permits involved 700 State laws and Federal laws, how is the court going to handle it as though it was one case? Are you going to have the one court handle 700 appeals?

Mr. JOHNSTON. I did not say as one case. Obviously there would not be 700.

Mr. MUSKIE. It is a tremendous caseload for one court, 700 appeals for just one project. And if you pose 700 appeals under my substitute, I do not know why it is not legitimate to pose 700 appeals under yours. One court is going to handle yours and several courts are going to handle mine.

Mr. JOHNSTON. Mr. President, I would like to answer all of these questions but——

Mr. MUSKIE. We will have an hour and a half tomorrow.

Mr. JOHNSTON. Do I have the floor, Mr. President?

Mr. MUSKIE. I think you do.

The PRESIDING OFFICER. The Senator from Maine has the floor.

Mr. JOHNSTON. I was going to suggest that there are two Senators who are going to ask for time, Senator JEPSEN and Senator BENTSEN.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Senator BIDEN be added as a cosponsor of the Ribicoff-Muskie amendment.

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

Mr. MUSKIE. I have one memo and, at the request of Senator RIBICOFF, I ask unanimous consent that the memo entitled "Greater Effectiveness of S. 1806's Remedies to Avoid Delay" be printed in the RECORD at this point.

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

GREATER EFFECTIVENESS OF S. 1806'S REMEDIES TO AVOID DELAY

Both S. 1308 and S. 1806 seek to eliminate delays in completing vital energy projects by establishing an Energy Mobilization Board to cut through red tape and secure prompt action. One of the major differences between the two bills is how they seek to ensure compliance with any schedule the Board establishes for completing action on an energy project. Under the provisions of S. 1308 the Board would substitute its judgment for that of any federal, state, or local agency which failed to meet a deadline by even one day. The provisions of S. 1806 would instead empower the Board to go to court to obtain a court order, requiring the agency to act if the agency has missed, or appeared likely to miss, a deadline.

Past experience demonstrates that the approach of S. 1806 is both workable, and effective. It will result in better decisions, less delay, and less intrusion into the workings of other federal, state, and local agencies. On the other hand the approach proposed by S. 1308 will only result in more delay and more litigation.

AMPLE PRECEDENT FOR JUDICIAL ENFORCEMENT OF DEADLINES

The principal import of section 19 of S. 1806 is to allow the Board which sets the schedules to go to court and obtain a court order directing another agency to conclude its deliberations and decide the matter one way or the other. This remedy is available either when a deadline has already been missed, or when a future deadline is likely to be missed. As this memorandum demonstrates impressive precedent for this approach demonstrates its effectiveness and workability. As the Court of Appeals observed the establishment of time limits "should serve like adrenalin to heighten the response and to stimulate the fullest use of resources." *NRDC* v. *Train*, 510 F.2d 692, 712 (D.C. Cir. 1973).

The right to sue over agency action unreasonably delayed is one already provided parties under the Administrative Procedure Act. It is one which the courts already enforce. Section 706(1) of the Administrative Procedure Act has long authorized a court to compel agency action on the grounds that it has been unlawfully withheld. See *Deering Milliken, Inc.* v. *Johnston*, 295 F.2d 856, 865 (4th Cir. 1961). See generally, Note, *Judicial Acceleration of the Administrative Process: the Right to Relief from Unduly Protracted Proceedings*, 72 Yale L.J. 574 (1963).

There follow some examples of actual cases demonstrating that the provisions of Section 19 will work in practice. In some cases the court actually forced an agency to act by a certain date, and the deadline was met. In other cases, the mere filing of a lawsuit was enough to secure rapid agency action, without even the need for a judicial hearing. All of the examples demonstrate that the reality of a lawsuit, including the possibility of contempt, plus the asurance of unfavorable

publicity from continuing to delay action on vital energy projects, will prove highly effective in seeing to it that if deadlines are missed, it will not be for long.

In many of the cases listed below the court established and enforced a deadline on its own even though there was no specific deadline established by law. The Board will have a far easier time winning any case it brings under Section 19 since there will already be a specific deadline established by it pursuant to a clear Congressional directive.

EXAMPLES OF COURT SUITS RESULTING IN PROMPT AGENCY ACTION

*North American Van Lines* v. *United States*, 412 F. Supp. 782 (N.D. Ind. 1976).

The court held that the Interstate Commerce Commission had unlawfully "flagged" North American Van's applications for new operating authority thereby delaying action on it while it completed a separate investigation to determine North American Van's fitness. The court ordered the Commission to grant or deny the illegally delayed applications within sixty days. In response to the court order, the ICC acted promptly on each application.

*Home Box Office, Inc.* v. *FCC* (D.C. Cir. 1977).

The court held that the Commission had unreasonably delayed the completion of its "program exclusivity" rulemaking proceeding. Although only eighteen months had had elapsed since the publication of the notice of proposed rulemaking and twelve months since the close of the comment period, the Commission had been studying the problem for nearly six years. The court ordered the Commission to "terminate" its program exclusivity proceeding within 180 days. As ordered, the FCC acted within 180 days to terminate the proceeding.

*Booth American Company* v. *FCC*, No. 23862 (D.C. Cir. 1970).

Plaintiffs application for an emergency license had been pending before the Federal Communications Commission for 17 months. Even though there was no applicable statutory deadline the court ordered the agency to act on the license request within 20 days or explain its failure to do so. Fifteen days after the court order the FCC granted the license.

*Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, 475 F.2d 968 (D.C. Cir. 1973).

The Natural Resources Defense Council challenged the EPA's administration of the Clean Air Amendments of 1970, 42 U.S.C. § 1857 et. seq. (1970), which required that each state formulate within a fixed period of time a plan to implement the environmental quality standards established by EDP. After determining that EPA had not followed proper procedures in granting states extensions under the Act, the court established time frames for both the States and the EPA to meet. The court first set a date by which all states were required to have submitted implementation plans to the EPA. It also set deadlines by which EPA was either to have approved or rejected these plans. In compliance with the court order the states submitted proposed plans within the time specified, and EPA acted promptly to approve or reject the plans.

*Commonwealth of Pennsylvania* v. *Environmental Protection Agency*, 500 F.2d 246 (3rd Cir. 1974).

The court found that EPA could, if necessary, institute proceedings under § 113 of the Clean Air Amendments of 1970 to enforce compliance by a state with a transportation control plan which included deadlines for its implementation. By analogy, S. 1806 would direct the EMB to set similar deadlines for compliance and would allow that agency to seek enforcement in the federal courts.

*Public Citizen Health Research Group* v. *Califano*, Civil Action No. 77-0911, D.D.C.

On April 22, 1977, a petition was filed to remove the drug phenformen from the market as an imminent hazard, pursuant to 21 U.S.C. § 355(e). When no action occurred, suit was filed on May 27th, and in mid-July without a court order, the Secretary of HEW ordered the drug removed from the market.

*Public Citizen* v. *Cook*, Civil Action No. 743-73, D.D.C.

A petition for rulemaking was filed with the SEC on March 15 1972 and was denied on August 25, 1972. After a petition for review and a motion for summary reversal were filed in the Court of Appeals, the agency agreed to ask for comments on the proposal. All comments were due on December 1, 1972 and responses to them were filed promptly thereafter. Despite several promises of immediate action, nothing was forthcoming. Therefore, suit was filed on April 18th and within three weeks, the action was taken by the agency.

*PROD* v. *Train*, Civil Action No. 74-999, D.D.C.

EPA was required under the Noise Control Act to issue a report on the principal sources of noise, and to propose regulations for them, by April 27th, 1974. When it failed to meet that deadline, PROD, a group of drivers of trucks and other vehicles, wrote the EPA on May 1, 1974, demanding that action be taken. The report, but not the proposed regulations, was issued on June 21st, and on July 2nd, suit was filed. The government obtained several delays in responding, but after it did, and before the Court could rule, EPA issued the rules on October 15, 1974.

*Nader* v. *Browne*, Civil Action No. 1240-72, D.D.C.

Ralph Nader had asked the CAB to deal with the problem of smoking on airlines by a petition filed on December 16, 1969. A colleague of his, Reuben Robertson, filed a formal third party complaint with the CAB on August 13, 1970, asking for an investigation of alleged violations of the ownership reporting requirements by 16 carriers. When the Board had not responded to either request, a lawsuit was filed on June 12, 1972, and a motion for summary judgment filed on July 18th. Just three days before its response was due, the CAB issued a major proposal on smoking, thereby mooting the Nader claim. It failed to act on the Robertson complaint, and so on November 10, 1972, the Court issued an order giving the Board 30 days to issue its response to the complaint filed by Robertson. The Board acted in compliance with the court order by issuing its response to the petition on the thirtieth day.

It should be noted that this list of examples does not include numerous cases involving the Freedom of Information Act where an agency has missed its statutory deadline under 5 U.S.C. § 552(a)(6), and the filing of a lawsuit brought forth immediate and substantial relief.

It is true that there have been other instances where courts have been reluctant to adopt or enforce a deadline against an agency. But in these situations, either an inflexible deadline was established by a statute without regard to the particular circumstances of the case, or the court was asked to establish a deadline of its own without the expertise or knowledge the agency itself possesses. Courts have also occasionally resisted adopting a deadline which would force the agency to put one proceeding ahead of another, or otherwise choose between competing priorities.

None of these situations will apply with deadlines set by the EMB. First, the deadline will have been established and monitored by an expert body with the difficulty and importance of the particular proceeding in mind. Second, the court will be asked to enforce a deadline that was adopted only after full consultation with the agency, and after consideration of what it can reasonably be expected to do. Finally, the court will be able to rely on the expert judgment of the EMB to tell it whether the agency could reasonably have been expected to meet the deadline and what court action is necessary to ensure rapid completion of the proceeding.

It should also be noted that, under the Ribicoff substitute, the EMB will be monitoring the agency action on a continual basis. If EMB determines the need for judicial intervention it will be able to file suit early in the process, before the agency falls hopelessly behind in its schedule. The court will not be confronted with a situation already doomed, as a realistic matter, to result in considerable delay regardless of what action it takes.

Enactment of legislation establishing an Energy Mobilization Board will establish a clear national policy that certain designated projects should be given top priority by the agencies because of overriding national needs. Thus the court under S. 1806 will only be called upon to enforce the deadline which an expert body, the EMB, has already determined is reasonable and necessary and consistent with the overriding national policy established in this Act. The Court will not be asked to choose on its own between several competing and equally important priorities, as is the usual case when courts are asked to impose deadlines.

One additional factor will further increase the effectiveness of EMB beyond anything experienced to date. Although the right to obtain a court order requiring agency action is well established, many parties and their attorneys are reluctant to seek relief in court from agency inaction for fear of only angering the agency that must act on its request. Since the Board will not be a party but merely seeking to obtain compliance with its schedule, and since it will have the full prestige of the United States government behind it in support of these projects, this will not be a problem.

MORE DELAY WILL RESULT FROM THE ALTERNATIVE APPROACH

In contrast, the alternative approach of allowing the Board to take over and actually make decisions for agencies which are tardy will only produce more delay. Almost by definition, the issues raised in these proceedings will be difficult, if for no other reason than that the projects will be large. Unlike the agency with the normal decisional authority, the Board will have no expertise in the areas covered, and will have to pick up in the middle of a particular case and start from scratch. Given those two factors, and assuming that the Board will attempt to do its substantive jobs properly, it is virtually certain that the Board will be unable to issue a reasoned decision in less than the time that the responsible agency could. And, if there is more than one missed deadline at a time, the prognosis for an accelerated decision is even less favorable.

Knowing that the EMB will step in and make a decision for it could also produce delay for another reason. It could lead federal and state agencies faced with difficult policy decisions to delay their decision until after the deadline. This would shift the responsibility for any unpopular decision to EMB, but only at the cost of considerable delay in obtaining final agency action. S. 1308 would thus achieve exactly the opposite effect than the one intended.

Then too, any provision giving EMB the authority to make the substantive decision will inevitably create only more litigation. And this will in turn mean only more delay.

The Board would have to apply substantive law with which it is unfamiliar. It may have to apply both state and federal law. Even

assuming the Board can correctly identify the substantive law to be applied, it is a virtual certainty that every decision the Board makes of this kind will be appealed. There will be a real problem of the quality of the Board's decisions if it is called upon to decide a Clean Air Act question one day, a strip mining issue the next, and a local zoning variance the third—and still continue its duties of setting schedules and providing overall monitoring for the program. Given its lack of expertise, decisions of the Board are likely to be reversed far more often than those of agencies who originally had responsibility for making the decision. The Board will then have to spend time to redecide the case. And more delay will result.

Thus, even without considering the undesirable effects of establishing another substantial bureaucracy to make decisions properly left to state or local governments, or to other federal agencies with the substantive expertise, the procedures in S. 1308 are unwise because they will produce more, not less, delay.

Mr. MUSKIE. With that I yield the floor so that other Senators may have some time.

Mr. JOHNSTON. How much time, Mr. President, does the Senator from Iowa wish? I yield 10 minutes to the Senator from Iowa, and after that 10 minutes to the Senator from Texas, and the remainder of the time to the Senator from New Mexico.

Mr. DOMENICI. Let me ask the Senator from Maine, if you please, is the Senator going to remain here until the debate is finished?

Mr. MUSKIE. Tonight?

Mr. DOMENICI. Yes.

Mr. MUSKIE. I will unless someone else on my side wishes the floor, unless Senator PERCY would like the floor.

Mr. DOMENICI. I wanted a couple of minutes to just respond to the Senator's observations about clean air in this bill, and if the Senator was not going to be here I was not going to make them, that is all.

Mr. MUSKIE. I am here and the Senator can go ahead.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. JEPSEN. Mr. President, the distinguished Senator from California has asked that I yield him 2 minutes.

Mr. CRANSTON. I thank the Senator. I will be brief and I will not take the time of the Senators waiting to speak.

I was one of those Senators who was an original cosponsor of S. 1308, the Energy Supply Act. I have become a cosponsor of the Ribicoff-Muskie substitute.

I supported that legislation in its original form because I believe it is vital that we reduce our dangerous dependence on imported oil, and get on with the task of conserving and producing energy domestically, particularly renewable energy.

I supported S. 1308 in its original form, not because I thought it was perfect, but because, with some reservations, I believe it represented a good start toward domestic energy production. Of course, much of that original bill has been left behind in the committee as we focus on the Energy Mobilization Board portion of the original bill.

Under the able leadership of the Senator from Washington (Mr. JACKSON), the committee has worked hard and made many changes in S. 1308.

And, in the meantime, other Senate committees with direct jurisdictional interest in various sections of S. 1308 have had an opportunity to focus on the issues which it raises.

Amendment No. 488, the Ribicoff-Muskie substitute, focuses the expertise of the Governmental Affairs Committee and other Senators on the so-called fast-tracking mechanisms of S. 1308, which the Energy Committee has reported separately.

Both this portion of the original S. 1308 and the Ribicoff-Muskie amendment would create an Energy Mobilization Board.

At debate here is the delicate balance at all levels of government between the need to license priority energy projects as rapidly as reasonable, and the need to preserve and protect environmental values and the quality of life in the Nation in which we live.

Those who advocate extreme positions in this debate would force us to choose one over the other, but I do not believe that is a necessity.

Mr. President, I believe that S. 1308 on the one hand, and the Ribicoff-Muskie amendment on the other, represent the acceptable parameters of that debate.

Doing less than the Ribicoff-Muskie amendment would do would not change the status quo enough to accelerate the production of energy significantly.

Doing more than S. 1308 as reported would sacrifice the important environmental protections which many of us have worked hard to establish.

I believe that the argument that to produce energy we must sacrifice reasonable environmental laws and regulations or we cannot get anything done is essentially specious.

I believe, Mr. President, that our licensing procedures need overhaul and coordination.

I believe that duplicative and unnecessarily burdensome regulations need to be eliminated.

I believe that endless challenges to energy production projects need to be forestalled, and that reasonable deadlines need to be set for final decisionmaking.

But I believe that it is possible to do all these things very carefully. We must not ignore, in the name of energy development, the interests our environmental laws are designed to protect.

After careful consideration of the two approaches, I find that I greatly prefer the Ribicoff-Muskie amendment, which I am now cosponsoring.

Mr. President, supporters of the Energy Committee approach have repeatedly referred to the Sohio pipeline project as a case justifying the procedure in S. 1308 as reported.

That project is located primarily in my State, and is one with which I am thoroughly familiar:

I was a supporter of the construction of that pipeline.

I believe it was in the national interest.

I worked hard in an unsuccessful attempt to get the pipeline built, and to resurrect it after Sohio's first decision not to proceed.

I am still hopeful we will find a way—without Sohio—to connect Long Beach to Texas by pipeline.

The final decision which the Sohio Corp. made was that the pipeline whether or not it was in the national interest, was not in the corporate interest.

And the corporation chose not to build it.

No environmental or licensing constraints remained as impassable obstacles to the project when the final corporate determination was made—in fact, the final State permit was in the process of being granted.

And, while the company blamed regulatory delays for changing the economics of the project, the record, which I have carefully examined, does not bear out that contention.

Rather, the record reveals that the company sought to circumvent environmental laws and requirements, while an attempt was made to create an atmosphere in which those laws would be overridden, almost from the beginning of the project.

Many of the delays in the regulatory process were a direct result of the failure and unwillingess of the corporation to submit applications or required information in a timely fashion.

I believe that to permit the confusion and delay created by such tactics to be used as an argument for legislation to remove from Federal, State, and local regulatory agencies the authority given to them by Congress or the legislatures of the several States—and to give that authority to a board which cannot possibly have their expertise, their experience nor the same sensitivity to the local environment, and which has as its sole mission expediting energy projects—is to invite just such tactics as we saw demonstrated by the Sohio Corp.

Yet this is where S. 1308 as reported would take us.

I believe that the weakness of the committee-reported bill is that it lends itself to—and indeed may encourage—this kind of abuse in the name of energy production, when it is possible to get the energy production with more careful procedures.

I believe that the Ribicoff-Muskie substitute, which stresses coordinated efforts among the regulatory agencies at all levels of government and greatly expedites their decisionmaking, eliminates the danger, while accomplishing what we are seeking to do: to cut through the redtape holding up energy development while giving full faith and credit to laws which the States and this Congress have adopted.

It was clear to me during the consideration given to the Sohio case that there were many who were prepared to ignore the interests of California's citizens in order to encourage the corporation to build the pipeline.

The relationship between the States and the Federal Government is delicately balanced.

I believe that the Ribicoff-Muskie substitute woud preserve that balance better than S. 1308 as reported.

I urge my colleagues to adopt the amendment.

I thank the Senator for his courtesy.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. JEPSEN. Mr. President, I rise in opposition to the Muskie-Ribicoff substitute and to give my general views on the subject of an Energy Mobilization Board, the need for such a board, and the necessary powers of such a board. Let me preface my remarks by expressing my concern about and desire to have; clean air, clean water, and blue streams jumping with fish, and green forests full of animals. I support environmental policies and laws, I even support the Environmental Protection Agency. Yes, I supported EPA when it meant Environmental Protection Agency but the record shows that EPA now means end productivity altogether.

Mr. President, first of all I would like to say that I wish it were not necessary to establish an Energy Mobilization Board. It seems to me that it is a sad state of affairs when the Congress must establish a quasi-independent board to fast-track needed energy projects when the Congress itself is responsible for passing the laws which hinder the building of such projects. A more responsible approach would be for the Congress to reopen debate on the laws in question, such as the Clean Air Act, the National Environmental Policy Act, the Endangered Species Act, and many others. If the laws are acting as a barrier to the building of needed energy projects then let us change the law, not establish an energy mobilization board to do our dirty work for us.

Let me just list for a moment some of the laws passed in recent years which have, at one time or another, been used to delay or stop major energy projects:

The Clean Air Act.

The Clean Water Act.

The Coastal Zone Management Act.

The Resource Conservation and Recovery Act.

The Federal Land Policy and Management Act.

The Endangered Species Act.

The Wilderness Act of 1964.

The Marine Protection Research and Sanctuaries Act.

The Outer Continental Shelf Lands Act.

The Fish and Wildlife Coordination Act.

The Bald Eagle Protection Act.

The National Environmental Policy Act.

The Wild and Scenic Rivers Act.

The Toxic Substances Control Act.

The National Historic Preservation Act.

Now, I would like to add to this list another list of energy projects, including refineries, oil terminal and pipeline projects and others, which have been canceled as a direct result of delays caused by environmental problems, Federal regulatory delays, delays in obtaining State and local permits, and delays caused by litigation or threatened litigation. I will not read the entire list but I ask unanimous consent that it be printed in the RECORD at this point.

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

LIST

I. REFINERIES

*Company, location, and size B/D*

Shell Oil Co., Delaware Bay, DE, 150,000.

Fuels Desulfurization (1970),[1] Riverhead, L.I., 200,000.

Northeast Petroleum (1971), Tiverton, RI, 65,000.

Supermarine, Inc. (1972), Hoboken, NJ, 100,000.

Commerce Oil, Jamestown Island, RI—Narragansett Bay, 50,000.

Steuart Petroleum (1974), Piney Point, MD, 100,000.

Olympic Oil Refineries, Inc. (1974), Durham, NC, 400,000.

Occidental, Machiasport, ME, 300,000.

Crown Central Petroleum, Baltimore, MD, 200,000.

Ashland Oil, Fort Pierce, FL, 250,000.

JOC Oil, Jersey City, NJ, 50,000.

Gibbs Oil, Sandorf, ME, 250,000.

Granite State Refineries, Rochester, NH, 400,000.

Shell, Gloucester Co., NJ, 150,000.

Cumberland Farms, Portsmouth, RI, 40,000.

Saber-Tex, Dracut, MA, 100,000.

Pepco, Saybrook, CT, 400,000.

Mobil, Paulsboro, NJ, 150,000.

II. OIL TERMINAL AND PIPELINE PROJECTS

A. Sohio PACTEX pipeline project with receiving terminal at Long Beach, California, and pipeline to Midland, Texas. Abandoned after expenditure of $50 million.

B. Seadock Deepwater Port project off the Texas coast. Abandoned after expenditure of $20 million.

III. LIQUIFIED NATURAL GAS PROJECTS

A. Abandoned or suspended:

*Project and site*

El Paso II, Port O'Connor, TX.

Eascogas LNG, Inc., Rossville, Staten Island, NY.

Tenneco, Inc. St. John, New Brunswick, Canada.

B. Pending but threatened:

*Project and site*

Pac-Indonesia/Pac-Alaska, Point Conception, CA.

Tenneco Trinidad LNG, Inc., NA.

NPC–LNG, Inc., Engleside, TX.

Southern California LNG Terminal Co., Deer Canyon, CA.

IV. COAL GASIFICATION AND LIQUEFACTION PROJECTS

A. High btu coal gasification projects suspended or inactive:

*Project, site, and output MMcf/d*

WESCO, Four Corners, NM., 275.

El Paso Natural Gas Co., Four Corners, NM, 144.

Panhandle Eastern Pipeline Co./Peabody Coal Co., Eastern Wyoming, 275.

Natural Gas Pipeline Co. of America, Dunn City, ND, 270.

Northern Natural Gas Co. of America, Powder River Basin, Montana, 275.

Columbia Gas System, Inc., Illinois, 300.

Exxon Corp./Carter Oil, Northern Wyoming.

Consolidated Natural Gas Co., Southwest Pennsylvania.

B. Coal liquefaction projects abandoned:

*Project, site, and output*

Coalcon/Union Carbide, New Athens, IL, 22 Mmcf/d 2900 bbl/d.

V. NON-NUCLEAR ELECTRIC POWER GENERATING PROJECTS

Each of these facilities was proposed prior to 1976 but was cancelled prior to January 1, 1979. (Kalparowitz was proposed in 1963).

*Project, location, and proposed output*

Kalparowitz Project, Southern California Edison, Utah, 3000 megawatts.

Empire Energy Center, Empire District Electric Co., Missouri, 325 MW.

Pioneer No. 1 and 2, Idaho Power Company, Idaho, 1022 MW.

Salem Harbor No. 5, North Shore No. 4, and New England Power Co., Massachusetts, 1666 MW.

Sherburne County No. 4, Northern States Power Company, Minnesota, 810 MW.

Sewaren No. 7 and No. 8, Public Service Electric & Gas Company, New Jersey, 767 MW.

Rush Island No. 3 and 4, Union Electric Company, Missouri, 1112 MW.

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[1] Fuels Desulfurization also attempted unsuccessfully to construct the same 200,000 barrel/day refinery in South Portland, Maine; Seaport, Maine; and Brunswick, Georgia.

Mr. JEPSEN. Mr. President, it is clear that the Congress has gone too far in its efforts to protect the environment and has imposed on the country an economic cost which was never contemplated. It is equally clear that the power of the environmental lobby is as great as any in Washington and that the Congress has no intention of reopening debate on any of the laws in question. It is unfortunate that those who ultimately bear the cost of these environmental laws are some of the poorest and weakest members of our society—those who have lost jobs or were denied jobs because of a lack of energy or a plant closing caused by environmental laws, or those who must pay higher prices for electricity and fuel oil so that the rich may be able to hike or camp in a pristine wilderness.

Mr. President, I am strongly inclined to agree with William Tucker's assessment of the environmental movement as one more concerned with protecting its own position and privileges than with protecting the environment. It is, as Tucker points out, the current manifestation of what Veblen called the leisure class. The environmental movement is largely made up of upper middle class people who can afford to live outside the cities where they can enjoy the clean air and jealously protect it; who can afford to take vacations in Alaska and enjoy its wilderness. They will not lose their jobs or suffer from a no-growth economy and are perfectly willing to force everyone to pay so that they may enjoy a pristine environment.

Perhaps the greatest absurdity of the environmental movement is the Alaska lockup. The goal is to deny all the people of the United States, and especially the people of Alaska itself, the benefits of its vast resource potential so that three-quarters of the State may be kept in a State of pristine wilderness, accessible only by dogsled. Yet the environmentalists are exceedingly clever in making it appear that the exact opposite case exists, that all Americans will benefit rather than suffering from a lockup of this vast area. Moreover, their lack of concern for the rights of the people of Alaska is absolutely incredible.

Mr. President, for all these reasons I feel that I must support an Energy Mobilization Board. We must start somewhere to roll back the tide of "ecomadness." We must reassert the rights of all Americans to a healthy, growing economy. And we cannot do that without adequate energy supplies.

Mr. President, as a former Lieutenant Governor I am very sensitive to the charge that an Energy Mobilization

Board will trample over States rights. And I am inclined to believe those who argue that State and local laws have not been responsible for stopping important energy projects. It is Federal law which is the villain.

Unfortunately, I feel that if a board is established which only has jurisdiction over Federal law this will only create a loophole for those opposed to any energy development to use State and local laws instead of Federal laws to accomplish their ends. It would surely be absurd, for example, to have a vital energy project which has passed every other hurdle to be stopped by a local zoning law. I fear that such situations may arise unless we give the board comprehensive powers. If, on the other hand, we go the other route and establish a board which has only procedural powers I am afraid that it will be simply another useless bureaucracy on top of all the other bureaucracies.

In other words, Mr. President, I feel we must go all the way with an Energy Mobilization Board and give it the substantive powers it needs, or forget the whole idea.

In conclusion I will repeat my initial point, that I would prefer the Congress to deal with the laws hampering energy development and revise them or repeal them where necessary, rather than appointing a quasi-independent board to do its dirty work. But given the political reality that the environmentalists will successfully block such an effort I feel that there is no other alternative except to establish a board which has substantial powers to get vital energy projects going.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mr. PERCY addressed the Chair.

Mr. BENTSEN. Does the Senator from Illinois seek recognition?

Mr. PERCY. I just wanted to inquire how long the Senator wishes to proceed, so that I might possibly fulfill another appointment.

Mr. BENTSEN. Ten minutes.

Mr. PERCY. Would it be possible for the Senator from Illinois to follow, then, in approximately 10 minutes, the Senator from Texas?

Mr. JOHNSTON. Mr. President, I think the Senate has agreed to go out at 6 o'clock. The Senator from Texas has 10 minutes and the Senator from New Mexico has 3. I am sure the Senator from Illinois could get whatever other time is left, which, by my calculation, is 2 minutes.

Mr. PERCY. Is there any reason why the Senate has to go out at 6 o'clock?

Mr. JOHNSTON. There was a unanimous-consent agreement.

Mr. PERCY. Could we ask unanimous consent that it stay in session until 6:10?

Mr. DOMENICI. Can the Senator speak tomorrow?

Mr. PERCY. It will be rather difficult tomorrow.

Mr. DOMENICI. I will take time tomorrow to address my remarks in rebuttal to the Senator from Maine.

Mr. BENTSEN. I will reduce my time to 7 minutes.

The PRESIDING OFFICER. There is no unanimous-consent agreement to recess. The Senate may continue in session as long as Senators wish to continue.

Mr. BENTSEN. Mr. President, this country is facing a full-blown energy crisis that threatens our future as the most powerful and prosperous Nation in the world, jeopardizes our national security, and leaves us in a position of extreme vulnerability. We import 46 percent of the oil we consume, and the price of that oil has almost doubled this year alone.

Throughout its history, the United States of America has developed a proud tradition of responding successfully to challenge, particularly when our vital national interests are at stake. We have consistently demonstrated an ability to mobilize our enormous talents and resources behind worthwhile national objectives.

Today one of our primary national goals is greater energy self-sufficiency—an objective we can and must achieve. This country has vast untapped energy assets. There is more oil trapped in the mountains of Colorado, Wyoming, and Utah than under the sands of Saudi Arabia. The United States of America has the means to overcome its energy problems, break the OPEC hammerlock, and regain control of our own destiny.

But do we have the will? Is our energy crisis large enough, compelling enough, and urgent enough to evoke an exceptional effort on our part to deal with it? Or should we just look the other way and stumble along with the policies that have brought us to this impasse?

That is the question the Senate will decide as it deals with the various proposals to establish an Energy Mobilization Board.

As one who submitted proposals for an EMB earlier this year, many of which are included in S. 1308, my position is clear and unequivocal. The policies and practices of the past will no longer suffice. We need new procedures, new approaches to problem-solving that will break the cycle of increasing, costly, and dangerous energy dependence. We need an Energy Mobilization Board that can blaze a trail through the wilderness of redtape and bring the creativity, the ingenuity of our economic system to bear on the problem of alternative energy development.

I would like to commend Senator JACKSON and the members of the Committee on Energy and Natural Resources for their leadership in developing proposals for an Energy Mobilization Board that makes sense for America. S. 1308 is consistent with the notion of mobilization. It calls for exceptional measures to deal with a vast and urgent problem.

S. 1308 recognizes that we cannot tackle the problem of energy self-sufficiency with one hand tied behind our back. It recognizes that this Nation can no longer afford a fiasco like the Sohio pipeline: 5 years, 700 permits, $50 million in expense, and a vitally needed project abandoned out of frustration, a victim of the regulatory system.

I do not wish to be overly dramatic, Mr. President, but let us just consider for a moment what might have happened during World War II if this Nation had attempted to mobilize with all the restrictions and redtape we confront today. Shortly after World War II broke out, we marshaled our resources, established a partnership between the public and private sectors and had major synthetic rubber plants in production in a matter of 287 days. That was a key element in the success of our war effort. If a similar situation were to occur today, the war would be over before we even got permission to site the plants.

Faced with a real crisis, we are talking about mobilization in a regulatory atmosphere which virtually precludes prompt, effective action. S. 1308 is a welcome breath of fresh air in that environment. It gives us hope for the future. It offers us an EMB that can do a job which urgently needs to be done.

Opponents of S. 1308 offer us instead a proposal that should be called the Energy Stagnation Board, a proposal that, frankly, I think will not contribute much to cutting through redtape, that clings stubbornly to the status quo and skirts the real problem.

What is that problem? And how does S. 1308 cope with it?

The problem, simply stated, is that it can currently take 6 to 8 years to get permission to set up an alternative energy project in this country, no matter how urgently it is needed, no matter how successful it promises to be. Even if the proposal survives all the environmental impact statements, permitting requirements and legal actions, there is still no assurance that a billion dollar facility will not at some future time be jeopardized by new decisions or regulations not on the books when the project began. The disincentives to establishing an alternative energy facility are immense, they are costly, and they frustrate our ability to develop our energy assets.

S. 1308 is designed specifically to deal with many of these disincentives. It establishes a mechanism for designating priority projects with potential for decreasing our energy dependence. It establishes a fast-track process and gives the EMB authority to establish deadlines and procedures to insure expedited decisionmaking. It gives the EMB power to see that its deadlines are adhered to. They can make that decision themselves, as I understand the legislation. It streamlines but does not compromise the process of judicial review. And, as long as public health and safety are not impaired, S. 1308 insures that, once approved and underway, a priority energy project will not be torpedoed by subsequent legislation or local decisions.

At a time when the American public is fed up with the heavy hand of government regulation and interference, S. 1308 gives us a tool to cut through the web of redtape that hinders our ability to respond to the challenge of meeting our energy goals.

The EMB, as proposed by the Energy Committee, will not trample on State and local prerogatives. It will not have the power to force alternative energy

facilities on reluctant jurisdictions. The State, the city, the county can always say "no"—just as they can today. What S. 1308 will do is streamline the procedure, eliminate regulatory overlap, speed the process of judicial review, and guarantee a decision—yes or no—within 2 years. Mr. President, I do not think that is an unreasonable time frame. If anything, I would like to see it shortened. If we cannot make up our minds on desperately-needed alternative energy facilities in 2 years, then I despair for our ability to take effective action to reduce our energy dependence in the future.

It is also important to understand, Mr. President, that S. 1308 does not alter substantive laws or establish unrealistic requirements. Its purpose is, rather to do away with unnecessarily prolonged hearings processes and harassing legal tactics that can tie a project up for years and, in the process, condemn this Nation to a future of dependence.

I do not pretend that S. 1308 is some simple, magical solution to our energy problems. Under ideal circumstances, it will be years before we reap substantial benefits from alternative energy production.

If the Senate balks at establishing a strong and effective Energy Mobilization Board, this country may never realize its energy potential. Failure to enact S. 1308 will send a clear and unequivocal message to our people and to the world; the message will be that the United States of America is not serious about its energy problems, that we see no urgent requirement for effective action. That, Mr. President, is a message I want no part of.

I urge adoption of S. 1308 as proposed by the Energy Committee.

Mr. JOHNSTON. Mr. President, I thank the distinguished Senator from Texas for his remarks. I think he is right on target.

Mr. PERCY. Mr. President, I rise to say I fully support the establishment of an Energy Mobilization Board. I think it is essential. Energy must be given a higher priority than it now has. It must be differentiated from our other priorities. The strength of our economy, the entire strength of our country, depends upon our having adequate energy.

The question, therefore, is not whether we have a Board. I am fully supportive of this concept. The question is: What kind of a Board should we have, and what powers should that Board have?

It is the hope of the Senator from Illinois that he can vote favorably on the creation of an Energy Mobilization Board. If the present substitute does not prevail, and I happen to think it does provide the best alternative route, then I hope that we can continue to modify and remove some of the dangerous features of the Energy Board provided in S. 1308. That bill will be strongly resisted by local and State officials and would cause them to feel coerced in this effort, rather than have a cooperative attitude toward it.

I am most interested, Mr. President, that Senator JOHNSTON has just introduced an amendment to clarify S. 1308's grandfather clause to waive a future law. I have not had an opportunity to study this clarification amendment in detail, but a cursory examination of it indicates that it recognizes some of the concerns that many of us have had about the Energy Mobilization Board, as envisioned by the Energy Committee. The Johnston amendment is a step toward providing answers for some of our concerns.

In connection with another piece of legislation that Senator GLENN and I have introduced together, the nuclear waste disposal bill, I have met with a great many representatives of State and local governments. I have heard their concerns, and we have drafted and redrafted our legislation as a result. The form in which it was finally introduced takes into account all these concerns.

It was our desire to create legislation that would have a cooperative, constructive, positive attitude toward local and State governments in matters that vitally affect them. That same principle, I think, applies to the amendment originally offered as S. 1806, by Senators RIBICOFF, MUSKIE, and six other Senators, including the senior Senator from Illinois.

It is the feeling of Senators RIBICOFF and MUSKIE that the balance that has been achieved in the substitute amendment we are now considering answers many of the strongest held objectives of State and local governments. It is, therefore, legislation that will lead to a cooperative spirit among State and local governments and among many, many private interest groups. With amendment 488, these groups will not get the feeling that they are being coerced, overridden, that their concerns are not being considered. They will not feel that we are, in a sense, forgetting that we are a Federal Government that shares power with the State and local communities.

Mr. President, we have seen what can happen in other countries when an individual lives under laws, but is able to obviate those laws, get around them, circumvent them, or cut right straight through them.

This, I think, would be a bad precedent to set here. It is with that in mind that Senators RIBICOFF and MUSKIE and others of us have worked together to try to find a way to accomplish what we want responsibly: to improve, facilitate, and speed up the decisionmaking process. To put energy highest in our national priorities.

And when we hear that word "energy," it must be a call for action by every group that is dealing with it. They must appreciate and understand that there are procedures established to insure that they do not just sit around at their own leisure. They have to make decisions and make them on time, in accordance with a schedule that the Energy Mobilization Board is empowered to set down, and one that the courts will be empowered to uphold.

It is with a great deal of admiration and appreciation that I thank my colleagues on the Energy Committee who have wrestled with this problem, who have cut through their own procedures to bring forward legislation that we can consider now.

We could not even consider the amendment pending were it not for the fact that the Energy Committee and its staff had worked diligently to bring this legislation forward.

Mr. President today we are being asked to consider two different proposals, to create an Energy Mobilization Board to hasten the construction of new, crucial, nonnuclear energy facilities.

Both bills—S. 1308, as reported out by the Energy Committee, amendment 488, the substitute introduced last week by Senator RIBICOFF and eight other cosponsors including myself—are intended to avoid roadblocks and unnecessary regulatory procedures that needlessly and pointlessly jeopardize essential energy projects.

The difference between them, of course revolves around the questions, "What is a necessary regulatory procedure? Where can corners be cut responsibly?"

These are vitally important questions, for certainly we are going to need as much consent and cooperation as possible from the Federal, State, and local officials who now plan and license our Nation's energy projects if we truly expect to achieve a streamlined, "fast-tracked," process. Should we establish a Mobilization Board that even has the appearance of being able to run roughshod over the Federal, State, and local laws that have been so carefully crafted over the years, we are going to incur the wrath of communities where fast-track projects are planned, and we are going to endanger the chance of fast-tracking working at all.

Colorado's Gov. Richard Lamm, chairman of the National Governor's Association's Committee on Natural Resources and Environmental Management, spoke eloquently recently about this need for Federal, State, and local cooperation in national energy planning. He explained:

> The states must be included as partners and not perceived as combatants, antagonists, or obstacles. What is sorely needed is not confrontation with state interests and concerns, but an accommodation that leads to good, timely and effective decisions. The senior Senator from Wyoming, Mr. WALLOP, who quoted Governor Lamm in the additional remarks he inserted into the Energy Committee's Report on S. 1308, added to these views when he said that cooperative—not coercive—federalism, is the key to energy development in our country.

Mr. President, it is my belief that the Energy Committee's Mobilization Board bill—S. 1308—could possibly encourage a coercive, not a cooperative, relationship between our Federal, State, and local governments. It gives the Mobilization Board powers it does not need, to expedite the licensing of priority energy projects—extraordinary, excessive powers that could seriously infringe on the responsibilities and rights of existing governing authorities. In so doing, it threatens to hurt our efforts to create a streamlined licensing process endorsed by all Americans much more than it figures to help them.

By contrast, Mr. President, the Ribicoff substitute Mobilization Board bill creates a fast-track process with teeth,

but also one with responsibility—to our energy needs, to our environment, to our governing authorities, and to our people.

We already have substantial evidence that amendment 488 will be more than tolerated by our Nation's State and local licensing authorities, and by a large segment of our population: 488 has this week received the endorsement of the National Governors Association, the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties. The League of Women Voters, the Sierra Club, and the Environmental Defense Fund are among the other groups that have already endorsed this legislation.

Mr. President, I would like to take a few minutes, if I may, to briefly discuss some of the real problems with the Mobilization Board bill reported out of the Energy Committee, and some of the strengths contained in the substitute legislation, amendment 488:

First, while the Energy Committee wisely chose not to give its Board power to waive substantive law—a provision the administration has flirted with and the House Commerce Committee has endorsed—it did retain a Board waiver of procedural law, without bothering to define the distinction between the two. It is often impossible to distinguish procedural from substantive issues—good cases could be made, for example, that public hearings, or pollution control monitoring, are both. Allowing the Board to decide what procedures can safely be waived could be disastrous in our effort to keep fast-track projects under responsible control. The Ribicoff substitute prohibits the waiver of procedural law.

Second, the Energy Committee not only has given the Board power to make decision schedules for licensing agencies, but also to take actions in lieu of agencies that miss these deadlines. Under amendment 488, the Board has full power to set expedited decision schedules, and it is authorized to go to court at any time to force compliance with these schedules. It cannot, however, make any decision for agencies that are negligent. Fast-track licensing decisions should be made by knowledgeable bodies that are sensitive to the special concerns of affected communities. There must be a full appreciation of the intent and purpose of the laws to be followed in decisionmaking. I am convinced, Mr. President, if S. 1308 passes, we will end up with a weighty, unwieldy new bureaucracy to take into account the thousands of existing Federal, State, and local laws that will be affected.

Another unfortunate byproduct of this part of the Energy Committee bill is the possibility that agencies would pass off all sensitive decisions to the Board, rather than make unpopular rulings themselves. Government accountability could be severely impaired by this provision of the legislation.

Third, the Energy Committee bill places no limit on the number of projects that can be fast-tracked at any one time. It was the full intent of the President, in his July energy speech requesting legislation for a Mobilization Board, that only the most crucial energy projects be placed onto a fast-track. Given the clear advantage that fast-track projects are to receive, it is proper that this is so. In fact, the Energy Committee's own bill—S. 1308—is called the Priority Energy Project Act of 1979, and its report makes clear that fast-tracking loses its value as soon as too many projects are placed onto it. Yet, the committee has done nothing to insure the placement of only the most worthy of projects onto the fast track. The Ribicoff substitute, by contrast, establishes a ceiling of 24 projects that can be fast-tracked at any one time.

A fourth problem area with S. 1308 is the watered down seemingly anything goes criteria for projects that are eligible for fast-tracking. At one time, the committee's staff recommendations called for the Board to select only projects that were "likely to contribute to the national security by significantly reducing the Nation's dependence upon imported oil." This language is proper, and we have adopted similar wording in amendment 488.

Now, however, S. 1308 entitles the Board to select any project it wants, as long as it finds that the project "is likely to reduce directly or indirectly" our dependence on foreign energy. This is a drastic reversal away from the original intent of fast-tracking as an extraordinary designation, to be bestowed only upon extraordinary energy projects.

A fifth problem lies in the Energy Committee's giving the Board sole power to designate fast-track projects. It is obvious, Mr. President, that no project should be given priority status if it is known to be an exceedingly problematic or inefficient venture. The Department of Energy is the existing Government body charged with researching and developing potential new energy technologies and could make a valuable contribution in the selection process. But S. 1308 has created no role at all for DOE to share its expertise with the Mobilization Board in selecting fast-track projects. Under 488, the Secretary of Energy would screen applications for fast-tracking, and would twice a year transmit a list of final candidates to the Mobilization Board for consideration.

Finally, Mr. President, under the Energy Committee bill, the Mobilization Board would be allowed to exempt a priority energy project from any substantive law passed after a project has begun. Although Congress would have the power to disapprove any waivers, this is one more example of the Board being given powers in excess of those that are required to expedite energy licensing. In future years, we may see the passage of essential, vital legislation, responding to a myriad of environmental and public policy concerns. What is the possible value of waiving all of these laws now? Is this not taking the chance that future Congresses will fail to act prudently in deciding whether fast-track projects deserve the waivers they have? Congress alone should be entrusted with exempting fast-track projects from new substantive laws as they are passed, on a case-by-case basis. It retains this right in the Ribicoff substitute.

I hope the full contrast between these two bills, as a result of today's full discussion, can now be seen.

In the former, a situation exists where, conceivably, a biased Mobilization Board could have total discretion to select an unlimited number of energy projects for fast-tracking, all of which were known to be impractical for any number of reasons, and none of which were expected to ever play a direct or significant part in reducing our imports of oil. Future environmental laws could even be waived for these dubious projects.

I do not think that 488 is a weak amendment. In it, we have created a Board that is solely entrusted with finally selecting priority energy projects; it is entrusted with establishing decisionmaking schedules for agencies, and with going to court, if need be, to insure that the schedules are maintained. It is mandated to choose a limited number of projects, those that it deems likely to play a significant role in reducing our imports of foreign oil.

Further, this bill calls for all agency decisions regarding licensing to be completed within a year, evidence that the fast-track process envisioned here will indeed be fast.

But at the same time, the Board will be responsible—it is empowered to streamline licensing only through cooperation, with the Department of Energy and with the many Federal, State, and local agencies that must retain the decisionmaking powers they presently have. Our bill recognizes that coercing should play no role in assuring that vital energy projects are licensed quickly, and responsibly, and with the backing of the American people.

My good friend and colleague, Senator GLENN, submitted valuable remarks accompanying the introduction of our substitute last week. He said:

> A responsible fast-track process is aimed at tightening deadlines, coordinating efforts at various governmental levels, and consolidating procedures wherever and whenever possible. It does not mean ignoring, skirting, or otherwise short-circuiting the substantive responsibility of any Federal, State, or local entity. They are far too important for that. We want to expedite intelligently, not rush blindly.

I view 488 as expediting intelligently, streamlining a process that we all agree is too lengthy and time consuming now. I urge my colleagues to give it their full support.

Mr. President, in addition, I would like to elaborate on a few other points that I believe have not been fully addressed in our consideration of this new agency, the Energy Mobilization Board. First, I would like to take up the question of the composition of the Board. As you know, the Energy Mobilization Board, as it would be established in S. 1308, would make the chairman of the Board responsible for virtually all action of the Board aside from the designation of projects. The three Board members who may serve part time, who are not required to give up private employment—in what-

ever capacity—to serve on the Board, and who are to be paid at the level of Cabinet secretaries for the days they spend doing the Board's business, have no other function than to advise the Board on the designation of projects. I am particularly concerned that these persons will not be subject to a series of laws that we have enacted to address widespread concern about the ethical conduct of Government officials and those who advise them. S. 1308 would exempt them from application of the conflict of interest laws and would exempt the Board generally from the Federal Advisory Committee Act.

Mr. President, these laws are a matter of deep interest to many in our society who care about responsible government.

As we handle nominations of individuals to carry out the highest responsibilities in our Government, we are continually confronted here in the Senate with questions as to whether a conflict of interest may exist for an individual. In drafting these provisions, I am sure the Energy Committee was concerned that talent and expertise from the private sector could be brought in to solve the Nation's energy problems. However, I am also sure that if individuals from prominent energy firms, banks, or others who advise the leading firms in the energy industry are nominated to the Board, it will indeed pose a certain burden on us in the Senate to distinguish between actual conflict of interest, potential conflict of interest, and the general public perception of conflict of interest in carrying out these important duties. Angels to serve on such a Board are few and far between.

Let me just note for you the reactions of several national groups deeply concerned by this legislation to this particular provision. In a letter dated September 27, 1979, the League of Women Voters wrote endorsing the Ribicoff/Muskie substitute. In part they said, "Members of the Board would not be exempt from conflict of interest laws, as they would be under S. 1308. There is no excuse for exempting officials who will be making decisions of tremendous monetary significance." The Energy Coalition points out that, "S. 1308 would exempt the Board from many accountability requirements." They continue in this vein: "Reacting to years of abuses, the Congress has enacted a variety of laws to make executive branch officials accountable for their actions. S. 1308 would exempt the Board from many of these. Members of the Board (but not the chairman) would be exempt from conflict of interest laws and can serve as officers of the very industries whose applications they would pass upon (S. 1308, section 4(b)(5), 4(b)(7)). The Board would be largely exempt from the Administrative Procedure Act (section 26). The Board would be exempt from the Advisory Committee Act (section 6(a)(7)). The decision to designate a priority project would not be reviewable. The powers of the Board are broadly defined, they are exercised subject to few criteria. The Nation's experience with misuse of power is too recent to comfortably accept the argument advanced by one administration official that with respect to energy we must be prepared to accept a "Government of men and women, not of laws." The Ribicoff/Muskie substitute would exempt the Board from neither ethics requirements, nor the Administrative Procedure Act. It prohibits Board members from holding other employment (S. 1806, section 4(b), 5(d)), requires as S. 1308 does not, that Board policies be publicly stated, be consistent with strict statutory guidelines and bind the actions of the Board. (See, e.g. S. 1806 sections 5(a)(3), 6(a), 6(a)(4), 9(b), 10)."

Mr. President, I would simply like to point out that in many cases when we have a nomination before the Senate the full extent of an individual's financial background is not apparent. We act in good faith. But it does not take many experiences with serious ethical problems to weaken the respect and admiration of the people of this country for those in high office. We must avoid this sort of problem before it occurs. The Ribicoff substitute would do this.

It would make Mobilization Board members accountable.

Mr. President, I believe that both S. 1306 and amendment 488 would contribute to more effective implementation of the National Environmental Policy Act. Let me just note one provision of our substitute that I believe has particular merit. Both bills would provide that a lead Federal agency supervise the preparation of a single environmental impact statement. However, 488 also provides that the Board shall consult with appropriate State and local officials during the preparation of the statement, with respect to any portions which will substitute for comparable requirements under state or local law. At the request of the State or local agency that agency may prepare the portion of the statement dealing with applicable State or local law.

Mr. President, in many cases State and local agencies will have more expertise, more concern, and more knowledge of practical alternatives than a small but powerful Federal office that is new to both the project and the area in which it is to be constructed. Those agencies should be given the opportunity to consult, as fully as possible, with the Federal officials supervising preparation of environmental statements and where their expertise is greater they should step in and do the job. Clearly, amendment 488 offers a preferable alternative in this important area.

ACCOUNTABILITY

Mr. President, the question of accountability is an important one, and it is at the very heart of this legislation. As reported, S. 1308 would allow the Energy Mobilization Board to make decisions in lieu of agencies of Federal, State, and local government that have been charged to make them by statute, regulation or other ordinance. Section 21(a)(1) empowers the Energy Mobilization Board to intervene and make decisions in lieu of a State or local agency that has missed a decision deadline. There are many problems with this provision. In my view it would allow agency officials who are simply not interested or who do not feel they have the time and resources to make the tough decisions, to avoid performing their duty, and instead to pass off their responsibility for these decisions onto the Energy Mobilization Board. Would it be surprising if a small agency of local government, faced with a particularly troubling problem, simply decided to hand over the decision to this powerful White House agency that we are now creating? I am concerned that this power could be highly disruptive. Governor Lamm, chairman of the National Governor's Association's Committee on Natural Resources and Environmental Management, has written that "this provision threatens to disrupt the basic system of federalism and raises serious constitutional issues that are certain to be litigated by the State." He prefers the mechanisms contained in the Ribicoff/Muskie substitute. The National Conference of State Legislatures has written that, "As a practical matter, substantial momentum could be lost between the time it would take the Board to complete the decision-making record of the State or local agency, decide what information is most important, and review existing State or local statutes and case law to determine how they should be applied. Secondly, the Board would probably be more subject to lawsuits because it would be perceived as a single-purpose agency whose primary mission is to facilitate energy projects, not to observe the spirit of State and local laws." The conference continues by raising the question of whether "The lean fast-moving entity originally conceived by its authors could even pretend to know the intricacies of the many State and local functions it might seek to displace. Far better to let the State or local agency make the decision itself, under court order if necessary, than to create an untried entity with powers that tend to make self-justification its primary reason for existence."

Mr. President, these quotes are but a sampling. I believe we should put the emphasis on making our Government agencies at all levels more accountable by adopting the enforcement mechanism contained in the Ribicoff/Muskie substitute.

CRITERIA FOR DESIGNATING PROJECTS

Mr. President, I believe we are agreed that the primary rationale for the Energy Mobilization Board is to get energy projects moving, and to reduce this Nation's dependence upon increased imports of foreign oil. However, there are many other consequences of major projects that can effectively be examined, and should be, before a project is designated as a national priority. For one thing, I believe those making the decisions should examine the extent to which the proposed facility would make use of renewable energy resources, or promote energy conservation. These are two areas of great promise which should not be neglected by the Board. Potential environmental impacts, economic information, and most importantly, the comments submitted by the public and by

responsible Government agencies that would be directly or indirectly affected by such projects, should be available to the Board for evaluation before it makes its decisions. If S. 1308 is adopted, all of these considerations may be ignored, not just for one project or five projects, but for all the projects the Board considers.

I am not advocating that we spend a great deal of time generating such information. In the case of major projects, much of it will already exist. And the Board must move quickly to make its decisions, as we provide in amendment 488.

However, I do believe the Board's actions will be viewed as more responsible if these questions are addressed before the determination is finally made.

Finally, Mr. President, I ask unanimous consent to have printed in the RECORD a brief comparison of S. 1308 and Amendment No. 488.

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

A BRIEF COMPARISON OF S. 1308 (JACKSON ET AL.) AND AMENDMENT NO. 488 (RIBICOFF ET AL.)

(1) S. 1308 lets Board exempt all projects from any law passed after the projects have begun construction. Congress can veto any waiver. Waiver must be "required for speedy operation of project" and cannot injure public health.

Amendment 488 allows for waivers of new laws only if Congress approves these waivers, on a case-by-case basis. (This is not written into the bill, but neither is it prohibited.)

(2) S. 1308 lets the lead agency writing an Environmental Impact Statement write it for State and local agencies, if the Board so chooses.

Amendment 488 lets State and local governments write sections of the EIS that pertain to State and local law.

(3) S. 1308 lets the Board choose fast-track projects completely on its own, save public comment.

488 requires the Secretary of Energy to consult with State and local agencies before deciding upon final candidates.

(4) S. 1308 would place all judicial review in the hands of a central, national court. (Temporary Emergency Court of Appeals.)

488 retains State court jurisdiction on purely State law matters. (e.g.: rate disputes.) All project decision schedule disputes go to local U.S. Court of Appeals.

(5) S. 1308 lets Board make licensing decisions for State/local agencies, when they miss deadlines.

Amendment 488 lets the Board go to court to force agency compliance.

Mr. DOMENICI. Mr. President, I do not want to unduly delay the Senate, so I will yield myself just 1 minute.

I say to my good friend from Maine that I will attempt to find myself on the floor when he is here again in the morning so I may talk to him a bit about a number of points he made.

But I close tonight using as an example a subject he would be familiar with and an environmental law he would be familiar with that I had something to do with drawing for this country. I will just use it as an example.

Under the Clean Air Act, there is a section on no significant declaration, which is based not on public health, but other environmental characteristics that we as a Nation seek to protect.

It is my understanding that under the bill proposed, if a new refinery or a new coal burning fire plant was contemplated within a pristine area as defined in that Clean Air Act, that if that plant could not comply with the requirements of State or national law regarding the degree to which it has to clean up its pollution, that this law in no way abridges or changes that. That would remain the law. It is the substantive test, and if the State or Federal Government said, "You don't comply," you do not comply.

On the other hand, if there are more judicial remedies for review than provided here, to that extent, time would be cut. If States or National Government have unduly long times to make the decision I have just described, in the affirmative or negative, this Board would only have authority to cut the time for the decisionmaking process to what is prescribed in this particular legislation.

I believe those who worked on environmental laws will understand that example in terms of nonwaiver of substantive law as an example of the intent to which we intend to comply with the requirements of substantive law, but merely to expedite the time required for such compliance.

## TARIFF ON TUNA NETS

Mr. CRANSTON. Mr. President, on October 1 I introduced S. 1851, amending the Tariff Act of 1930 to continue the duty-free status of repair parts, materials, and equipment purchased in Panama by the U.S. domestic tuna fleet.

S. 1851 is a straightforward attempt to resolve what I believe to be a prohibitive situation for our tuna industry—a situation that has occurred unwittingly through passage of the Panama Canal implementation legislation.

Prior to the passage of the canal implementation measure, the Panama Canal Zone was not considered foreign soil. For years, the American tuna fleet has docked in Panama, adjacent to the fleet's historical fishing grounds, for repairs and for installation of the highly specialized netting these purse-seine vessels require. The sophistication of the netting stems, in large part, from the fleet's attempt to meet the low-porpoise-kill mandate of the Marine Mammal Protection Act. Our domestic tuna fishermen have done an outstanding job in their continuing reduction of porpoise mortality incidental to the catching of yellowfin tuna. They have combined a high degree of skill with a complicated series of panels and webbing to allow porpoise to escape the nets intended for the yellowfin tuna.

Up to now, the U.S. purse-seine tuna fleet has bought its nets from Panamanian manufacturers using foreign webbing. U.S. net manufacturers have been unable to provide the kind and size of webbing and nets required by the industry. While much progress is being made by domestic net producers to acquire both the equipment and skills needed to outfit our large tuna vessels, they need additional time to meet these strict requirements.

In the meantime, because the Panama Canal Zone is now considered a foreign country, the tuna fleet faces a 50-percent tariff on its net importations, bringing the cost of a $250,000 net to $375,000.

Mr. President, I do not believe that the Congress wants to apply this tariff to an industry that purchases complicated and expensive equipment in order to comply with the Marine Mammal Protection Act. The webbing and nets have been of tremendous help in saving porpoises as required by Federal law and regulation. Although negotiations between the tuna industry and domestic net manufacturers are in progress, additional time will be required to match tuna industry requirements with the capability of domestic net manufacturers to meet those requirements.

I have introduced S. 1851 with these needs in mind. I look forward to the Senate Finance Committee's favorable consideration.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

## PROPOSED ADDITIONS TO THE WILD AND SCENIC RIVERS AND NATIONAL TRAILS SYSTEMS—MESSAGE FROM THE PRESIDENT—PM 115

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying documents and papers, which was referred to the Committee on Energy and Natural Resources:

*To the Congress of the United States:*

In my Environmental Message of August 2, 1979, I proposed legislation to add a number of rivers and trails to the National Wild and Scenic Rivers and National Trails Systems.

Enclosed are reports and draft legislation that would add the following three river segments to the National Wild and Scenic Rivers System as federally administered components:

—Gunnison River, Colorado
—Encampment River, Colorado
—Priest River, Idaho

I am reaffirming my support for designation of a segment of the Illinois River in Oregon for which legislation was submitted to the Congress last year. I am also reaffirming my support for the following four river segments proposed in my last Environmental Message for inclusion in the System:

—Bruneau River, Idaho
—Dolores River, Colorado
—Upper Mississippi River, Minnesota
—Salmon River, Idaho

In addition, I am transmitting to you new study reports on eight rivers which have been found to qualify for inclusion in the National Wild and Scenic Rivers System as State-administered components. Each of the States in which the rivers are located has expressed an interest in administering these rivers as

components of the national system. The rivers are:

—Pine Creek, Pennsylvania
—Buffalo River, Tennessee
—Youghiogheny River, Pennsylvania-Maryland
—Shepaug River, Connecticut
—Kettle River, Minnesota
—Lower Wisconsin River, Wisconsin
—Housatonic River, Connecticut
—Illinois River, Oklahoma

In my 1977 Environmental Message, I proposed 20 additional river segments for study as potential additions to the National Wild and Scenic Rivers System. Several of those rivers have already been designated. Except for rivers where subsequent development has affected the river's qualification for designation, I continue to support legislation authorizing the study of these rivers. Moreover, I am submitting legislation to add the North Umpqua River in Oregon to the list of those rivers to be studied.

In order to assist full congressional deliberation on the proposed Upper Mississippi Wild and Scenic River, I have directed the Secretary of the Interior to complete, with full public participation, a conceptual master plan for the river which will set forth the specific requirements for lands or interests in lands to protect the river corridor and provide public access, campgrounds and other recreational facilities. This is to be completed by April 1980.

My recent Environmental Message also contained a number of proposals relating to the National Trails System. The system is still in its fledgling stage and should be expanded to meet widespread public interest. With this objective in mind, I have directed the Federal land managing agencies to enlarge the National Recreation Trails System. In addition, I am transmitting the study report and legislation to designate the 513-mile Natchez Trace National Scenic Trail through Tennessee, Alabama and Mississippi. I am also resubmitting proposed legislation to establish the Potomac Heritage Trail through Pennsylvania, Maryland, West Virginia, Virginia and the District of Columbia. Furthermore, I am reaffirming my support for the enactment of legislation to create the North Country Trail from the State of New York to North Dakota. Legislation to create this 3,200-mile trail has already passed the House of Representatives in the form of H.R. 3757.

Finally, I am transmitting a report from the Secretary of the Interior recommending that a 13.6-mile segment of the Big Thompson River in Colorado not be added to the National Wild and Scenic Rivers System. This river segment is located entirely within the Rocky Mountain National Park and is managed and protected by the National Park Service. Further, approximately 80% of this 13.6-mile river segment is in a wilderness proposal now before the Congress. Therefore, I believe that the protection afforded by the National Wild and Scenic Rivers Act is unnecessary.

I urge that the Congress promptly act on my recommendations in order to protect these rivers and trails for the recreational and aesthetic enjoyment of all Americans.

JIMMY CARTER.

THE WHITE HOUSE, *October 2, 1979.*

## DESIGNATION OF THE TUOLUMNE RIVER IN CALIFORNIA—MESSAGE FROM THE PRESIDENT—PM 116

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying document, which was referred to the Committee on Energy and Natural Resources:

*To the Congress of the United States:*

Pursuant to Section 4(a) of the Wild and Scenic Rivers Act (P.L. 90-542), I am transmitting to the Congress my recommendations and proposals with respect to the designation of the Tuolumne River in California.

The Tuolumne River has been jointly studied by the Departments of Agriculture and Interior. Of the 92 miles which were studied, 82 miles have been found eligible to be added to the national system of Wild and Scenic Rivers. The study proposes that if added to the national system, the river would be jointly managed by the Departments of Interior and Agriculture.

On the basis of information now available, I concur with the findings of the study and recommend that the mileage found to be eligible to be added to the system should be designated as a Wild and Scenic River as part of the national system. A draft bill to accomplish this is attached.

The final printed version of the study has not yet been prepared. In order to meet the statutory deadline of October 2, 1979, however, I am transmitting this recommendation. I intend that the study of the river be finalized and I shall have it transmitted to you when it is complete. Should any other pertinent information become available however, which would call for a different recommendation, I shall transmit a revised proposal to you along with the completed study.

JIMMY CARTER.

THE WHITE HOUSE, *October 2, 1979.*

## PROPOSED OWYHEE WILD AND SCENIC RIVER—MESSAGE FROM THE PRESIDENT—PM 117

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying document, which was referred to the Committee on Energy and Natural Resources:

*To the Congress of the United States:*

I am transmitting herewith draft legislation to add two segments of the Owyhee River in Idaho and Oregon totalling 178 miles to the National Wild and Scenic Rivers System. These segments would be administered by the Secretary of the Interior as units of the national system.

I also recommend that an additional 14-mile segment of the river be administered by the State of Oregon under its Scenic Waterways program.

These recommendations are based on the accompanying report prepared by the Secretary of the Interior under section 5(a) of the Wild and Scenic Rivers Act.

JIMMY CARTER.

THE WHITE HOUSE, *October 2, 1979.*

## COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with reports, documents, and papers, which were referred as indicated:

EC-2238. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Alternatives to Consider in Planning Integrated Logistics Support for the Trident Submarine," September 28, 1979; to the Committee on Armed Services.

EC-2239. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, the October 1978-March 1979 (first half of fiscal year 1979) listings of Department of Defense contracts negotiated under authority of Section 2304(a)11 and 2304(a)16; to the Committee on Armed Services.

EC-2240. A communication from the Secretary, Interstate Commerce Commission, reporting pursuant to law, that the Commission is unable to render a final decision in Docket No. 37146, Transit on Wheat Between Reshipping Point and Destination, within the specified seven-month period which is to expire at the earliest on October 17, 1979; to the Committee on Commerce, Science, and Transportation.

EC-2241. A communication from the Secretary of the Interior, transmitting, pursuant to law, notice of Outer Continental Shelf Leasing Systems, Sale No. 42; to the Committee on Energy and Natural Resources.

EC-2242. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Fusion—A Possible Option for Solving Long-Term Energy Problems," September 28, 1979; to the Committee on Energy and Natural Resources.

EC-2243. A communication from the Administrator, Energy Information Administration, Department of Energy, a quarterly report for the period April through June 1979 concerning imports of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal; reserves and production of crude oil, natural gas, and coal; refinery activities; and inventories (data on exploratory activity, exports, nuclear energy, and electric power are also included); to the Committee on Energy and Natural Resources.

EC-2244. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report of the Secretary of the Treasury on the Antirecession Fiscal Assistance Program, covering calendar year 1978; to the Committee on Environment and Public Works.

EC-2245. A communication from the Acting Assistant Secretary of the Interior, transmitting, pursuant to law, an announcement of the focused water research and development areas of interest for fiscal year 1980 funding consideration; to the Committee on Environment and Public Works.

EC-2246. A communication from the President of the United States, reporting, pursuant to law, his intention to withdraw the designation of Ethiopia as a beneficiary developing country for purposes of the Generalized System of Preferences; to the Committee on Finance.

EC-2247. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Proposition 13—How California Governments Coped With a $6 Billion Revenue Loss," September 28, 1979; to the Committee on Governmental Affairs.

EC-2248. A communication from the Mayor of the District of Columbia, transmitting a draft of proposed legislation to amend the District of Columbia Self-Government and Governmental Reorganization Act with respect to the borrowing authority of the District of Columbia; to the Committee on Governmental Affairs.

EC-2249. A communication from the Assistant Secretary for Education, Department of Health, Education, and Welfare, transmitting, pursuant to law, the fourth annual report of the Advisory Council on Education Statistics; to the Committee on Labor and Human Resources.

## PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-472. A resolution adopted by the Legislature of the Commonwealth of Puerto Rico; to the Committee on the Judiciary:

"RESOLUTION

"Resolution to express to the House of Representatives and the Senate of the United States the desire of the People of Puerto Rico to have the right to vote in the General Election for the President and Vice President of our American Nation; and to reiterate the will of the People of Puerto Rico to maintain a permanent union with the United States, reaffirming the need of the Puerto Ricans to have the right to the presidential vote as part of our prerogatives as American citizens

"STATEMENT OF MOTIVES

"At present the People of Puerto Rico do not have the right to vote for the President and Vice President of the United States, in spite of the fact that a great many of our fellow citizens do participate in the internal processes of the National political parties, including the conventions to select the Presidential and Vice Presidential candidates of our American Nation.

"The President of the United States continually makes decisions that affect the People of Puerto Rico, without us having the right to vote for him.

"It is the conviction of the Senate of Puerto Rico that the right of the Puerto Ricans to the presidential vote should be among the prerogatives of our American citizenship and our relationship of permanent union with the United States.

"The immense majority of the Puerto Rican people are interested in maintaining a permanent union with our American Nation with the full exercise of the rights and prerogatives of our American citizenship.

"Be it resolved by the Legislature of Puerto Rico:

"Section 1.—To express to the House of Representatives and the Senate of the United States the desire of the People of Puerto Rico to have the right to vote in the General Election for the President and Vice President of our American Nation; and to reiterate the will of the People of Puerto Rico to maintain a permanent union with the United States, reaffirming the need of the Puerto Ricans to have the right to the presidential vote as part of our prerogatives as American citizens.

"Section 2.—That a copy of this Resolution be sent to the House of Representatives and to the Senate of the United States, to the President of the United States, to the United Nations Organization, and the communications media of Puerto Rico and the United States and that for this purpose it be translated into the English language.

"Section 3.—This Resolution shall take effect immediately after its approval."

POM-473. A resolution adopted by the Board of Directors of the Council of Governments, relating to continuing operation of special fuel crisis intervention payments and state gasoline set-aside programs; to the Committee on Appropriations.

POM-474. A resolution adopted by the Kansas Independent Oil & Gas Association, relating to the crude oil excise tax; to the Committee on Finance.

POM-475. A resolution adopted by the Kansas Independent Oil & Gas Association, relating to natural gas; to the Committee on Energy and Natural Resources.

POM-476. A resolution adopted by the Kansas Independent Oil & Gas Association, relating to underground injection; to the Committee on Environment and Public Works.

POM-477. A resolution adopted by the Kansas Independent Oil & Gas Association, relating to fractional interests and limited partnership sales; to the Committee on Banking, Housing, and Urban Affairs.

POM-478. A resolution adopted by the Kansas Independent Oil & Gas Association, relating to the Interstate Oil Compact Commission; to the Committee on Energy and Natural Resources.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 3434. An act to amend the Social Security Act to make needed improvements in the child welfare and social services programs, to strengthen and improve the program of Federal support for foster care of needy and dependent children, to establish a program of Federal support to encourage adoptions of children with special needs, and for other purposes (together with additional views) (Rept. No. 96-336).

By Mr. KENNEDY, from the Committee on the Judiciary without amendment:

H.J. Res. 303. Joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the seven calendar days beginning October 7, 1979, as "National Port Week."

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary:

Joseph C. Howard, Sr., of Maryland, to be U.S. district judge for the district of Maryland.

Shirley B. Jones, of Maryland, to be U.S. district judge for the district of Maryland.

Lynn C. Higby, of Florida, to be U.S. district judge for the northern district of Florida.

James C. Paine, of Florida, to be U.S. district judge for the southern district of Florida.

James W. Kehoe, of Florida, to be U.S. district judge for the southern District of Florida.

Eugene P. Spellman, of Florida, to be U.S. district judge for the southern district of Florida.

Gene E. Brooks, of Indiana, to be U.S. district judge for the southern district of Indiana.

Albert Tate, Jr., of Louisiana, to be U.S. circuit judge for the fifth circuit.

William L. Beatty, of Illinois, to be U.S. district judge for the southern district of Illinois.

Hugh Gibson, Jr., of Texas, to be U.S. district judge for the southern district of Texas.

George J. Mitchell, of Maine, to be U.S. district judge for the district of Maine.

Jerry L. Buchmeyer, of Texas, to be U.S. district judge for the northern district of Texas.

Samuel D. Johnson, Jr., of Texas, to be U.S. circuit judge for the fifth circuit.

Edward B. Davis, of Florida, to be U.S. district judge for the southern district of Florida.

Nathaniel R. Jones, of Ohio, to be U.S. circuit judge for the sixth circuit.

By Mr. RIBICOFF, from the Committee on Governmental Affairs:

The following-named persons to be Governors of the U.S. Postal Service:

William J. Sullivan, of Maine;
George Watson Camp, of Georgia; and
Richard R. Allen, of North Carolina.

(The above nominations from the Committee on Governmental Affairs were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. RIBICOFF, from the Committee on Governmental Affairs:

Frankie Muse Freeman, of Missouri, to be inspector general, Community Services Administration.

Ronald P. Wertheim, of the District of Columbia, to be a member of the Merit Systems Protection Board.

(The above nominations from the Committee on Governmental Affairs were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

## 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. NELSON (for himself and Mr. KENNEDY):

S. 1853. A bill to amend the Higher Education Act of 1965 to extend the Teacher Corps Program; to the Committee on Labor and Human Resources.

By Mr. CRANSTON (for himself, Mr. BAYH, Mr. CHILES, Mr. GOLDWATER, Mr. HAYAKAWA, Mr. HELMS, Mr. JEPSEN, Mr. LUGAR, Mr. MORGAN, Mr. NUNN, Mr. THURMOND, and Mr. TOWER):

S.J. Res. 106. Joint resolution authorizing and requesting the President to proclaim the week of October 14 through October 20, 1979, as "National Mobile Home/Manufactured Housing Week"; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON (for himself and Mr. KENNEDY):

S. 1853. A bill to amend the Higher Education Act of 1965 to extend the Teacher Corps program; to the Committee on Labor and Human Resources.

● Mr. NELSON. Mr. President, today Senator KENNEDY and I are introducing legislation to reauthorize the Teacher Corps through fiscal year 1983.

This bill authorizes an appropriations level of $100 million for the Teacher Corps in fiscal year 1981 and for each of the 2 succeeding fiscal years. This is the same appropriation that is authorized for the current fiscal year.

The original legislation, enacted as part of the Higher Education Act of 1965 (Public Law 89-329), established a Teacher Corps to strengthen educational opportunities for children in areas having concentrations of low-income families, and to encourage colleges and universities to broaden their teacher preparation programs accordingly. To achieve this purpose, the Teacher Corps was to attract and train qualified teachers and inexperienced teacher interns, and make them available to local education agencies for service in low-income areas.

Grants and contracts were authorized for institutions of higher education and local education agencies for recruiting, selecting, and training Teacher Corps members and for the operational costs of Teacher Corps projects. Funding has been provided for projects designed to meet the special educational needs of children from migrant worker families, juvenile delinquents, youth offenders, and adult criminal offenders.

Initially, the Teacher Corps was regarded as a "service" program—somewhat similar to the Peace Corps—in the sense that it provided additional education opportunities for low-income children through the provision of superior teacher training and certification for many young college graduates who would not otherwise have chosen to become teachers. In sum, the initial emphasis of the Teacher Corps was on training new teacher-interns, and on providing "services" to local universities and colleges needing assistance in their preservice teacher training programs.

Amendments to the Teacher Corps legislation in 1974 (Public Law 93-380) expanded the responsibilities of the Teacher Corps by adding authority to encourage institutions of higher education and local education agencies to improve their programs for training and retraining currently active teachers. The focus of the Corps, therefore, shifted from preservice training of teacher interns to an emphasis on retraining experienced teachers and teacher aides, so that they might be better equipped to address the educational needs of children in low-income areas. The purpose of the Corps also gradually shifted from an emphasis on improving the skills of individual teachers to an emphasis on improving entire schools and institutions of higher education as the best means for achieving lasting benefits from limited resources.

Other amendments to the Teacher Corps in 1976 (Public Law 94-382) enabled a shift from providing "services" to colleges and universities in their efforts to provide preservice teacher training to an emphasis on showing—providing evidence to those who are responsible for individual Teacher Corps projects—how institutions of higher education are employing new teaching techniques in their efforts to prepare or retrain teaching personnel for service in low-income areas. In other words, each Teacher Corps project must show evidence of staff development that is responsive to student needs and furnish proof that participating institutions will continue project achievements once Teacher Corps funding has ended. Corps staff must also document and evaluate the achievements of projects, and information on project successes and failures must be made available to other local education agencies.

Changes in the authorizing legislation also increased the project length from 3 to 5 years, and the mandate of the Corps was expanded from teachers only to all professionals—such as teachers, teacher aides, and school administrators—involved with the education of low-income children.

A typical project now includes all the educational staff of three or four schools, all of which serve a low-income community. The historic cooperation between an institution of higher education and a local education agency is continued. However, since 1978, an elected community council, consisting of parents and other community members, has been added to the governing structure. This governing structure determines the types of improvements or changes in the schools and educational personnel that are to be achieved through the training and retraining offered by the Teacher Corps program.

If the project proposal is approved, the first year is devoted to detailed project development; the last 4 years consist of the actual training, with an emphasis on disseminating information on project successes and failures during that last 2 years. All information documented at the local level is to be included in a large national evaluation of the Teacher Corps.

The Teacher Corps is often confused with another Office of Education program for the training of educational personnel—the teacher centers program. Because there are some similarities between the Teacher Corps and the teacher centers, it has been suggested that these two programs are overlapping, competing, and even conflicting in their objectives and activities.

But, in fact, nothing could be further from the truth. Despite similarities, there are very important differences between the two programs; in a sense, the Teacher Corps and teacher centers are complementary to one another.

The teacher centers are concerned solely with the training of teachers. The Teacher Corps, on the other hand, aims to train all educational personnel in project schools—teacher interns, teacher aides, and school administrators as well as teachers;

The Teacher Corps has a specific focus on the educational needs of some of society's most disadvantaged students—children from low-income areas. Teacher centers make no distinction among students;

Whereas teacher centers are designed to help teachers become more effective with their students, the Teacher Corps is designed to improve the nature and effectiveness of entire institutions (colleges and universities) so that their teacher preparation programs are more responsive to student as well as teacher needs; and

Responsibility for approving grant applications rests with the teacher center policy boards, where teachers comprise the majority of members. In the Teacher Corps, by comparison, a policy council governs projects; this council includes the superintendent of the local education agency, the dean of education of the institution for higher education, and the chairperson of the elected community council (composed of parents and other community members).

Over the past 10 years, a number of evaluative studies of the Teacher Corps have been conducted by such organizations as the U.S. General Accounting Office (GAO), the Center for Education Policy Research at Harvard University (1971), and the Office of Education (1975). These studies have found that the Teacher Corps attracted a special type of person to teaching in low-income areas—persons who tended to be more effective than other teaching personnel in such areas as the use of community resources, initiating contact with parents, and the development of ethnically relevent curricula. These studies also have suggested that more Teacher Corps interns remain in schools serving low-income populations after becoming teachers than teacher interns prepared in traditional ways.

The comments of current or former participants in the program also attest to the impact of the Teacher Corps program on individuals and whole communities. In a letter to Dr. William Smith, director of the Teacher Corps, the chairperson of the community council in Wise, Va., wrote the following:

> The project has done many things to bring our school and community closer together. It has involved community members in the school as volunteers and resource persons. It has increased community support for services to strengthen the school program, such as the Reading is FUNdamental Program and the Outdoor Education Center. Through various activities parents have gained a better understanding of the academic program and learned how they can help their children at home. Teachers, parents, and community representatives have been able to discuss issues and to understand each others' points of view. Because of our Teacher Corps project we have been able in two years, to progress to a point which otherwise would have taken us a decade.
>
> Even though our project was not refunded for a '78 cycle, the Council plans to continue its activities. In fact, we have already taken steps to expand the Council to include repre-

sentatives from the primary school and the high school. We feel that we have made a good start. We intend to remain active and to work toward bringing resources such as the Teacher Corps to our area.

The Teacher Corps remains a useful and timely program for the training of professionals who are central to the education of some of this society's most disadvantaged students. It is anticipated that an average of 16,000 experienced educational personnel and 320 teacher interns will be trained each year through the Teacher Corps program. This educational personnel is located in approximately 320 schools and 80 school districts throughout the country. An average of 80 colleges and universities are involved with the activities of the Teacher Corps each year. In my judgment, the Corps remains essential to the achievement of the goal that children from all sectors of American society receive an education of quality and relevance.

Funding for Teacher Corps projects is made on a competitive grant basis. The Corps follows standard Office of Education practices for the administration of discretionary grant programs. Grants are made annually, although projects cover 5 years. The Teacher Corps has typically funded 60 new project starts in each of its first 12 years. In 1978, this number was increased to 80 because the first year costs of the new projects—since they will be devoted to planning and development—will be lower than the full operational costs.

The administration requested an appropriation of $37.5 million for the Teacher Corps in fiscal year 1980. Unfortunately, the Senate approved only $30 million for the Corps. This means that no funds will be available for technical assistance contracts or new project starts, and that grant awards to current program participants will have to be reduced. It is my hope and expectation that these funds will be restored next year.

Teacher Corps authorization under the Higher Education Technical Amendments of 1979 is scheduled to expire at the end of fiscal year 1980. Since a new 5-year cycle in the Teacher Corps program just started last summer, and a major long-term evaluation of the program has just been initiated in response to current authorizing legislation, no revisions are being proposed in the Teacher Corps at this time. Instead, this legislation would extend the Teacher Corps legislative language in the higher education authorization for fiscal year 1981 and the 2 succeeding fiscal years.

The Senate Labor and Human Resources Subcommittee on Education, Arts and Humanities, chaired by the distinguished Senator from Rhode Island, Senator PELL, has just initiated hearings on the reauthorization of the Higher Education Act. The subcommittee will be considering the reauthorization of the Teacher Corps as part of the Higher Education Act, and will be reporting its recommendations for the entire act by May 15, 1980.●

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By Mr. CRANSTON (for himself, Mr. BAYH, Mr. CHILES, Mr. GOLDWATER, Mr. HAYAKAWA, Mr. HELMS, Mr. JEPSEN, Mr. LUGAR, Mr. MORGAN, Mr. NUNN, Mr. THURMOND, and Mr. TOWER):

S.J. Res. 106. Joint resolution authorizing and requesting the President to proclaim the week of October 14 through October 20, 1979, as "National Mobile Home/Manufactured Housing Week"; to the Committee on the Judiciary.

● Mr. CRANSTON. Mr. President, in these days of rapidly spiraling housing costs, Americans are finding an increasingly attractive alternative that is providing housing for millions of American families who otherwise could probably not afford to own their own homes.

I am speaking, Mr. President, of the mobile home/manufactured housing industry. This industry has captured a large portion of the Nation's housing market. Mobile homes produced in 1978 totaled over 274,000 units. The average cost of all sizes of mobile homes sold last year was $16,300—less than one-fourth the median price for a single-family house in 1978.

The post World War II nationwide housing shortage gave the mobile home/manufactured housing industry its first big boost. The Federal Government recognized the benefits of these homes as residences. The Federal Housing Administration began financing mobile home construction to meet the housing needs of returning veterans, and within a decade the shift in emphasis was complete. Now mobile homes mean stability and year-round livability. With growth came sweeping innovations in design to the point where these manufactured homes are now equipped with almost every convenience that one would expect in a conventional home. Today mobile homes account for 25 percent of all new single-family homes sold at any price.

Mobile homes are a major source of housing for people of low and moderate means. Last year mobile homes represented 76 percent of all new, single-family homes under $25,000. By 1983, the mobile home market is expected to outpace conventional housing, according to the 1979 industrial outlook.

Mr. President, if anyone doubted the impact and vital role of mobile housing in our country's total housing industry, these facts should end those doubts. In my own State of California, the mobile-home industry contributes over $500 million annually to the State economy, and provides affordable, comfortable housing to hundreds of thousands of our elderly, and low- and moderate-income citizens who might otherwise be without adequate housing. On a national scale, the economic impact of the industry is well over $6 billion a year.

Several of my colleagues are joining me in cosponsoring a resolution to declare the week of October 14 through October 20 to be "National Mobile Home/Manufactured Housing Week." I am joined by the distinguished junior Senator from California, Mr. HAYAKAWA, and Mr. BAYH, Mr. GOLDWATER, Mr. CHILES, Mr. NUNN, Mr. LUGAR, Mr. MORGAN, Mr. HELMS, Mr. THURMOND, Mr. TOWER, and Mr. JEPSEN.

This resolution is offered in conjunction with an exhibit of mobile homes on the Federal Mall, October 16 and 17. I would urge my colleagues in the Senate to take a few minutes from their busy schedule to see the exhibit. I believe that those who see the display will be very impressed with what technology can do to lower housing costs and provide affordable, safe, and attractive housing for Americans.●

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## ADDITIONAL COSPONSORS

S. 1090, S. 1091, AND S. 1092

At the request of Mr. TALMADGE, the Senator from Tennessee (Mr. SASSER) was added as a cosponsor of S. 1090, S. 1091, and S. 1092, bills to amend the Employee Retirement Income Security Act and the Internal Revenue Code relating to church plans.

S. 1735

At the request of Mr. HATCH, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 1735, the Congressional Pay Cap Act of 1979.

AMENDMENT NO. 488

At the request of Mr. RIBICOFF, the Senator from Connecticut (Mr. WEICKER) was added as a cosponsor of amendment No. 488 proposed to S. 1308, a bill to set forth a national program for the full development of energy supply, and for other purposes.

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## AMENDMENTS SUBMITTED FOR PRINTING

### PRIORITY ENERGY PROJECT ACT—S. 1308

AMENDMENT NO. 494

(Ordered to be printed and to lie on the table.)

Mr. BRADLEY submitted an amendment intended to be proposed by him to S. 1308, a bill to set forth a national program for the full development of energy supply, and for other purposes.

AMENDMENT NO. 495

(Ordered to be printed and to lie on the table.)

Mr. HART submitted an amendment intended to be proposed by him to S. 1308, supra.

AMENDMENTS NOS. 496 AND 497

(Ordered to be printed and to lie on the table.)

Mr. ARMSTRONG submitted two amendments intended to be proposed by him to S. 1308, supra.

AMENDMENTS NOS. 498 THROUGH 500

(Ordered to be printed and to lie on the table.)

Mr. ARMSTRONG submitted three amendments intended to be proposed by him to amendment No. 488 proposed to S. 1308, supra.

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## NOTICES OF HEARINGS

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

● Mr. CHILES. Mr. President, I would like to announce that the Subcommittee on Federal Spending Practices and Open Government, Committee on Governmental Affairs, will hold a hearing on the continued oversight on fraud and abuse in GSA. The hearing will take place on

Wednesday, October 10, 1979, at 9:30 a.m. in room 457 of the Russell Senate Office Building.

If you have any questions, please contact the subcommittee office at 224-0211.●

SUBCOMMITTEE ON CIVIL SERVICE AND GENERAL SERVICES

● Mr. PRYOR. Mr. President, I wish to announce that the Subcommittee on Civil Service and General Services will begin hearings on the use of consultant services by the Federal Government on October 12, 1979, at 10 a.m. in room 1114 of the Dirksen Senate Office Building.

Anyone wishing additional information about the hearings may contact the subcommittee staff at 224-4551.●

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

● Mr. CHILES. Mr. President, I would like to announce that the Subcommittee on Federal Spending Practices and Open Government, Committee on Governmental Affairs, will hold a hearing on the continued oversight of fraud and abuse in the General Services Administration. This hearing will take place on Wednesday, October 10, 1979, at 10 a.m. in room 457 of the Russell Senate Office Building.

If anyone has any questions concerning this hearing, they may contact the subcommittee office at 128 C Street NE., or call 224-0211.●

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

● Mr. CHILES. Mr. President, I would like to announce that the Subcommittee on Federal Spending Practices and Open Government of the Committee on Governmental Affairs will hold a hearing on fraud and abuse in the Community Services Administration. This hearing will take place on Thursday, October 18, 1979, at 10 a.m. in room 3302 of the Dirksen Senate Office Building.

If anyone has questions concerning this hearing they may contact the subcommittee office at 128 C Street NE., or call 224-0211.●

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the sessions of the Senate today and on Wednesday, October 3, 1979, and Thursday, October 4, 1979, to hold markup sessions on the windfall profits tax bill.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the sessions of the Senate Wednesday, October 3, 1979, and Thursday, October 4, 1979, to hold markup sessions on synthetic fuels legislation.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold a hearing on energy productivity amendments.

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

SUBCOMMITTEE ON AGRICULTURAL CREDIT AND RURAL ELECTRIFICATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Agricultural Credit and Rural Electrification Subcommittee of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the sessions of the Senate on Thursday, October 4, 1979, Friday, October 5, 1979, and Tuesday, October 9, 1979, to hold hearings on S. 1465, amendments to the Farm Credit Act.

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

## ADDITIONAL STATEMENTS

### HURRICANE RELIEF IN THE CARIBBEAN

● Mr. CHURCH. Mr. President, in the aftermath of Hurricanes David and Frederic, the U.S. Government, private American citizens, and other people of many other nations have joined together to help the people of those islands rebuild their property and their lives. This disaster relief and rehabilitation effort represents the finest of the humanitarian traditions of our Nation.

The President has sent to the Congress a request for additional funds for disaster relief and rehabilitation in the Caribbean. The House Committee on Foreign Affairs has reported the bill to the House with the recommendation that it pass. The Committee on Foreign Relations will consider the President's request as soon as time permits. Meanwhile, relief and rehabilitation efforts will continue with funds previously appropriated.●

### THE PUBLIC AND THE PAY RAISE

● Mr. HATCH. Mr. President, I noted an interesting editorial in Monday's edition of the Salt Lake Tribune. I think it represents the view held by most of my fellow Utahans, and I would venture, most of the citizens of the United States. Lest there be any doubt about this issue in the minds of my colleagues here in the Senate and House, I ask that the editorial, "Wrong Pay Raise Time" be printed in the RECORD.

The editorial follows:

WRONG PAY RAISE TIME

United States House of Representatives members who last week successfully prevented a pay raise for themselves and various other top level federal employees are correctly reading the public mood. They may also be aiding significantly the fight against inflation.

Not that approving a 5.5 or 7 percent increase—the most commonly discussed options—for congressmen, judges and sundry high echelon bureaucrats would super fuel inflationary fires. But setting an example of foregoing an opportunity to dig deeper into the national treasury could help strengthen the argument for self-denial and sacrifice during these times of run-away living costs.

By any measure, there is political poison in elected officials granting themselves handsome pay raises. Something should be said for the occasions on which they have let that draught pass.

Although, according to federal law, congressmen are entitled to annual increases based on the cost-of-living index, a 5.5 percent raise was not taken last year and this year's increment, which technically could be 12.9 percent, may be waived also.

The late Sen. Everett Dirksen once said of a congressional salary hike: "senators have to eat, too." But none of those presently being deprived will starve.

Representatives and senators now make $57,500 annually. The judges and high post employees slated for the now disputed raise are in the $47,500 category. It is expensive to live in Washington, D.C. Still, that complaint doesn't elicit much sympathy coming from those who asked or angled to be either sent or summoned there.

Unquestionably, no perfect opportunity exists for elected public officials to award themselves higher pay. But now, when life among taxpayers who finance such items, seems endlessly more expensive, the proposal, in the political sense, is utterly without redemption.●

### A TAX REFORM WITH MEANING

● Mr. DOLE. Mr. President, a few years ago there was much talk of tax reform. At that time, most people thought of tax reform as meaning closing "loopholes" that are available to individuals and corporations. These "loopholes" are the exemptions, credits, and deductions that Congress has enacted in order to encourage certain behavior by corporations and individuals. One example is the charitable deduction, designed to encourage philanthropy. Another is the deduction for interest on mortgage payments, which makes it easier for people to own their own home. Because so many people benefit from these loopholes, it is difficult to get a consensus about which of them could profitably be eliminated. As a result, "tax reform" as it was understood a few years ago appears to have faded away as a significant issue.

Whatever the merits or drawbacks of various tax loopholes, they have one thing to be said for them. They were all passed by Congress and signed into law by the President. Each exemption, credit, and deduction in the Internal Revenue Code was thoroughly examined, discussed, and debated in the course of the legislative process before it was enacted. Furthermore, these provisions of the code are frequently scrutinized by the courts and analyzed by the news media and by professional journals. There are no secrets whatever concerning tax loopholes.

But what if these loopholes had been put into the Internal Revenue Code without action by Congress, and without notice to the public and an opportunity for the issue to be discussed? Certainly the public outcry at such an arbitrary and antidemocratic action would be heard loud and clear by the Congress. No one could reasonably claim that such a fundamental legislative concern as tax policy should be left to the IRS alone. Such an abuse of administrative discretion would have to be stopped.

In this context, the most meaningful tax reform would be to return tax policy to the congressional process, where there are plenty of opportunities to analyze the relative merits of various proposals.

Believe it or not, that is the situation we face today: one of the most serious questions of tax policy is now decided without discussion or notice to the public and without action by Congress. That policy matter is the rate of tax imposed on individuals each year. The rates go up each year unless Congress acts to reverse that, and no one is told what is happening. Why is this so?

The answer is inflation and the progressive tax scale. When income rises to keep up with inflation, people move into higher tax brackets and are taxed at a higher rate. Yet their real income is no greater than before, and they are automatically forced to pay a higher real rate of tax. As a result, the tax burden grows every year with inflation (and we have gone more than a few years now without stable prices). This is taxflation: An unlegislated, annual tax increase, imposed by the IRS without publicity or notice to anyone. Here, if anywhere, is a cause for meaningful tax reform.

Mr. President, the necessary reform is ready and waiting. The Tax Equalization Act, S. 12, has been introduced in this Congress by the Senator from Kansas. It would adjust the tax brackets, zero bracket amount, and personal exemption by the rate of inflation (measured by the Consumer Price Index). It is unjust to impose a hidden tax on our citizens, and the Tax Equalization Act would bring tax policy back into the open, where it belongs. There is no justification for hesitating on this matter. Reform is needed now, for the hidden tax will not remain hidden much longer, as the public's awareness of the problem grows. Congress would do well to keep ahead of this issue, rather than wait to bear the brunt of public pressure. Tax Equalization would also have the not incidental virtue of correcting an injustice.●

## THE FUTURE OF SALT II

● Mr. BIDEN. Mr. President, events of the past 24 hours have served, I believe, to restore a proper perspective, in the Senate as in the Nation at large, to the confusion that has been allowed to develop between the issue of Soviet troops in Cuba and the deliberate consideration of the SALT II treaty upon the merits of that agreement itself.

In his address to the Nation last night, President Carter employed a rational perspective in reviewing the "tempest" in the Caribbean. While 2,000 Soviet combat troops is a matter to be taken seriously—within its own frame of reference—it is a matter that must be balanced off against the global and enduring significance of a responsibly negotiated treaty. Both issues involve the national security of the United States, but their significance differs in orders of magnitude.

I think it should be a matter of pride and gratitude on the part of all the Members of this body which has long claimed to be the greatest deliberative assembly in the world, that this necessary perspective has been maintained calmly and persistently throughout the Cuban controversy by our majority leader, the distinguished Senator from West Virginia. Senator BYRD yesterday summed up the comparative import of these two issues in an outstanding and well-reasoned article that appeared opposite the editorial page of the Washington Post.

Mr. President, I commend Senator BYRD's important statement to those of my colleagues who have not yet had the opportunity to read it, and I am grateful to my distinguished colleague from California, Senator CRANSTON, for having yesterday inserted the majority leader's article in the RECORD.●

## ORDER FOR RECESS TO 9:15 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 9:15 a.m. tomorrow morning.

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

## TIME OF LEADERSHIP TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders not extend beyond 9:30 a.m. tomorrow, and that the time for the two leaders be equally divided.

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

## ORDER FOR RECOGNITION OF SENATORS AND RESUMPTION OF PENDING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 9:30 a.m. tomorrow, Mr. TOWER be recognized for not to exceed 15 minutes, that he be followed by Messrs. EAGLETON, RIEGLE, and LEVIN, each for not to exceed 15 minutes, and that at no later than 10:30 a.m. the Senate resume consideration of the pending measure.

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

## NATIONAL PORT WEEK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 303.

Mr. STEVENS. No objection.

The PRESIDING OFFICER (Mr. STEWART). The joint resolution will be stated by title.

The legislative clerk read as follows:

A resolution (H.J. Res. 303) authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 7, 1979, as "National Port Week."

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the joint resolution.

The question is on the third reading and passage of the joint resolution.

There being no objection, the joint resolution (H.J. Res. 303) was ordered to a third reading, as read the third time, and passed.

The preamble was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

## RECESS UNTIL 9:15 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 9:15 tomorrow morning.

The motion was agreed to; and at 6:09 p.m. the Senate recessed until tomorrow, Wednesday, October 3, 1979, at 9:15 a.m.

# EXTENSIONS OF REMARKS

## ENERGY DEPARTMENT FIGURES ARE USELESS

### HON. BERKLEY BEDELL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 2, 1979*

● Mr. BEDELL. Mr. Speaker, I wish to advise our colleagues of some concerns that have been expressed by the Small Business Subcommittee on Antitrust and Restraint of Trade about the distribution of middle distillate fuels—heating oil and diesel fuel. The subcommittee, which I chair, has been studying this subject since last spring and we have released several reports on it.

Earlier this week the subcommittee sent a letter to Charles Duncan, Secretary of Energy. While we are pleased to see that the national inventory of distillate fuel in primary storage facilities will soon reach the administration's goal of 240 million barrels, we are concerned that the heating oil and diesel fuel still is not flowing at a normal rate to local distributors. Primary inventory figures become irrelevant if the fuel is not reaching the consumers.

Several times the Department of Energy has assured the Antitrust Subcommittee that they would reassess the dis-

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

tribution situation at the secondary and tertiary levels as soon as it completed its own study of dealer and customer inventories. The DOE last week released its findings, and we are greatly disappointed; the data is of no immediate use to us or anyone else.

We are presented with a statement as to how much distillate fuel was in the tanks of small distributors in mid-June 1979. There is no suggestion in the report as to what fraction of total storage capacity the inventory figures represent, nor are we told what the normal or historic levels are. Moreover, the DOE does not have any figures for us at all, regarding customer inventory and wholesale jobber stocks.

What is especially troubling is that the head of DOE's Energy Information Administration, Lincoln Moses, continues to point to data about primary stocks in a futile effort to explain what the situation is at the local level. There is a serious information gap there.

In an internal memo dated September 18, 1979, Moses says:

A KEY FACT ABOUT SECONDARY STOCKS

The keen interest in secondary stocks of heating oil grows largely from apprehension that refiners may have "starved" the downstream distribution in order to build primary stocks.

EIA data give little support to such apprehension. Total quantities of distillate supplied to distribution channels during the four months, May, June, July, August, were as shown below (in millions of barrels):

| | |
|---|---|
| 1977 | 330.0 |
| 1978 | 343.6 |
| 1979 | 342.2 |

These figures show no pinching of supplies of distillate put into trade channels since the end of the heating season, as compared to either last year or the year before.

As further Census work (sponsored by EIA) matures, a more detailed understanding of the secondary stock situation should emerge.

That is very interesting, but it does nothing to explain why many refiners had their dealers on allocation fractions of 60 to 80 percent during that period. In four separate hearings our subcommittee attempted to find an explanation for the discrepancy between shipments out of primary inventory and quantities delivered to dealers for distribution at the local level. We had hoped the long-awaited DOE report might be a useful tool in understanding this, but it is not.

Mr. Speaker, I heard this week that Phillips Petroleum currently has its dealers in the upper Midwest on a 65 percent allocation this month, and it is expected to be the same next month. Amoco dealers are now at a 70 percent fraction for distillates in the Midwest, and it is expected that the figure will be the same again in October.

These companies are two of the largest suppliers of diesel and heating oil in my home State of Iowa. It will be very difficult for me to explain to my constituents that, even though their local dealers are getting 30 percent less than they did at this time last year, the DOE tells us there is plenty of heating oil.

At this point, Mr. Speaker, I wish to insert in the RECORD a copy of the letter sent by the Antitrust Subcommittee to Energy Secretary Duncan.

The letter follows:

WASHINGTON, D.C.
*September 25, 1979.*

Hon. CHARLES W. DUNCAN,
*Secretary of Energy,*
*Department of Energy,*
*Washington, D.C.*

DEAR MR. SECRETARY: The Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business continues to be concerned about local-level distribution of middle distillate fuels—diesel and home heating oil. We appreciate the Department of Energy's recent attention to secondary and tertiary inventories of heating oil, and we hope that we can count on your prompt attention to the following problems.

First, we are pleased to see that it appears as if the administration's goal of 240 million barrels of distillate fuel in inventory will be met. This will be somewhat irrelevant, though, if the fuel does not reach end-users when they need it.

Some of the major refiners have indicated that they have increased their inventory at the primary level by curtailing shipments of fuel to their distributors. This has resulted in lower than normal inventory levels in some local areas, as has been pointed out in several reports prepared by our Subcommittee staff. (See enclosure).

In the upper Midwest and Great Plains States, for instance, we are concerned because several of the largest fuel oil suppliers have had their dealers on relatively low allocation fractions for several months now. Amoco is still at 70 percent and Phillips is at 65 percent. Gulf has adopted a bizarre formula that has the effect of reducing some dealers' allocations to less than 40 percent of last year's supply. The combined effect of these and other suppliers' reduced shipments into the area has been to create a very tight supply situation as the fall harvest and heating season approach.

While it does appear that overall supply levels may be adequate to meet minimum needs, we are concerned that the local-level distribution system remains stretched so thin that there is little capacity to absorb any unusual demand. Therefore, we urge you to expedite deliveries from primary inventory to local dealers.

Second, we have a continuing concern over the fact that some refineries still are not maximizing their output of middle distillate fuel. In fact, it is our understanding that the DOE-established price "tilt" remains in effect, encouraging maximized gasoline production, even though gasoline inventories now appear to be adequate. If the government is going to influence refinery yields, encouraging the production of one fuel over another, clearly the need for middle distillates must supersede any desire for added inventories of gasoline.

Our third concern is with the kerosene shortage that is developing in New England and upstate New York. Our field hearing in Maine two weeks ago first brought this problem to light, and our staff has since discussed our concerns with officials of your Economic Regulatory Administration.

The Subcommittee understands that the Department of Energy has made arrangements with the Department of Defense and local government agencies to establish procedures to deal with spot shortages of kerosene. We welcome that news.

Finally, there is the Department of Energy's continuing lack of useful information on local inventory levels.

On August 17 in Cedar Rapids, Iowa, we held a hearing on middle distillate supplies in the Midwest. On September 10 we held a hearing in Bangor, Maine, to study the heating oil situation in New England. At both hearings DOE witnesses declined to comment on our staff reports on secondary and tertiary inventory, saying that the Department was conducting its own study which would be completed "soon." That study was released last week, and it is a great disappointment to us.

The report, prepared as a joint effort by the Energy Information Administration (EIA) and the Census Bureau, is limited to giving figures only for the amount of fuel oil in retail distributors' tanks as of mid-June 1979. There are no figures given for inventory at jobber/distributors or in customer tanks. Nor are there any figures given for prior years. Thus, the report is of little or no value as an analytical tool.

It is very disturbing to us to read the comments of Lincoln Moses, Administrator of the EIA. In a memo discussing the new report he says, "Despite the impossibility of answering many natural questions from a single month's data, this report does 'mean something.' First, it shows that secondary stocks data collection is in process . . ." His memo goes on to say that some time around Christmas we will find out what local dealers' inventories were in June 1978.

While we welcome the development of a reporting system that will, for the first time, provide us with reliable figures about local-level inventories of fuel oil, we also must note that the reporting system as it now functions is not producing information in a timely or useful fashion.

Again, Mr. Secretary, we wish to state our appreciation for your willingness to address these complicated and sometimes controversial issues. In your brief tenure at the Department of Energy we have observed considerable improvements in the Department's attention to these issues, and we look forward to cooperating with you in our mutual efforts to resolve these problems.

Sincerely,

Dan Quayle, ranking minority member, Subcommittee on Antitrust; Berkeley Bedell, chairman, Subcommittee on Antitrust; Thomas J. Tauke, James M. Hanley, Olympia J. Snowe, Richard H. Ichord, Tony P. Hall, Tom Steed.

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## RESTRICTIONS ON POLITICAL PARTICIPATION

### HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 2, 1979*

● Mr. VANDER JAGT. Mr. Speaker, the distinguished gentleman from Minnesota, BILL FRENZEL, has done an outstanding job in leading the battle against H.R. 4970—the Obey-Railsback bill. Those of us who support his position commend him for his effort and his well reasoned rebuttal to many of the points advanced by the bill's supporters.

But whether one supports or opposes the Obey-Railsback bill's restrictions on political action committees, I am sure that all of my colleagues will agree that BILL FRENZEL is one of the leading experts in the field of election law and is hardly an individual who would present a distorted partisan argument. This is demonstrated by his clear and precise editorial explaining his opposition to this bill which appeared in the September 27 New York Times.

Mr. Speaker, I strongly recommend that my colleagues read the following

editorial and consider the advice of the learned gentleman from Minnesota:

ON THE BILL CURBING INTERESTS' GIFTS

(By BILL FRENZEL)

WASHINGTON.—A bill that the House may be soon asked to consider is designed to reduce the amount of money that a political-action committee, or PAC, can give a House candidate and the amount any candidate can receive from all PAC's. Its high-minded sponsors believe it would magically prevent alleged "special-interest" manipulations of the Congress. None of the bill's supporters has been able to identify any House member who has been unduly influenced by any interest, nor have they shown that PAC contributions are a greater, or less great, influence than editorials, direct lobbying, demonstrations or independent expenditures.

Before Congress changes a law, there is usually, and ought to be, proof that a system needs repair and that the proposed repair will be successful with a minimum of undesirable side effects. There has been no such demonstration with the bill under consideration, sponsored by Representatives Tom Railsback, Republican of Illinois, and David R. Obey, Democrat of Wisconsin, partly because its sponsors so far have been afraid to subject it to committee hearings, and partly because their rationale that PAC's are evil is based on subjective "feelings."

Every nickel that PAC's contribute to candidates is voluntarily given by individuals. Those contributions are subject to disclosure and limitations just as they would be if direct contributions were made to candidates.

The growth of PAC's is normal and natural. They were not sanctified by regulations and law until 1974. Since then, they have grown rapidly because individual contributors like them. People like to be identified with their union, professional group, corporation, or ideological group. They also like to have their contributions identified with the PAC's of the so-called special-interest groups.

In the last 20 years, as political parties have become less popular and confidence in government has fallen, PAC's have been the greatest—in fact, the only—institution in our society that has encouraged and expanded political participation by the public. PAC's have encouraged tens of thousands of people who never were active politically to participate in our political processes.

Every cure has some side-effects. The Obey-Railsback measure, which cures only a fantasy, has a ton of adverse side-effects in addition to quashing political participation. Many of them, especially protection of incumbents, are wholly intentional. The bill would have the following effects:

1. It would leave typical candidates defenseless against rich candidates whose unlimited right to contribute to their own campaigns is protected by the Constitution. PAC contributions are often the only balance to rich candidates.

2. It especially penalizes challengers who need to spend heavily to gain identification equal to incumbents. The Kennedy Institute at Harvard recently reported to Congress that not enough money was being spent in campaigns, a finding that we believe supports our position.

3. It would leave Big Labor with its enormous legal advantages to spend the involuntary contributions of its members—union dues—for political purposes. Without PAC's, labor's political power is unbalanced.

4. It would increase fund-raising costs. Current limits on contributions have forced candidates to use direct mail, by far the most expensive fund-raising device. That trend would be exacerbated by the bill.

5. It would penalize candidates with competitive primaries who would have to squeeze two elections out of one contribution limit.

6. It discriminates against an oppressed minority, Republicans. Fourteen of the 16 Republican challengers who defeated incumbent Democrats in 1978 elections received more contributions from PAC's than they would be allowed under the bill. Under its limits, many of them probably would not have won.

The bill seems to rely on the same limited constituency that unsuccessfully tried to pass taxpayer financing of House elections—incumbents, Common Cause, and the A.F.L.-C.I.O. Each group would be aided by its passage. Their strategy is to limit PAC contributions so that Congress will be forced to turn to taxpayers' money to pay for its own re-election. Taxpayer financing ought to be able to stand on its own feet, or fall, as it did, of its own weight.

The Federal election law that restricts contributions and requires disclosure provides ample opportunity for people to decide if certain contributions add up to "undue influence." The people's best defense against alleged corruption in Government is to vote the rascals out.

Laws that further restrict political participation and political expression deserve to be defeated.●

## MENTAL HEALTH NEEDS OF OLDER AMERICANS

## HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 2, 1979*

● Mr. PEPPER. Mr. Speaker, the loneliness and despair of millions of older Americans suffering from mental illness should be a matter of concern to all of us in this body. Yet, oftentimes the more visible problems of income security, housing, malnutrition, and mandatory retirement obscure the subtler but equally as devasting effects of mental illness. While the elderly constitute only 11 percent of the population of this country, more than 25 percent of all suicides are committed by persons over 65.

As a member of the Select Committee on Aging, which I have the honor to chair, addressing the gaps in mental health coverage under medicare is a matter of the highest priority. I am pleased to report that the Ways and Means Subcommittee on Health, has reported out H.R. 3990 with provisions extending mental health coverage under medicare.

Mr. Speaker, no member of the committee has worked harder to make all the Members of this body aware of this insidious but underpublicized problem than ROBERT DRINAN. As chairman of the Aging Committee's National Conference on Mental Health and the Elderly, Mr. DRINAN worked tirelessly to insure that the conference went beyond the usual philosophical discussions of what could be done, and effectively mapped out a strategy for firm legislative action. At this time, I wish to call the attention of my colleagues to Mr. DRINAN's opening remarks before the American Phychological Association on "Meeting the Mental Health Needs of Older Americans: A Failure in Public Policy."

MEETING THE MENTAL HEALTH NEEDS OF OLDER AMERICANS: A FAILURE IN PUBLIC POLICY

In a recent presentation by Mrs. Rosalyn Carter, the chairperson of the President's Commission on Mental Health, before the Select Committee on Aging, on which I serve, Mrs. Carter noted that she first became interested in the mental health problems of the elderly when she was visiting nursing homes during her husband's Presidential campaign. Mrs. Carter revealed the contents of a letter from one woman who said: ". . . it is a terrifying experience getting older in America. You suddenly find yourself an outsider . . . indeed, one reaches an age where one is considered not to exist . . .".

Although most politicians have had the same experience as Mrs. Carter in visiting nursing homes, the fact is that somehow the enormous needs of senior citizens for better mental health care has not become a reality in the Congress. The reality is that those senior citizens who need assistance in the area of mental health are generally invisible. They are probably not present in large numbers among the more resourceful senior citizens who participate in organized groups of older Americans.

I would like to talk with you about three things: (1) the extent of the problem; (2) what the federal government should do in this area; and (3) how our new concern for the mental health needs of the elderly fits into federal programs in the area of mental illness.

I. Extent of the problem:

Every ninth citizen, or eleven percent of the total population, is over the age of 65. This population of 23 million is increasing at twice the rate of the population in general. As a result, this phenomenon has been called "the greying of America".

By the year 2000 every fifth American will predictably be over the age of 65. The public policy implications of this startling phenomenon are, of course, enormous.

There are now 134 separate federal programs charged with serving the elderly. Despite this broad array of programs, many needs of the elderly are not reached—especially in the area of mental health.

It should be noted, however, that Congress has been relatively responsive to the needs of older Americans. Congress enacted Medicare in 1965, the Supplementary Security Income program (SSI) in 1972, and in 1978 raised the mandatory retirement age from 65 to 70. Congress also inserted an escalator clause in the Social Security program so that senior citizens each July 1 receive an increment in their benefits measured by the rate of inflation during the previous twelve months.

There are, however, still great gaps in the benefits available to senior citizens. Medicare does not reach prescription drugs, eyeglasses, dental care or hearing aids. The lack of these often increases the isolation and conseqent mental health problems of senior citizens.

Meals on Wheels, moreover, reaches only a very small proportion of those who would be eligible for this enormously useful program. In addition, a massive program of federal reimbursement for property taxes for the elderly is needed. Bills have been presented to the Congress for many years that would allow a retired person or couple to remain in their home after the age of 65 with the federal government offering on a matching basis a portion of the property taxes which this couple would be paying. Very clearly, this proposal would be expensive, but it would alleviate the tremendous trauma which senior citizens often experience when they are required for financial reasons to leave the home which they have occupied for some 30 or 40 years.

Possibly the most under-discussed problem of the elderly is that of mental illness. In April 1979 the House Select Committee on Aging sought to identify the problems in this area in a two-day conference. Here are some of the findings of that landmark symposium:

1. Fifteen to twenty-five percent of the elderly have significant mental illnesses. Some of these illnesses—perhaps many—are

correctible if they are diagnosed at an early stage.

2. The suicide rate among senior citizens is appalling. Twenty-five percent of all of the suicides are persons over the age of 65.

3. Depression and psychosis increase significantly among people over the age of 65. This is even more so among those over the age of 75. This is a very significant statistic, since members of the over-75 group constitute the fastest-growing segment of the senior population.

4. Twenty percent of all persons in America suffering from alcohol-related problems are elderly. It appears that 1.6 million people out of the 23 million senior citizens may be alcoholics. It is calculated that 22 per 1,000 are alcoholics in the 65–74 age group. There is a vast literature about alcoholism among the elderly. It is generally assumed in this literature that a state of depression might frequently be the reason why senior citizens acquire an addiction to alcohol.

5. The elderly consume 25 percent of all of the prescription medications used in America. Again, a vast literature points to abuses in this area, although accurate statistics are apparently not available.

6. The statistics which are presently available with regard to the incidence of mental illness among the elderly totally underestimate the actual extent of mental health problems. Senior citizens are isolated by low income and by lack of mobility in obtaining existing services. It should also be noted that one-fifth of the men over 65 are widowers and that over fifty percent of women over the age of 65 are widows.

Clearly contributing to conditions adverse to good mental health is the fact that 3.3 million senior citizens—or one-seventh of all of the elderly—live under the poverty line; that line is now $3,417 for a couple and $2,720 for a single person.

7. The American Psychological Association has estimated that 80 percent of senior citizens requiring mental help do not obtain it. Only 2 percent of all patients in private psychiatric care are over the age of 65. Only 4 percent of all persons seen at public outpatient mental health clinics are senior citizens.

Clearly we are confronting a tragedy of enormous proportion. It is tragic because, as Dr. Robert Butler, the Director of the National Institute of Aging, has told us, there are some 100 reversible conditions that mimic senility. Dr. Butler reported that many physicians unfamiliar with geriatric medicine labelled forgetfulness or confusion as indicators of fixed organic brain disease when frequently these symptoms do not indicate anything that serious.

II. What the Federal Government should do:

It is sad to note that the National Institute on Aging receives only 1 percent of the budget of the National Institutes of Health. Only 2 percent of all Medicare funds go to mental health coverage for the elderly. Medicare pays only $250 annually for outpatient treatment for mental illness. This clearly should be increased to at least $750. Mrs. Carter and the Administration inserted funds in the budget for 1980 to provide for the $750 figure.

We should also change the 20–80 co-payment for mental illness to 50–50, as is the case for physical illness.

The limitation of $250 annually and the 20–80 copayment for mental illness clearly are built-in acts of discrimination against mental illness.

Another discrimination exists in present law in that inpatient psychiatric hospital care is limited to 190 days during the entire lifetime of the insured! This clearly should also be changed, so that at least the same coverage is offered to mental illness as to physical illness.

Congress should also enact a measure which would alter existing law so that the referral of a mentally ill patient by a physician or a psychiatrist should not be required before Medicare reimburses for treatment given by a licensed clinical psychologist. This change alone would introduce a whole new cadre of mental health professionals into the treatment of the elderly.

Congress should also enact laws which would decrease the incentives to institutionalize senior citizens which now exist in federal programs. It is distressing to note that 60 percent of elderly patients now admitted to state mental hospitals have received no previous psychiatric treatment. Similarly distressing is the fact that 30 percent of all patients in public mental hospitals are over the age of 65.

Congress should also increase the allowable reimbursement for outpatient treatment of mental conditions. Similarly, there should be an increase in funding for the National Institute on Aging. If this sum were raised to $78.5 million, this would give to this important agency the modest increase which would be only 5 percent above inflation. The total sum is pathetically small when it is considered that the National Institute on Aging serves 23 million Americans.

Clearly home care should be expanded, especially to include preventive mental health care.

All are agreed that we need to launch a major national research program on organic brain disease, the most devastating mental health problem of older persons.

All are agreed once again that training in geriatrics should be mainstreamed into the curriculum of the pre-clinical years of medical schools. Likewise, federal programs should be increased for training fellowships for graduates of psychology and students in social work schools.

There appears to be a consensus that the National Institute on Aging should be designated as the lead agency on research into the problems of the aging. For pragmatic reasons as well as humanitarian, research into brain disease is important; unless we discover ways to contain brain disease and thereby to limit the incidence of senility, in two generations, or by the year 2020, there will be 2½ million Americans in nursing homes.

There are several other things which the Congress could do to improve the mental health of senior citizens. One, for example, would be to encourage the availability of services in underserved areas by foregoing the payback under the Community Mental Health Systems Act and the Nurse Training Act.

III. The mental health of senior citizens in relation to the overall Federal program for mental illness:

In 1963, President Kennedy called for the deinstitutionalization of mental hospitals in America. Pursuant to that policy, Congress enacted the Developmental Disabilities Act and the Rehabilitation Act of 1973. Medicare and the SSI program are also designed in part to carry forward the goal of deinstitutionalization.

Today, 16 years after President Kennedy called for deinstitutionalization, one-half of the occupants of mental hospitals have left.

The Supreme Court confirmed the wisdom and indeed the constitutional need for the deinstitutionalization program. In 1975, the U.S. Supreme Court in the case of O'Connor v. Donaldson ruled that no nondangerous person may be deprived of his or her liberty if he or she is "capable of surviving safely by himself or with the help of willing family members and friends".

Five Presidents and eight Congresses have followed up this program which, in the words of the Developmental Disabilities Act, requires that the state give treatment which is "the least restrictive of the person's personal liberty".

At this time, Congress funds over 700 community mental health centers. Unfortunately, these centers reach only 40 percent of those who need care; some 1500 centers would be needed.

It is startling to note that in 1969 427,700 persons were institutionalized for mental illness. In 1977, this figure had dropped to 160,800, a drop of 62 percent.

The impact on elderly citizens of this policy of deinstitutionalization was enormous.

In 1969, there were 133,000 elderly persons in mental institutions. By 1977 that figure had dropped to 44,000—a reduction of 66 percent.

What happened to the nearly 100,000 senior citizens who have been deinstitutionalized over the past several years?

Unfortunately, almost every bit of evidence which we have suggests that these 100,000 people have not been adequately cared for. We hear of horror stories about 500 homes for deinstitutionalized elderly persons in New York City with some 23,000 occupants. The statistics on deinstitutionalized persons are not adequate, however, since there has been little follow-up. We do know that right now, 64 percent of all admissions to mental hospitals are readmissions. A survey in the February 1975 issue of the magazine, "Scientific American" reported that 50 to 75 percent of all readmissions could have been avoided if comprehensive mental health care had been available in the community.

Again, pragmatic reason suggests that federal policy should be more vigorous in carrying out the goals of deinstitutionalization. The average cost per institutionalized patient in 1977 was almost $21,000 whereas the same cost in 1969 was only $5,600.

In the further implementation of the federal policy of deinstitutionalization of persons in mental hospitals particular care should be extended to the elderly. Mentally disabled persons should not, for example, lose one-third of their SSI benefits because they live with relatives. Likewise, there should be a change in the regulations of the Comprehensive Employment Training Act (CETA) to encourage the training and employment of mentally disabled persons. Likewise, additional HUD funds should be available for homes for mentally disabled citizens.

We must not separate the mental problems of the elderly from the overall problems of mental health in the United States. The final report of the President's Commission on Mental Health gives us some startling conclusions which are enormously relevant in any discussion of the problems of mental health or senior citizens. Among those conclusions are the following:

1. Twenty to thirty million Americans will need some form of mental health care at any one time.

2. Two million Americans have been or will be diagnosed as schizophrenic.

3. Six million Americans are mentally retarded.

4. The current direct cost of providing mental health care is $17 billion—a figure which excludes all costs of alcoholism.

Despite these startling statistics, the federal research budget for mental health has actually in real dollars decreased over the past decade. The actual amount available to the National Institute of Mental Health is incredibly small.

In 1979 the federal government is spending $52.7 billion on health—exclusive of the Veterans Administration programs. About 12 percent of that total goes to problems related to mental health.

If there is any one recommendation that should be followed through by those interested in the health of senior citizens, it is the call for a unit or centralized agency to diagnose and treat the mental health problems of senior citizens. These persons, who are vulnerable to depression and other forms

of mental illness cannot really be expected to discover which of the 134 federal agencies related to aging can give them what they need in housing, nutritional needs and transportation or—most essential of all—access to outpatient mental health services. These centers for mental health treatment should be the key and the focal point of all services for senior citizens across the nation.

The Mental Health Systems Act proposed by the Administration seeks in part to do that. This proposal contains several creative measures, such as a measure that would give funds for outreach programs to try to give preventive mental health care. But the National Council of Senior Citizens on June 12, 1979 criticized this measure severely. This group feels that the community mental health centers, as they now operate, discriminate against the elderly. That de facto discrimination was validated in the recent study made by the U.S. Commission on Civil Rights.

On June 25, 1979, the American Federation of State, County & Municipal Employees also criticized the Administration's proposed Mental Health System Act. This group desires to have federal law require the states to follow up on every person who has been deinstitutionalized from a mental institution.

CONCLUDING RECOMMENDATIONS

It is easier to make a case for research into diseases of the heart and blood than it is for illnesses that relate to the mind and spirit. Cardiovascular mortality has fallen by over 10% in the recent past in every adult grouping. Consequently, Congress has increased the budget for research into this disease over the next three years from $456 million to $610 million per year.

Similarly, it is known that over 45 million Americans now alive will die of cancer. As a result, the budget of about $1 billion per year passes without difficulty.

Mental illness, however, is much more difficult to dramatize. The stigma surrounding mental illness unfortunately continues to live on. The President's Commission report notes this stigma in these words:

". . . the misunderstandings surrounding mental and emotional problems are so great that there is insufficient support for needed services and further research . . . the stigma and the fears exist and they are deeply ingrained in our society . . ."

The President's Commission concluded its report on this rather gloomy note:

". . . At present our efforts to prevent mental illness or to promote mental health are unstructured, unfocused and uncoordinated . . . they demand few dollars, limited personnel and little interest at levels where resources are sufficient to achieve results . . ."

Legislation and adequate funding can of course achieve a great deal in the area of mental health. But ultimately it is those who work in the field of mental health—and especially psychologists—who are the indispensable agents involved. This role is much more difficult than the role played by those who care for physical illnesses. Each day you are up against the unfathomable causes of personal anguish. I commend and salute you because each day you seek to turn torment into tranquility and transform pain into peace.●

## MARINE RESOURCES PROTECTION ACT

### HON. NORMAN D. DICKS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 2, 1979*

● Mr. DICKS. Mr. Speaker, on Friday, my distinguished colleagues from Washington State, Representatives SWIFT, LOWRY, and myself introduced the Marine Resources Protection Act. This bill is exceedingly important and urgently needed for the State of Washington and the Nation as a whole. While this legislation does not contain any new congressional policy, it will insure that existing Federal policies are properly carried out.

During the 95th Congress, the House and Senate agreed upon legislation which would provide a comprehensive examination of whether or not a new west to east pipeline for the transshipment of Alaskan and other crude oil is needed. If, after exhaustive review, the administration determines that such a pipeline is needed, then expedited Federal permitting and waivers of Federal law will be available for those pipeline systems the President selects. You may remember this as title V of the Public Utilities Regulatory Policies Act passed into law November 8, 1978.

Title V was enacted to provide for an in-depth look at the need, the environmental impacts, the economic impacts, the available financing, the safety factors, national security considerations of an east to west pipeline system. It set up a process for the various competing pipeline applications to be thoroughly reviewed and analyzed based on 16 separate and specific criteria. This process has almost run its course, and a decision is expected shortly on which, if any, pipelines will be selected by the President to be eligible for expedited Federal permits and the possible waiver of Federal laws. There are many arguments both for and against the building of a transshipment pipeline, and I am not here to discuss the merits or demerits of building such a pipeline. I am here to make sure that if a pipeline is built through my State of Washington, then Washington State is afforded the proper environmental protection it needs and deserves.

My particular concern, and the concern of my colleagues stems from the fact that two of the competing applications, those submitted by the Trans-Mountain Pipeline Co., and the Northern Tier Pipeline Co. travel through Washington State.

If one or both of these pipelines are selected in the title V process and one of them is subsequently built, then I firmly believe that reasonable environmental safeguards, which are easily obtainable and not costly must be a condition of any such transshipment of crude oil through Washington State.

The potential environmental problem posed by the title V process for Washington State involves the fact that we already have four refineries—operated by Arco, Mobil, Texaco, and Shell—located in northern Puget Sound, and they are currently receiving approximately 350,000 barrels a day by tanker. These refineries were historically supplied by pipeline, but since 1972, they have been forced to increasingly rely on tanker delivery. This is the result of the decision by Canada to curtail its crude exports upon which Washington State refineries depended. Unfortunately, this caused increasing levels of tanker traffic inside Puget Sound and adjacent waters—waters which are unspoiled and contain immense resources. This increased tanker traffic has posed very serious threats to water quality and the many industries dependent upon that good water quality. The effects of a major oilspill on these important water-based industries of the Pacific Northwest have been thoroughly documented by many studies, including a recent study done by the National Oceanographic and Atmospheric Administration which demonstrated that the dispersal of a major oilspill in northern Puget Sound would have disastrous long-term consequences on the marine environment.

I might also add that many of the tankers which now transport oil to the Washington State refineries are foreign flag vessels originating in the Persian Gulf. These vessels are notorious for disregarding safety regulations and have the highest oilspill casualty record of any tankers, as they are oftentimes leaky and rusty and operating outside the parameters of the law. These ships pose a double threat to the unspoiled waters of the sound, and increase the risk of a spill tremendously.

Therefore, if President Carter, under the title V process, chooses one or both of the pipelines beginning in Washington State, then the four northern Puget Sound refineries must be required to hook up to that pipeline and be supplied by it instead of by their own separate tanker traffic.

I wish to make it clear that I am not advocating that an east-west oil pipeline be built. I am stating quite emphatically that if a pipeline is built, then the present tanker traffic and oilspill potential must be taken into account.

If the four Puget Sound refineries hook up to a transshipment pipeline, all tanker traffic will be centralized at a single terminal whether it be for transshipment use, or for use by local refineries. Then, if Washington State must be the transshipment point for the crude oil going east, it will have been afforded a degree of environmental safeguard which will make the risk easier to accept.

This idea to hook up the existing refineries to a transshipment pipeline should one be built is certainly not new. In fact, when Congress enacted title V, this was precisely what we had in mind. Section 507(b) of that act sets forth the criteria which govern how the President is to approve a proposed crude oil pipeline. One of the criteria specifically states that a finding is required of "environmental impacts to the proposed systems and the capability of such a system to minimize the environmental risk resulting from the transportation of crude oil." And when we approved this language (which is supposed to govern the President's decision), the conferees said the following in the statement of managers on the conference report:

In adopting language setting forth the criteria to be considered by the President in making the decision under this section, the conferees agreed that the provision requiring the executive to consider the "environmental impacts of the proposed systems and the capability of such systems to minimize environmental risks resulting from transportation of crude oil" should be understood as setting forth the intent of Con-

gress that the executive should take actions to minimize both existing and future environmental risks from the transportation of crude oil. In specific, the conferees noted that there are environmental and economic risks associated with the existing crude oil tanker traffic serving refineries on Puget Sound—an invaluable and irreplacable national resource. Risks to the economically and esthetically important resources dependent on good water quality in Puget Sound would be substantially reduced if the Washington refineries were connected to and utilized a northern crude oil delivery system, if one is built.

In the final environmental impact statement released in mid-August, the Environmental Protection Agency specifically states that a necessary proposal modification of the Transmountain and Northern Pipelines should be noted:

The terminal and pipelines should be designed and constructed to serve all of the Greater Puget Sound Refineries so that all crude-carrying tanker traffic on Puget Sound would be eliminated. This would provide valuable protection to important American and Canadian marine resources. Requiring this modification to the facility would insure that the crude oil transportation policies of Washington State's Federally approved Coastal Zone Management program would be fully implemented as part of this Federal Action.

So you see, Mr. Speaker, it is not just Federal legislation which requires that the President assure that the northern Puget Sound refineries are connected to any crude oil transportation system built in my State. This has long been a part of State policy as well. Both the Washington State legislature and the State's approved coastal zone management plan have specifically addressed themselves to this question and strongly reinforce the provisions of title V of the Public Utility Regulatory Policies Act. There is overwhelming support in my State for doing everything possible to protect the fragile and economically important resources found in Puget Sound and the adjacent waters. While neither I nor most of my colleagues are in favor of a new oil port at or west of Port Angeles, we do feel that if one is built, everything reasonably possible to minimize environmental risks from the transportation of crude oil should be made part of that decision.

Mr. Speaker, this legislation is intended to help implement existing policy; it will fill a gap in legal authority to accomplish that policy. While Congress has already decided to hook up the northern Puget Sound refineries to any transshipment facility built through Washington State, there is still insufficient legal authority to absolutely guarantee that this will happen. Section 507 (a) of the Public Utility Regulatory Policies Act provides the President with the authority to condition any permit issued to a pipeline under title V on hooking up to the northern Puget Sound refineries. But again, this may not guarantee that hookup takes place, because the President does not currently have specific legal authority to require the refiners to hook up to an approved system. While it is possible that public pressure could free the refiners to hook up, again there is no assurance that they will. And, in fact, the refiners have indicated in the past that they would not hook up on their own.

Therefore, it is our feeling that the President should be provided with the authority necessary to accomplish this vital goal. Accordingly, the legislation we are introducing today will provide the President with authority to assure that hookup takes place if a pipeline is built through Washington State.

Mr. Speaker, this legislation does not automatically force the northern Puget Sound refineries to hookup. Instead, it provides for a 6-month period of voluntary negotiation between any approved pipeline system and these refineries in order to assure that adequate opportunity is present for voluntary agreement. If, after a 6-month period, no agreement has been reached, then the President is directed to assure that hookup takes place. All tariff and cost disputes will be resolved by the Federal Energy Regulatory Commission, the appropriate regulatory body for such a decision. Finally, specific exemptions are set forth to assure that refineries that are located too far away from these proposed pipelines—in Vancouver or Tacoma, for example, would not be affected, since to hook them up would be too costly. Also, existing shipments of high paraffin content crude oil to the Shell refinery would not be affected, since this type of oil cannot flow efficiently through a pipeline unless heated.

Finally, Mr. Speaker, let me say a few words about cost. We are all very aware that environmental protection can be expensive. With respect to the question of hooking up the northern Puget Sound refiners, there has been some talk about how much it would actually cost. Fortunately, we are in a unique situation when looking at the cost of this important and sensible move. The refineries in northern Puget Sound, with the exception of Arco's, were never built to receive crude oil by tanker. Instead, their dock facilities were primarily designed to ship out refined products, and are in need of substantial modifications and repairs. In 1974, it was estimated that the shore side facilities of Mobil, Shell, and Texaco alone needed $54 million worth of repairs and modernization.

The refineries also now bear substantial operating costs which they could avoid if hooked up to an approved crude oil transportation system. Regulations on tanker traffic inside Puget Sound and the adjacent waters are far more stringent than they are at or west of Port Angeles. Tanker size is limited, and there are requirements for tug escorts, dual pilots and other safeguards in order to assure maximum safety inside the narrow and confined passages east of Port Angeles. Substantial savings will be gathered by these refineries by moving to a centralized crude oil delivery terminal outside Puget Sound and its adjacent waters; in conformance with State and Federal law.

I should also point out some of the costs of failing to remove as much of the tanker traffic from Puget Sound and adjacent waters as we can while at the same time constructing a large transshipment facility. In 1975, the University of Washington, after a careful study estimated the economic value of the resources that would be affected by a major spill in this area and found that the combined economic value of fisheries, tourism, and recreational resources in the Sound was $330,652,000. In 1977 the total income accruing to Washington residents from fishing alone was $302,786,800, so it is safe to say that the economic value of Puget Sound is much greater today. We can hardly afford not to take all reasonable measures to protect that valuable a resource.

Mr. Speaker, I am looking forward to working with all affected parties in order to assure that any oil port siting decision affecting my State is one which is well coordinated and accomplished in a manner which minimizes damage to the environment.●

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## THE POPE MAKES AN EXTRAORDINARY APPEAL FOR PEACE AND JUSTICE FOR IRELAND

### HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, October 2, 1979*

● Mr. BIAGGI. Mr. Speaker, the world has been captivated by the trip of Pope John Paul II. The world is seeing the Pope embark on an extraordinary mission of peace and conciliation.

Nowhere was this theme more evident than during the Pope's trip to Ireland. The Pontiff's speech at Drogheda—a town just 30 miles from the border separating Northern Ireland from the Irish Republic was one the most moving pleas for peace in Ulster ever registered. The Pope said:

I appeal to you in language of compassionate pleading . . . on my knees I beg you to turn away from the path of violence and return to the ways of peace. You may claim to seek justice, but violence only delays the work of justice—violence destroys the work of justice.

The Pope's words were not limited to a condemnation of violence. He recognized that the violence in Ireland is not motiveless. The Pope in a reference to British and Dublin Government policies said:

To all who bear responsibilities for the affairs of Ireland I want to speak with the same urgency and intensity with which I have spoken to the men of violence. Do not cause or condone or tolerate conditions which give excuses or pretext to the men of violence.

The responsibility for peace rests with those in political power according to the Pope. I serve as chairman of the 130 member Ad Hoc Congressional Committee for Irish Affairs. The committee has as its sole goal to advance the role which the United States can and should play on behalf of achieving peace and justice for Ireland. We seek to accomplish this goal by appealing to all sides to meet and discuss peace. We exist in part because of a continuing political vacuum which exists both in London and Dublin which has permitted the Ulster question to fester without resolution for decades. The Pope in his statement addressed himself directly to this point when he said:

I urge you who are called to the great calling of politics to have the courage to face up to your responsibility, to be leaders in the

cause of peace, reconciliation and justice. If politicians do not decide and act for just change then the field is left open to the men of violence. Violence thrives best when there is a political vacuum and refusal of political movement.

The Pope helped to dispel a major myth which is perceived by many in the world that the problem in Northern Ireland is a sectarian one. He said:

The tragic events taking place in Northern Iseland do not have their source in the fact of belonging to different churches and confessions, that this is not, despite what is so often repeated before world opinion a religious war between Catholics and Protestants.

The problems of Ulster are multifaceted and involve the very core of human existence the Pope said it quite eloquently—

As long as injustices exist in any of the areas that touch upon the dignity of the human person be it in the political, social, or economic field, be it in the cultural or religious fields—true peace will not exist.

Pope John Paul II has delivered not just a message of words, it should be a catalyst for action—for resolution of the agony of Ireland. There are optimistic signs that movement toward a cease fire may already be underway. I maintain as I have throughout my tenure as chairman of the ad hoc committee that such a cease fire is vital to the peace process however no cease fire will be called unless it can be demonstrated that political initiatives are forthcoming.

As we reflect on what the Pope has said—it is important to recognize the overriding desire of many in this world that there be a just and lasting peace for Ireland. That has been the motivating factor behind the 2 years of activity o: the ad hoc committee. In the months ahead we intend to continue to work for the enactment of House Concurrent Resolution 122 which I introduced with some 70 cosponsors calling on Great Britain to embark on a new political initiative for Ireland which restore lost human rights and promotes self-determination. Our efforts will also be directed at conducting a full investigation of reports that American firms in Northern Ireland are practicing discrimination against the Catholic minority. The element of economic discrimination has clearly existed and has contributed to the stalemate which exists in the six counties. We must work vigorously for its elimination especially where American firms are involved. This investigation will be conducted by our committee with special assistance from my colleague from New York, BENJAMIN GILMAN.

Mr. Speaker, Pope John Paul II saw millions in Ireland and his message was a clear one. He concluded his remarks at Drogheda with the following:

Let history recount that at a difficult moment in the experience of the people of Ireland the Bishop of Rome set foot in your land, that he was with you and prayed with you for peace and reconciliation for the victory of justice and love over hatred and violence.●

# SENATE—*Wednesday, October 3, 1979*

*(Legislative day of Thursday, June 21, 1979)*

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by Hon. J. JAMES EXON, a Senator from the State of Nebraska.

## PRAYER

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

Hear the words of the Apostle Paul in his first letter to the Thessalonians:

NATIONAL DAY OF PRAYER

*Pray without ceasing.*—I Thessalonians, 5: 17.

God of our Father's and our God, we thank Thee for a nation so grounded on Thy truth and so steeped in Thy word that we celebrate a national day of prayer. We lay before Thee our continued dependence upon Thee. Bless this land and its people. Help us to pray when we are alone, to pray in church, to pray in our homes, to pray in Congress, to pray while we work. Teach us to pray the prayer of brotherhood and unity. Teach us to pray the prayer that brings peace and power. Teach us to pray without ceasing.

Give Thy higher wisdom to the President and all who bear the responsibilities of government. And may we all pray—

"Breathe on me, Breath of God,
Fill me with life anew,
That I may love what Thou dost love,
And do what Thou wouldst do."
—EDWIN HATCH.

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., October 3, 1979.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J. JAMES EXON, a Senator from the State of Nebraska, to perform the duties of the Chair.

WARREN G. MAGNUSON,
*President pro tempore.*

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

## RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

## 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 OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I do not believe I have any time under the order.

The ACTING PRESIDENT pro tempore. The majority leader and the minority leader are sharing the time until 9:30.

Mr. ROBERT C. BYRD. Does the Senator from Wisconsin wish me to yield?

Mr. PROXMIRE. Three minutes.

Mr. ROBERT C. BYRD. I yield 3 minutes to the distinguished Senator from Wisconsin.

## REAPPOINTMENT OF ADM. H. G. RICKOVER

Mr. PROXMIRE. Mr. President, I received word today that the Secretary of the Navy has extended Admiral Rickover on active duty for 2 more years beyond January 31, 1980, when his current tour of duty was scheduled to expire.

I applaud this decision by the Secretary. Admiral Rickover has compiled a truly impressive record as head of the naval nuclear propulsion program since its inception more than 30 years ago. Today, the nuclear submarine fleet is the backbone of our national defense with the ballistic missile submarine undoubtedly our most effective deterrent.

While his technical accomplishments in more than a half century of Government service are unsurpassed, Admiral Rickover has always demonstrated that characteristic which we too seldom find in the Federal Government—a personal commitment to promote effective and efficient Government for the people of the United States.

Admiral Rickover is one of the few Government officials with the courage to demand that Government contractors live up to their contracts. He has rooted out waste and corruption on numerous occasions. His career is eloquent testimony to the wisdom of keeping experienced, dedicated persons in office and to the fact that incorruptibility can prevail in the Government bureaucracy.

Over the years Members of Congress have come to rely on Admiral Rickover because of his honesty and candor as well as his technical expertise. He speaks

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