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PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, SECOND SESSION

SENATE—*Thursday, March 27, 1980*

(*Legislative day of Thursday, January 3, 1980*)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

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

Let us pray.

God of grace and God of glory, grant us wisdom and grant us courage for the living of these days. Free us from a way that makes us rich in things and poor in soul. Show us more clearly how to be stewards of the bounty and the power with which Thou hast endowed this Nation. May the things which are seen and visible be guided and upheld by the unseen and the eternal. Shape our lives for citizenship in Thy higher kingdom, the law of which is love. Bind us together in a common national purpose, praying for one another, bearing one another's burdens, helping one another at work so that we may come to evening undefeated by temptation, with work well done and at peace with our fellow-men and at peace with Thee. 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 27, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. ROBERT C. BYRD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE LEADERSHIP

The ACTING PRESIDENT pro tempore. The majority leader yields his time to the minority leader.

The minority leader is recognized.

Mr. BAKER. I thank the Chair.

THE JOURNAL

Mr. BAKER. Mr. President, I ask unanimous consent that the Journal of the proceedings of the Senate be approved to date.

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

THE PERILS OF INFLATION

Mr. BAKER. Mr. President, next week I will begin a series of statements on the current state of the American economy—how it got this way, its impact on the lives of the American people, and what we must do to restore our economic health and strength.

As a preface to that discussion, I wish to have printed in the RECORD today the very perceptive and enlightening recent testimony of one of America's premier economists, Dr. Arthur Burns, before the Senate Committee on Banking, Housing, and Urban Affairs.

His statement is aptly entitled "The Perils of Inflation," and it is well worth the careful consideration of my colleagues on both sides of the aisle.

I ask unanimous consent that the full text of Dr. Burns' testimony be printed in the RECORD at this point.

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

THE PERILS OF INFLATION

The inflation we are faced with today has brought our country to a point of economic crisis unmatched in its dangers since the Great Depression of the 1930's.

There is no need to dwell on the facts about recent price movements. Inflation is clearly accelerating. During the eleven years ending in 1978 the consumer price index doubled, which implies an average annual rate of increase of 6.5 percent. In 1979 the index rose by more than 13 percent—a pace that would lead to another doubling in just 5½ years. So far this year the price level has been rising at an annual rate of about 18 percent. These facts speak for themselves.

The crisis created by our raging inflation obviously differs from that of the 1930's. We are not surrounded by the misery of body and spirit that arises out of widespread, long-continued unemployment and low incomes. The grinding poverty so common in the 1930's has virtually vanished. Indeed, as a people, we have never been so blessed with material wealth and comforts, nor so well protected against the risks of unemployment and disability. For these reasons many economists have tended to underestimate the gravity of our inflation problem.

The instincts of the public have been sounder; almost from the beginning of the current inflation the public has been troubled by its progress.

The consequences of rapid inflation can be devastating for the individual family. Erosion of the buying power of bank deposits, savings bonds, insurance policies, and private pensions frustrates all past efforts of working men and women to provide for expected needs of their families. On the other hand, inflation benefits individuals who had piled up debts to purchase a home or other durables that are going up in price. Inflation thus acts like a giant lottery, with the distribution of outcomes both arbitrary and perverse: prudence is penalized, improvidence is rewarded.

People need to plan ahead. They need to provide for their retirement, for the education of their children, for the many contingencies of life—all of which require saving. But when faced with the prospect of rapid increases in prices, what are they to do? Individuals of substantial means can try to protect their accumulated savings by investing in real estate, precious metals, works of art, or other so-called inflation hedges; but when many try to do that, prices soar and further investments become risky gambles. People of modest means generally save through bank deposits or government bonds; for them the certainty that what they put by will rapidly erode in value becomes a cause of despair. Persistent, rapid inflation creates deep feelings of anxiety. It weakens the economic security that Congress sought to build in our nation through massive social legislation.

Inflation leads to anxiety not only as individuals contemplate the erosion of past savings but also as they view their current incomes and expenditures. When the general price level is stable, the structure of prices and wages has a good deal of inertia, and that is highly valuable to a society; people then know where they stand and what their practical options are. But in times of inflation, prices and wages become volatile. With prices changing at frequent intervals and by widely different amounts, and with relative wages among occupations and skill levels continually shifting, people's economic moorings are cut; they are kept off balance, and they live with the continuing concern that their incomes may fall behind in the race against prices or fail to keep up with the incomes of others.

Our inflation has ominous consequences for the longer run as well as for the immediate future. Business investment in new

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

plant and equipment has been the mainspring of the remarkable improvement in living standards that our nation has enjoyed in the past. Capital investment always involves some risk and uncertainty; but inflation greatly magnifies the risks by reducing the ability of business managers to assess costs and prices over the long time horizons typically involved in investment projects and by driving up the interest charges needed for their financing. Moreover, under historical cost accounting—the method used widely for inventories and universally for capital assets—taxes have to be paid on a phantom portion of profits. For all these reasons, inflation discourages productivity-enhancing investment, and thereby weakens hopes of a better future for ourselves and our children.

Worse still, if we fail to overcome the current inflation, it may soon begin to dissolve the glue that holds our society together. This risk will grow when it becomes apparent that languishing productivity and the deteriorating terms of our trade with the rest of the world are preventing the economic product available to the American people from increasing. At best, the result with then be an era of deep social divisions, with hostility and bitterness spreading.

To deal with the problem of inflation with some hope of success, it is essential to understand how it came about. Economists have not been at a loss in pointing to sources of the inflationary bias of our economy. Among the factors frequently cited are the power of trade unions, monopolistic tendencies in the business world, the stagnation of productivity, the increasing intervention of government in the economy, the size and persistence of Federal budget deficits, the excessive growth of the money supply, as well as various special factors that achieved prominence during the 1970's—such as the devaluation of the dollar, occasional bad harvests and the vigorous exercise of monopoly power by the OPEC cartel.

These factors undoubtedly have played a role in the inflation process. But concentration on them obscures the fundamental cause of the price revolution of our times—namely, the philosophic and political currents that were released in our country by the depression of the 1930's, then by World War II, later still by the clamor for a Great Society.

A nation that still remembers the Great Depression and the remarkable demonstration during World War II of our nation's capacity to produce both "guns and butter" naturally places a high value on continuing good times. It is not unreasonable for people to want the government to promote full employment. It is not unreasonable for an urbanized industrial society to expect some protection against the hazards of old age, unemployment, poor health, and bad housing. It is not unreasonable for a compassionate people to expect the government to be responsive to the needs of the poor. It is not unreasonable for citizens to be concerned about the degradation of the environment and the hazards to health and safety of both workers and consumers. And it is not unreasonable in a democracy for particular groups to seek to advance their own economic interests by political means.

However, these wide-ranging and insistent political demands and the government's response to them are basically responsible for the present virulent inflation. Our government has promoted inflation in three ways: by persistently biasing economic policies toward stimulus; by continually interfering with the forces of market competition in order to benefit special groups; and by pursuing objectives for the environment and for the health and safety of our citizens in needlessly expensive ways. A great deal has been said about the third of these; I will concentrate on the first two.

Our fiscal and monetary policies have been biased toward stimulus because of the pressure on government to keep unemployment low. This bias has been evident throughout the postwar period; even in the first Eisenhower administration, in which I served, the government was inclined to respond with greater alacrity and force to signs of rising unemployment than to signs of over-full employment. But the bias tended to grow, partly because rising incomes during the 1950's and early 1960's were not yet accompanied by rapid inflation. As people became more prosperous, they also became less tolerant of the imperfections in our society; and as year of little inflation succeeded one another, they grew less concerned about inflation.

These trends in public attitudes were constantly stirred by reformist thought, and they merged with a tendency among policy makers toward greater boldness—a tendency that culminated in the unprecedented effort under Presidents Kennedy and Johnson to accelerate the growth of an already expanding economy by a massive cut in business and personal income taxes. This effort, the major venture of the so-called "New Economics," was initially counted as a brilliant success. But as our economy was pressed to its limits by expansionist policies, it became highly inflation-prone; and the rest is history.

A stimulative bias has been imparted to fiscal policy not only by the government's efforts to keep unemployment low but also by its response to demands for economic and social reforms—even when they involved massive redistribution of incomes. Since World War II, the government has steadily expanded the social insurance program—extending its coverage to the bulk of the population in the 1950's, adding disability insurance in 1957 and Medicare in 1966, and repeatedly improving the benefit levels and other terms of old age and unemployment insurance.

It has sharply expanded the scale of assistance to the disadvantaged among us, starting with the Great Society programs in the 1960's and continuing in the 1970's. And it has become excessively responsive to demands from special interest groups for subsidies, tax concessions, or preferential credit arrangements.

In pursuing these actions, far too little attention has been given to the inflationary affects of federal budgets. Federal spending tends to be more inflationary than private spending, first because government is usually less efficient than private enterprise, second, because government has encumbered itself with especially high labor costs, third, because the Federal Reserve System cannot as a practical matter offset an upsurge in federal spending to the same degree as an upsurge in private spending.

Nevertheless, federal spending would have had relatively little stimulative effect on the economy if it had been accompanied by balancing increases in tax revenues or if the increases in social welfare expenditures had been offset by cuts in other expenditures. But support for such balancing actions has not been strong enough to overcome the pressures from the beneficiaries of fiscal largesse.

The consequence is that the federal budget has been more stimulative in recent times, as it is again this year, than the public has realized or than the Congress itself has intended.

It was because of lack of control over the consequences of its separate budget decisions that Congress adopted new procedures in the Budget Act of 1974. In essence, they require Congress to ensure that the detailed taxing and spending decisions conform with its over-all fiscal plan. While the new procedures represent an important step forward, Congress is having considerable difficulty in applying them.

The very circumstances that originally called forth the reform are still at work—that is, the constituencies in favor of tax cuts and spending increases are better organized and politically stronger than those favoring spending cuts.

The effects of these pressures can be traced in the steep ascent of government outlays during the 1960's and 1970's. Federal expenditures first exceeded $100 billion in 1962, but they have escalated rapidly since then. The $200 billion mark was crossed in 1971, the $300 billion mark in 1975, the $400 billion mark in 1977, and the $500 billion mark in 1979.

Tax revenues meanwhile also rose sharply, but they have failed to keep pace with expenditures. The result has been a virtually unbroken string of deficits, extending from 1961 to the present. This acceleration of federal spending reflects the proliferation of social programs—more and more spending on income security, veterans' benefits, food stamps, education, manpower training, health and medical care, community development, and so on. Even before 1965 social welfare expenditures from all public funds were growing faster than our gross national product. But once the Great Society programs got under way, such expenditures exploded, increasing from 12 percent of the gross national product in 1965 to about 20 percent at present.

Undue stimulus through fiscal and monetary policy tends to generate inflationary pressures by causing the aggregate demand for goods and services to rise above the level than can be supplied at existing prices. That is how the current inflation was precipitated in the fatal year 1965, when our government sought simultaneously to fight a war in Vietnam and to launch the Great Society at home while reducing tax rates instead of raising them.

But even when aggregate demand is growing at a moderate rate, inflationary pressures may be released by a faltering of aggregate supply, and this too has happened in our country. Since the mid-1960's, and particularly since 1973, improvements in productivity—that is, output per hour worked—have slowed sharply in the private sector.

Last year productivity actually declined. Just as rising costs of imports tend to make us poorer as a nation, so too does sluggish productivity. Something must then give; if some groups are able to maintain or improve their position, the burden will fall on the rest of the economy.

It is not enough that we constrain the explosive growth in our demands for the good things of life; until we manage to restore the uptrend in productivity, we must accept a lower standard of living.

Neither Congress nor the American people as yet show sufficient appreciation of this somber fact. The many years of rising real incomes earlier in the postwar period have led the public to expect continuing gains, and even to demand them as a right. When prices are going up rapidly, workers feel justified in insisting that their wages rise still faster.

Whether or not employers share this view, they are bound to be concerned about the effects on worker morale of insisting on a smaller increase. And when they grant pretty much what workers demand, as they often do, they ordinarily find it necessary to raise prices correspondingly.

Firms in this position are often in danger of pricing themselves out of the market and having to lay off workers. But if such a pattern is widespread, the expected rise in unemployment may well call forth fiscal and monetary policies that in effect validate the wage and price increases.

Moreover, businessmen whose sales are suffering because of their pricing policies are likely to join with union officials in demanding that the government protect them from "unfair" competition.

This brings me to the role of government in fostering inflation by acting in restraint of trade. In principle, most of us recognize that the whole nation profits from the market forces that reward the firms and industries with the lowest costs and prices and that penalize those unable to compete effectively. Congressmen, businessmen, union leaders, editorial writers, people in all walks of life will assert this in principle; but in practice many of us take a different view.

Let any vocal group be exposed to the penalties of the market—an industry like steel or textiles or shoes that is pressed by foreign competition, a firm like Chrysler that is suffering from mistaken management decisions, farmers in financial difficulty because they paid exorbitant prices for land—and there is a rush to Washington to demand government protection or assistance.

Many find their demands granted by a sympathetic government. Usually, the bounty lavished on these groups is much smaller than the costs simultaneously imposed on the nation as a whole in the form of higher prices. But in these proceedings the voice of the general public is often hardly audible against the clamor of the petitioners.

The government's willingness to sacrifice the public interest for the sake of protecting special interests from the rigors of competition is one of the oldest chapters in our economic history. From the tariff laws of the 19th century through the labor and agricultural legislation of recent years the theme is the same; the differences lie only in the details of which groups are given how much, and how large is the resulting rise in prices for the nation as a whole.

As I and others have testified many times before this and other Congressional committees, the minimum wage not only increases labor costs but contributes to the grave problem of youth unemployment; subsidizing farmers to cut back production both raises the cost and reduces the supply of food; and the Davis-Bacon Act tends to raise construction costs throughout the country. And yet in 1977 Congress mandated successive increases in the minimum wage; in 1977 and 1978 it raised farm price supports and extended acreage restrictions; and in 1979 it rejected all efforts to narrow the application of the Davis-Bacon Act.

Just a few weeks ago the House of Representatives voted to keep the Federal Trade Commission from removing barriers to competition in the funeral parlor and certain other industries. Evidently, Congress will not even permit us to depart this earth at a competitive price.

The atmosphere of politics as usual in this fascinating city is not confined to a single political party nor to a single branch of government. One listens with a sense of dismay to those candidates for President who promise to cure inflation by massive cuts in taxes. And the Administration's voluminous budget document for fiscal year 1981, as is now widely acknowledged, gave only feeble lip service to the need for fiscal restraint; the more deeply one probes into that document the more one grieves over its failure to come to grips with our domestic crisis.

For the current fiscal year—1980—the estimates of federal outlays and of the deficit run sharply higher than the official projection made only three months earlier. Further enormous increases in spending were projected for fiscal year 1981 and later years. And, still sadder to relate, the budget document did not even mention that existing law literally requires a balanced budget in fiscal 1981.

If the January report of the Council of Economic Advisers reflects recent Administration thinking, as I presume it does, it makes equally discouraging reading. The thesis it advances that our problems are largely due to the recent increases in oil prices bespeaks either misunderstanding or unwillingness to face reality.

Other industrial countries, including some that import all rather than half of their oil, have experienced the same price increases without a corresponding acceleration of inflation. An insight into the melancholy priorities of the Administration was offered by the announcement that the President deferred the date for achieving the legislatively targeted rates for both unemployment and inflation; for the former the target rate of 4 percent was deferred from 1983 to 1985, or by two years, but for the latter the target rate of 3 percent was deferred to 1988, or by 5 years.

These documents—the budget and the Council's report—plainly conveyed to the business and financial community that the Administration had no effective program for coping with inflation. This message, together with the startling January increases in consumer and producer prices, brought on the recent collapse in the bond market. Market participants drew the inference that prices of goods and services are likely to rise much faster than they had thought earlier; hence the inflation premium built into bond yields shot up and bond prices dropped correspondingly.

Is there much hope that we can overcome inflation? The members of this Committee, along with other members of Congress, can answer that question better than I. Apparently, there was some shock value in the price figures for January. According to the press, these figures created symptoms of panic in the Administration, and it has been reported that current policies are being thoroughly reexamined. We will soon know whether the anticipated revisions of budgetary and other policies are powerful enough to make a real difference in the situation our country now faces.

I will try in the time remaining to sketch the kind of program that I think can prove effective. Given the momentum that inflation has now gained, we should not expect it to end abruptly. But we can no longer afford a gradualist policy, calling for the application of mild measures over a period of perhaps five to ten years, such as still appears to be favored in many circles.

A gradualist policy has the ring of prudence and caution, but the very caution that inspires it is also likely to lead to its premature suspension or abandonment in practice. Economic life is subject to all sorts of disturbances and surprises. As has happened in the past, a business recession or some other untoward development can readily overwhelm and topple a gradualist timetable for curing inflation. In the present economic environment, gradualist policies offer little hope of success.

In order to make real headway in the fight against inflation, it has become essential to rout inflationary psychology—that is, to make people feel that inflation in our country can be, and that before long it probably will be, brought under control. Such a change in national psychology cannot be accomplished by marginal adjustments of public policy. In view of the strong and widespread expectation of inflation that prevail at present, fairly drastic and consistently applied therapy is needed to turn inflationary psychology around.

Last autumn, I made four specific suggestions that I shall repeat and explain today. The first called for a legislative revision of the budget process that would make it much more difficult to run deficits and that would serve as the initial step toward a constitutional amendment directed to the same end. My proposal would require a balanced budget unless a deficit were authorized by something more than a simple majority—say, two-thirds—of each house of Congress. Such a measure would demonstrate to the public that the Congress is finally ready to take stern and responsible action to end the persistent budget deficits that have nourished our inflation.

Deficits can, of course, be eliminated either by raising taxes or by cutting expenditures. I believe the national interest would now be best served by expenditure cuts. Significant reductions, however, are becoming difficult to achieve because of rapid growth of social security and the other entitlement programs that are automatically chained to rising prices. I therefore urge the Congress to consider carefully various proposals to weaken the tie between the price indexes and outlays under these programs, insofar as that can be done without injuring those truly in need. In addition to its beneficial effect on Federal spending, such a course would strengthen the constituency opposed to inflation, and it would also set a constructive example for the private economy.

My second suggestion called for a commitment by Congress to a comprehensive plan for dismantling regulations—such as those imposed by the Davis-Bacon Act—that have been impeding the competitive process, and for modifying others—particularly those concerned with the environment, health, and safety—that have been running up costs and prices unnecessarily. As every student of the subject now recognizes, the burdens imposed by our farflung regulatory apparatus have become enormous; thoroughgoing reform is long overdue.

My third suggestion called for a binding endorsement of restrictive monetary policies until the rate of inflation has become substantially lower. I have said little about monetary policy today because I believe the Federal Reserve is proceeding in the right direction; the only question is whether Congress and the public will permit the Federal Reserve to continue to do so. From my service on the Board I learned about the limits on the ability of a central bank—even an independent central bank such as ours—to combat inflation in the absence of strong and steadfast support from the Congress. A concurrent resolution of the Congress making a commitment to such support would permit the Federal Reserve to act forthrightly and with vigor.

My final suggestion called for legislation scheduling reductions in business taxes in each of the next five to seven years—the reduction to be quite small in the first two years but to become substantial in later years. This sort of tax legislation would not run up the budget deficit in this critical year or next; it would thus scrupulously avoid fanning the fires of inflation. Its passage would, however, release powerful forces to expand capital investment, thereby improving the nation's productivity and exerting downward pressure on prices later on. Such tax legislation would also help in the more immediate future to ease the difficult adjustments forced on many businesses and their employees by the adoption of the first three parts of the suggested program.

My suggestions for dealing with inflation are designed to shake the conviction now held by many millions of Americans that inflation will continue over the long future. I recognize that the first three suggestions would impose some hardships on people, perhaps many people, for a while. In my judgment, that can no longer be avoided. A failure to deal promptly and effectively with the problem of inflation would ultimately result in far greater hardships and it might even endanger our democratic way of life.

It is highly important for Congress and the general public to understand that time is working against us; the longer inflation persists, the more difficult it will be to subdue it. Day by day inflationary expectations are becoming more widespread and more deeply embedded. Once people are persuaded that inflation has become the national way of life, they are apt to spend more and save less; in other words, they will modify their behavior in ways that tend to validate that belief. But more ominously, growing numbers are entering into longer-term contractual commitments with respect to interest rates, wages, rents, or prices that can prove disastrous once inflation is curbed. As the clock ticks on there is steady growth in the number of people who, despite sincere rhetoric to the contrary, have become fearful of what will happen when inflation stops. The time available for averting a disastrous climax to our inflation is therefore running short.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I have no need for the remainder of my time under the standing order. I am grateful to the majority leader for yielding his time, as well. But in the absence of requests or any other requirement, I am prepared now to yield it back, unless the majority leader has some other need in mind.

The ACTING PRESIDENT pro tempore. The Chair thanks the minority leader.

Perhaps the minority leader would like to suggest the absence of a quorum and let the time run against the two orders.

Mr. BAKER. Very well.

The ACTING PRESIDENT pro tempore. Until Mr. HATFIELD can be recognized.

Mr. BAKER. I thank the Chair.

Mr. President, I ask unanimous consent that the time for the quorum call I am about to request be charged against the time allocated for leader time this morning.

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

TRIBUTE TO NORMAN BRADLEY

Mr. BAKER. Mr. President, on March 1, one of the outstanding journalists in Tennessee, Mr. Norman Bradley, retired, ending a career that touched the lives of many people in my home State, the South, and the Nation.

Mr. Bradley exercised tremendous insight as he molded the editorial policy of the Chattanooga Times. He took complicated issues and brought sound reasoning to them. He examined community needs and interpreted them in such a way as to contribute to the growth and stability of Chattanooga.

One way to describe this journalist is a man who is eminently fair. While his editorial position reflected a certain point-of-view, he provided equal and fair treatment in the news columns. In tackling the diverse, tough issues of the day, Mr. Bradley used good judgment in formulating the conclusions that he reached.

But his achievements were not limited to the editorial pages of the Chattanooga Times. He served as a strong advocate for the city he loves and his influence will be felt for years to come in the many civic endeavors he touched.

A native of Mississippi, Mr. Bradley began his newspaper career on the Jackson, Miss., Clarion-Ledger in 1934. He was with the Associated Press for 10 years before joining the Times as an editorial writer in 1947.

He was the founding editor of the Jackson, Miss. State-Times in 1955, returning to the Chattanooga Times after one year. He was also editor of the afternoon Chattanooga Post, published by the Times, during its publication from 1966 to 1970. He served as editor of the Times since 1971.

Mr. Bradley has been active in civic affairs in Chattanooga and is a member of the American Society of Newspaper Editors, the National Conference of Editorial Writers and the Society of Professional Journalists, Sigma Delta Chi.

I cannot imagine what further experiences lie ahead for a man like Norman Bradley who has left his mark in so many areas of journalistic and civic service, but I am confident he will find and meet new challenges.

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

The ACTING PRESIDENT pro tempore. The absence of a quorum has been suggested.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, the order for the quorum is rescinded.

The distinguished Senator from Oregon is recognized, under the order.

Mr. HATFIELD. I express my appreciation to the Chair for this time.

LOBBYING WITH APPROPRIATED MONEYS: STANDARD OPERATING PROCEDURE AT THE OFFICE OF SURFACE MINING

Mr. HATFIELD. Mr. President, the Office of Surface Mining has been lobbying the Congress to defeat S. 1403, the Surface Mining Amendments of 1979, in apparent violation of title 18 of the United States Code, section 1913. That section prohibits lobbying with appropriated moneys.

We all realize and accept the fact that the White House and other policy officers of the administration push for support of their legislative proposals and lobby to defeat measures they find unacceptable. Fine. But when agency bureaucrats engage full time in lobbying for the demise of a measure pending before the Congress, and when those Federal employees on Government time mobilize environmental and other public interest groups to campaign against that bill, and when those agency personnel actually "map out a lobbying strategy and assign tasks," that, Mr. President, is clearly a misuse of Federal funds.

Paraphrasing the law which prohibits lobbying with appropriated moneys: No appropriated money shall, in the absence of express authorization by the Congress, such as powers of the President, be used directly or indirectly to pay for any personal service, telephone, letter, and so forth, intended to influence in any manner a Member of Congress to favor or oppose, by vote or otherwise, any legislation pending before the Congress. The law also says that this shall not prevent Federal employees from responding to requests from Congress. Violation or attempted violation of the statute is punishable by fine or imprisonment or both. That is the law.

Mr. President, I believe the prevalence and scope of lobbying activity in the Office of Surface Mining are the most blatant I have ever witnessed.

To investigate this suspected criminal misconduct by employees of the OSM I requested the General Accounting Office to verify the existence of several documents and to search for corroborative evidence. The GAO has provided excellent support in the investigation.

My staff, working with staff from the House Interior Committee, has also alerted the Department of Justice to the presence of possible criminal misconduct by OSM employees and has supplied the FBI with several of the documents to which I will refer today.

My colleagues may recall the debate and Senate vote last year on S. 1403. That bill, still held hostage in the House Interior Committee, passed the Senate by an overwhelming 69-to-26 vote margin. Little did anyone realize, however, the intense and organized effort by the Office of Surface Mining to affect that vote and to insure the bill was successfully bottled up on the House side.

Let me share with my colleagues some of the evidence which documents this unauthorized use of public moneys and violates the very essence of the separation of powers doctrine.

Senators may remember receiving a letter from five environmental groups dated July 31, 1979, which urged us "to resist any consideration of S. 1403 on the Senate floor * * * and to vote against the bill." You may have assumed that letter was generated by the National Wildlife Federation or the Environmental Policy Center or NRDC or Friends of the Earth or the Sierra Club. I certainly thought the letter was born of those groups' sincere apprehensions about the bill.

But we were misled. The letter was drafted by the Office of Surface Mining. An August 1, 1979, memorandum from the OSM Director of Legislative Affairs to the Director and others states:

Environmental groups have finally gotten their act together and have sent a copy of the attached (draft letter) to all Senate Offices today.

Calls have been made to local groups asking that they express similar sentiments to their Senators.

A July 27, 1979, memorandum discusses the status of S. 1403 prior to the Senate vote and itemizes OSM lobbying efforts and target Senators:

Referring to next steps in the Senate, the memo states:

We need time to organize outside lobbying, to educate Senators and staffs on the substance and ramifications of the amendments . . .

Another quotation:

Outside lobbying. Local environmental and farm groups are being alerted and should begin to contact Senators next week.

The document further discusses OSM organizing efforts to defeat S. 1403 with the Environmental Study Conference and the National Governors' Association staff.

OSM apparently uses other types of coersion to punish their detractors and reward their true friends. An August 31, 1979 memorandum directed to the contracting officer from the legislative affairs director recommends that certain Senators be penalized or rewarded for their performance with respect to OSM by decreasing or increasing, respectively, the priority of contract awards to a particular State. For example:

Alaska—Stevens is important to us . . . However, he's already voted against us on S. 1403. Due to this and low $ figures, low priority.

Another example:

Kentucky—high priority. We have already lost Ford, but he has not been as "out front" on S. 1403 as he might have been.

For New Mexico, the memo says medium to high priority:

While Domenici has been a driving force behind S. 1403, he is a reasonable politician, and gives credit where it's due. We won't change his position on S. 1403, and Schmitt is hopeless but it would be good if we could find some way to temper Domenici's antipathy and his corollary activity on S. 1403.

Ohio gets a high priority:

Metzenbaum has been our best friend on S. 1403, but is under heavy industry pressure to back off. He could use some help.

Our Utah Senators apparently do not rate with OSM:

Garn and Hatch are not likely to be of any use to us in any case or situation. The same goes for Marriott . . . The only payoff might be with (Governor) Mattheson.

Mr. President, all of this talk of contract payoffs and lobbying activity failed to make much of a dent in the Senate and, with the support of 20 Governors of coal producing States, S. 1403 passed with ease.

Apparently that easy win whipped up lobbying activity in the Office of Surface Mining to even greater levels. On September 17, 1979, just 6 days after Senate passage, a memorandum to the Director spelled out in some detail a "House strategy for S. 1403." One of four recommendations in that memorandum was as follows:

Outside lobbying. I am concerned at the narrow base of our support, and will set up a task force to broaden it. I am setting up a group that will bring in the League of Women Voters, CEQ, the Farmers Union, National Association of Counties, League of Cities, and other environmental groups.

If you (the Director) agree, I will go ahead and begin to set meetings up . . .".

Three days later, with the Director's approval, the legislative affairs director met with outside groups to organize the House lobbying strategy:

I met this morning with representatives of Environmental Policy Center, National Wildlife Federation, League of Women Voters, National Farmers Union, and Powder River Resource Council to map out a House lobbying strategy and assign tasks.

Subsequently, Gus Speth (CEQ) and I met with representatives of some thirty national conservation groups, briefed them on the provisions of S. 1403 and asked them to get mailings out to their local affiliates right away.

Director Heine and Deputy Director Reeves apparently approved fully of these efforts because the following week on September 27, 1979, there was a second meeting, this time with representative from the EPA and CEQ also assisting.

On September 19, 1979, a meeting involving the entire OSM Directorate, including Regional Directors, discussed options to defeat S. 1403 in the House. One of the options was "Regional Directors proceed to lobby the Governors of coal producing States."

Mr. President, I could continue to give examples of direct and indirect attempts by the OSM to affect S. 1403 in the House, but I believe my colleagues get from this discussion a feel for the widespread nature of OSM's lobbying activity.

In my opinion, these unauthorized activities represent a clear misuse of Federal funds, and upon hearing from GAO on their further assessment of this lobbying activity, I intend to press the matter before the Department of Justice.

It is too easy to say, "well, every agency lobbies a little bit—maybe OSM got a little carried away, but what's the harm?" Mr. President, I view this as a serious breach in the very tenets of the constitutional separation of powers between the executive and legislative bodies. The law is clear. And, just as clearly, officials of the Office of Surface Mining have failed to comply with that law.

The Energy Committee may pursue these activities of questionable legality in hearings. Senator WARNER has suggested oversight hearings to review other serious problems at the Office of Surface Mining. At this very moment, Congressman SYMMS is pursuing OSM lobbying activity in a hearing before the House Interior Committee.

Mr. President, I recognize that printing these documents in the RECORD will take up several pages, but the evidence must be included to permit Senators to view a portion of OSM's lobbying activity for themselves. I ask unanimous consent, therefore, that my letter of request to the General Accounting Office (less one paragraph of the letter) and the OSM memoranda and documents from which I quoted be placed in the RECORD.

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

U.S. SENATE,
Washington, D.C., March 24, 1980.

Hon. ELMER B. STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR MR. STAATS: After reviewing the attached documents, I believe there is evidence to suggest possible unauthorized use of appropriated monies by employees of the Office of Surface Mining (OSM). Contrary to the provisions of Title 18 of the U.S. Code, § 1913, employees of the OSM may have misused Federal funds by engaging in the organization and operation of lobbying efforts with public interest groups to detrimentally effect legislation pending before a House committee. I have also received allegations which indicate that OSM employees permitted public interest group representatives to obtain access to and use of Government FTS telephones and computers for purposes of lobbying.

The enclosed documents refer to environmental and public interest group lobbying organized by OSM. Three of the five public interest groups identified, however, are not registered lobbyists with the Clerks of the House and, therefore, are in possible violation of Title 2 of the U.S. Code, § 269.

I request that you immediately assign investigative staff to verify the existence of these and other documents and evidence which would be of value in addressing allegations of unauthorized use of appropriated monies. I would appreciate your prompt action since these allegations may become public on March 27, 1980.

I recognize your investigation may result in evidence suggesting criminal misconduct. Findings of this nature, of course, should be forwarded to the Department of Justice.

Thank you for your assistance.

Sincerely,

MARK O. HATFIELD,
Ranking Member, Committee on Energy and Natural Resources.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., August 1, 1979.

Memorandum.

To Walter Heine, Paul Reeves, Dick Nellius, Dick Hall.

From Len Stewart.

Environmental groups have finally gotten their act together and have sent a copy of the attached to all Senate Offices today.

Calls have been made to local groups asking that they express similar sentiments to their Senators.

Senator———: We understand that S. 1403, as amended (a bill to amend the Surface Mining Act of 1977), has been reported out of the Senate Energy Committee and is ready for consideration by the full Senate. That bill as originally introduced intended simply to extend the deadline for states to propose their own surface mining programs under the Surface Mining Act. As a result of its amendment in committee, however, it now constitutes a serious threat to the fundamental goals of the Surface Mining Act. S. 1403 would postpone application of the Act's full standards to federal lands for another year at least, at a time when the federal lands program is already a year late. In addition, it would cripple the Interior Department in its efforts to implement the Act by lifting from the States their obligation to comply with the Department's regulations.

The immediate need for an extension of the states' deadline has now been eliminated because the United States District Court in Washington, D.C. has granted the states a seven-month extension by court order. In view of that court imposed extension and in light of the serious implications of S. 1403 as it now stands, we strongly urge you to resist any consideration of S. 1403 on the Senate floor at this time and to vote against the bill if it does come up for roll-call.

THOMAS L. KIMBALL,
National Wildlife Federation.
LOUISE DUNLAP,
Environmental Policy Center.
RAFE POMERANCE,
Friends of the Earth.
JOHN MCCOMB,
Sierra Club.
JONATHAN LASH,
Natural Resources Defense Council.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 27, 1979.

Memorandum.
To: Gary Catron, Walter Heine, Paul Reeves.
From: Len Stewart.
Subject: Status of S. 1403.

The Committee report is due to be filed late today, and will consist of three parts: a "neutral" Committee report, Minority views prepared for Hatfield's signature, and Dissenting views, signed by Jackson, Metzenbaum, Melcher, and possibly other Members.

PRESENT STRATEGY

At present, Jackson's only proposed strategy is to try to stall Senate consideration until after the recess. To accomplish this, we will need a group of Senators to insist on the three day rule (which will carry us through August 1) and to object to any attempts to get a time agreement on the bill after August 1.

Staff tells me candidly that, while the above scenario sounds good in theory, individual Senators will be extremely reluctant to cross Senator Byrd on this. Byrd reportedly wants to whisk the bill through the Senate before anyone has time to focus on it, and staff advises that they will need help to forestall him.

In addition to Jackson, Metzenbaum and Melcher, who are willing to try and stall Byrd, Proxmire is willing to help, and Hart and Nelson may be. I will continue to try and round up other non-Committee Members for this effort.

NEXT STEPS

Senate

We need time to organize outside lobbying, to educate Senators and staffs on the substance and ramifications of the amendments, and to establish the case that S. 1403 cannot be characterized as an energy production proposal as its proponents will try to characterize it.

Outside lobbying. Local environmental and farm groups are being alerted and should begin to contact Senators next week.

Information dissemination. The Environmental Study Conference staff has been briefed and Monday's Weekly Bulletin will have a run-down on the amendments. ESC will prepare a special Floor Brief on the subject if we can give them enough lead time.

Interior. We have developed a list of staff Contacts for all Senate offices. We should have an information packet delivered to them early next week so that followup phone calls can be made. The packet need not be too detailed, but just enough to raise the issues. A short cover letter of summary with the Secretary's letter to Jackson attached should be sufficient.

Governors. The next NGA meeting isn't until February, 1980, so, for the time being, NGA will continue its position of non support for the amendments. Lamm is trying to keep a low profile, and NGA staff feels that, as States begin to finalize their programs for submission, Rockefeller's support will wane.

A decision on the Montana position could satisfy Herschler and other Westerners, further eroding Rockefeller's support.

House

Only a very few Members have focussed on the provisions of S. 1403. Strangely enough, neither Rockefeller nor the coal industry has done any work on the House side.

For this reason, a head-count of House Interior is neither feasible nor wise at this point. Although Udall is committed to taking as much time as possible once the Senate has completed consideration, he cannot guarantee at present that he has the votes to work his will in Committee.

Once again, time here works to our advantage. A decision on the Montana petition and submission of a good number of approvable State programs could buy us enough Interior Committee votes. (Kogovsek, Eckhardt, Kostmayer, Murphy, Williams, Johnson, Cheney for example.)

REMAINING NEEDED ACTIONS

1. Montana petition. The timing and scope of a decision could have a lot of impact on the process.

2. Response to the Flannery decision. As long as the June 3 date remains fixed, there is still an arguable case to be made for legislative action. A Departmental response or proposed remedial action will help a lot.

3. Administration commitment to veto?

ADDITIONAL CONCERNS

The major fear I have is that additional time will allow proponents to find a veto-proof vehicle for S. 1403—like the Fast-Track or Mobilization Board Legislation, trying to capitalize on the energy production fever in the Congress.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., August 31, 1979.

Memorandum.
To: Dave Maneval.
From: Len Stewart.
Subject: Priority List—Contract awards announcements.

1. Alabama—although the dollar amount is relatively high the political payoff may not be great. Neither Senator is particularly involved with legislation or annual appropriations effort.

At the same time, Dave Short indicates that he is having a terribly tough time getting in to talk with Governor James on the serious problems he is encountering with the State regulatory authority. We might be able to use this announcement in some way to ease his access.

2. Alaska—Stevens is important to us in his dual role of member of Interior Committee and Ranking Member of Interior Appropriations Subcommittee. However, he's already voted against us on S. 1403. Due to this and low $ figure, *low priority*.

3. Arizona—low priority.

4. California—low priority. Cranston will be with us; Hayakawa won't be influenced or care. The Bay area (Berkley) House delegation—Phil Burton and George Brown—are on the House Committee, but will support us in all cases.

5. Colorado—Hart doesn't ordinarily participate in grant awards/announcements. But, this grant is fairly large, CSM is a very popular school, and Hart is about to gear for reelection. Hart is among our staunchest supporters; Armstrong will likely vote against us in the Senate If Golden is in Representative Johnson's district (I'll check), Johnson is on House Interior Committee and is not necessarily a foe. A personal touch on this grant could be useful. The really important Coloradan to us in Governor Lamm, who has been really heroic to date in his efforts to avoid Rockefeller and his amendment.

Medium priority:

Idaho—low priority. We already have split the Senate delegation on S. 1403, and McClure won't appreciate $68k. The House delegation is hopeless.

Illinois—high priority. Good $'s; very high citizen interest in coal mining in southern part of the State. We won't have a problem with Stevenson in the Senate, but Percy, who was a good ally during original consideration P.L. 95–87 had the reelection scare of his life in '78, is weak in down-state areas, and could be a problem on S. 1403—we already see erosion among "moderate" Republicans. Imhoff anticipates that Governor Thompson is having a problem ascertaining whether his political bread is buttered by the coal industry or the environmental/agricultural interests, and that Thompson's posture on strip-mining will be made on pure politics.

8. Kentucky—high priority. We have already lost Ford, but he has not been as "out front" on S. 1403 as he might have been on the Ford-Hatfield package—the Senate Committee reported S. 1403. We need not lose Huddleston.

9. Massachusetts—low priority, low $'s. MIT is (I think) in Speaker O'Neill's distric, but O'Neill will do whatever Udall asks when the time comes.

10. Minnesota—the only possible plus is that Vento is on the House Interior.

11. Mississippi—low priority.

12. Missouri—we are currently experiencing problems with Danforth and Eagleton over a show-cause action. However, I think we can and are dealing with this on the merits, and $58K won't help us soften up either Senator. Low priority.

13. Montana—high priority. Baucus places a lot of importance on grants. Melcher is a good friend, and Judge, a powerful force within NGA. We need to keep being visible in a positive way in Montana. Both Pat Williams and Ron Marlenee are on House Interior.

14. New Mexico—medium to high priority. It would be good generally, to have a few newspaper stories on a positive, federal, coal-related action in New Mexico for a change. While Domenici has been a driving force behind S. 1403, he is a reasonable politician, and gives credit where it's due. We won't change his position on S. 1403, and Schmitt is hopeless, but it would be good

if we could find some way to temper Domenici's antipathy and his corollary activity on S. 1403.

Both Runnels and Lujan are active on coal on House.

15. Ohio—high priority, sizeable award. Metzenbaum has been our best friend on S. 1403, but is under heavy industry pressure to back off. He could use some help. Glenn is no problem, but is of no real assistance.

16. Oklahoma—low funds, low priority. Oklahoma delegation is not inclined to be particularly friendly.

17. Pennsylvania—high priority. Heinz is mercurial as is Schweiker. They were both moderately supportive throughout original Senate consideration, but both are voting much more conservatively these days on issues of parochial concern.

18. Texas—low priority.

19. Utah—Garn and Hatch are not likely to be of any use to us in any case or situation. The same goes for Marriott on the House Interior Committee. The only payoff might be with Mattheson.

20. West Virginia—low dollars, therefore low priority.

21. Wyoming—Herschler and Wallop want to get along with us and Wallop was a real help on S. 1403. I am very uncertain about Simpson, and I would rate this one a high priority. Unfortunately, this is such a small amount of money.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 17, 1979.

Memorandum.

To: Walter Heine/Paul Reeves.

From: Len Stewart.

Subject: House Strategy, S. 1403.

GENERAL ENVIRONMENT

During the Senate debate, we were victimized generally on two counts. First, we were subject to claims that we are inflexible, unfair, and unresponsive in our dealing with industry, States, and the Congress. Second, we were scored specifically by a Library of Congress report on the excesses of our regulations by the conclusions of the Consol report, and by charges that our State window is a myth. The first category of complaints is largely perceptual, the second factual. However, as we will find as true in the House as we did in the Senate, factual reality and perceived reality are interchangeable on the Hill (few, if any, will have read either the Act or the regulations when the time comes to make decisions). We, therefore, must go on the offensive in the House on both fronts.

SPECIFIC ENVIRONMENT

Udall will say publicly that he continues to oppose the bill and sees no immediate need for legislation of any kind at present.

However, privately, he doesn't think he can ignore pressure to move the bill as it begins to mount, and anticipates hearings as soon as the Committee calendar is free of coal slurry and NRC legislation—mid to late October. I have previously given you a preliminary headcount, but this will begin to change as lobbying focuses on the Committee Members.

NECESSARY NEXT STEPS

To a great degree, the House Committee is as uneducated as the Senate was on what our regulations provide, how they compare with the Act, what procedures States encounter in attempting to win program approval, and generally why many of the provisions of the Act and our regulations provide what they do. In sum, they know little or nothing about coal mining—the economics, procedures, and environmental impacts; they have about the same level of understanding of P.L. 95-87, and no knowledge of what S. 1403 really does.

In order to understand the arguments against S. 1403 therefore, House Members will have to be broadly educated on the big picture of mining, environmental requirements under P.L. 95-87, and the whole State program approval process.

So much for the factual needs. On the perceptual side, I find that no one on the Hill knows who we are, and this mitigates against us to a very great degree. Additionally, our "constituency" is perceived to be narrow focus and Washington, D.C. oriented.

It is therefore important that we begin to:

1. Meet with individual Members. In these meetings we should walk the Member through the particular coal situation in his State (if any); outline the general State submission and approval process; brief him on the current status of his State program (if any), including any particular problems, and mentioning significant enforcement actions; explain the State window concept and the other variance allowances in the program; give simple examples of how the State window and variance procedure applies in his State; describe with examples why the regulations are more detailed than the Act; and explain the impact of S. 1403.

Attached is an initial proposed list of who needs to be seen, and a suggested outline of how to coordinate the information for the meetings.

2. Develop an internal, DOI task force to augment and support our Hill activities. This should include Bob Uram, someone from Guy Martin's operation, Gary Catron, among others. Conceivably, members of this group could follow up our meetings and elaborate, for instance, on what the Ford-Hatfield amendments mean in terms of the Coal Management Program. Bob Uram is now working up a list of specific variance allowances in the regulations and examples for each.

3. Outside lobbying. I am concerned at the narrow base of our support, and will set up a task force to broaden it. I am setting up a group that will bring in The League of Women Voters, CEQ, the Farmers Union, National Association of Counties, League of Cities, and other environmental groups. The point here is that we are going to need local officials from Iowa and Illinois knocking on doors and telling what the "Rockefeller" amendment means for the protection of prime farmland; local sportsmen and fishermen talking to their congressmen about the potential impacts on game and fish, etc.

4. Press strategy. I have no thoughts on this except to seize events—such as the impending Federal lands rulemaking and the State window elaboration—to hold press briefings for all the reporters who write for coal State papers.

If you agree, I will go ahead and begin to set meetings up, on a prioritized basis, beginning as soon as possible. For each, I will prepare a short background on the Member, a list of District-specific or State-specific issues, and status of the State program and significant enforcement problems.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 20, 1979.

Memorandum.

To: Walter Heine, Paul Reeves.

From: Len Stewart.

Subject: Briefing Interest Groups on S. 1403—FYI.

I met this morning with representatives of Environmental Policy Center (EPC), Natural Wildlife Federation (NWF), League of Women Voters (LWV), National Farmers Union (NFU), and Powder River Basin Resource Council to map out a House lobbying strategy and assign tasks.

Bob Mullins (NFU) felt he could enlist labor support and will meet early next week with Doug Fraser (UAW) and William Winpisinger (Machinists). The most we can probably expect is to get labor signatures on a letter of opposition to S. 1403 for distribution to the House. However, even this gesture could help foster a perception of broader based support, especially when combined with farm support.

Mullins will activiate State NFU chairmen, who have a great deal of impact with Western Members and Governors. Mullins will also bring them to Washington when appropriate.

League of Women Voters will likewise activate local and State chapters, and will be able to provide local representatives from key districts for work here.

Additionally, these groups will begin to solicit the interest and help from local elected officials in key districts (primarily Midwest and West) on the subject.

This group will meet again next week to assign new tasks.

Subsequently, Gus Speth (CEQ) and I met with representatives of some thirty national conservation groups, briefed them on the provisions of S. 1403 and asked them to get mailings out to their local affiliates right away.

Gus also volunteered to give Stu Eisenstat a call to try to get a White House position on the veto question.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 28, 1979.

Memorandum.

To: Walter Heine, Paul Reeves, Mike Sullivan, Gary Catron, Bob Uram.

From: Len Stewart.

Subject: Meeting with Interest Groups—FYI.

I had a second meeting yesterday with representatives of the National Wildlife Federation, National Farmers Union, Environmental Policy Center, and the League of Women Voters. Also in attendance were Kathy Fletcher, Chuck Warren (EPA), and Carolyn Isber (CEQ).

It was confirmed that Rahall is beginning to contact coal State Members, both on and off the House Interior Committee (sample letter to Bob Carr attached) and has reportedly gotten 25 signatures on a letter to Udall requesting speedy consideration of S. 1403 (or H.R. 4728). The number of signatures is somewhat in question, since Rahall is cornering Members on the Floor who have not been briefed by staff on Udall's opposition. Several Members have had second thoughts upon returning to their offices—Florio and Patterson for example.

Interest group representatives spent (wasted) an inordinant amount of time quarrelling over language in a proposed joint letter of criticism to Senator Kennedy.

When the discussion finally turned prospective, interest group representatives levelled a great deal of criticism at the Department and White House for not having made a public statement of renewed opposition to S. 1403—they claimed this was hampering their lobbying efforts on the House side.

To a certain extent, I agree that, to the extent the issue and our opposition has not been raised publicly in the House side, Rahall is better able to get unwitting signatures on his letter. Is there a possibility of putting together a short re-statement of opposition for House-side distribution? Perhaps the best format would be a letter to Udall. Udall and Seiberling may put out their own "Dear Colleague" in an attempt to counteract Rahall.

Finally, Kathy Fletcher acknowledged that a White House signal would be helpful, and will talk with Eisenstat about it.

Plans for Director Heine to meet with coal State Members were well received.

Attachment.

S. 1403: POSSIBLE STRATEGY OPTIONS FOR THE OFFICE OF SURFACE MINING

Following is an outline of possible actions, inspired by the meeting between Walter Heine, Paul Reeves, Regional Directors and

Assistant Directors on September 19, 1979, to defeat S. 1403 in the House of Representatives.

1. Abandon the permanent program regulations entirely and rewrite. This option is predicated upon the assumption that the only way to overcome the deep-seated antipathy the Office of Surfacing Mining (OSM) has apparently generated among the States and the industry is to sacrifice the regulations as the primary source of irritation, thus providing evidence of OSM's good-faith intention of adopting a more cooperative posture toward the States. The option fails to take into account the fact that each has special problems with the regulations (aside from the general complaints about the State window approach and the unrealistic time frame). It would severely disrupt the process of State program approval by denying the Secretary access to the regulations as guidelines. Most likely, it would be even more unsettling in its effect than the Rockefeller amendment portion of S. 1403. In short, this would be a classic case of throwing the baby out with the bathwater.

2. Mollify Rockefeller by agreeing to limited amendments of performance standards in the Act. Assumption here is that the only trade-off Governor Rockefeller would seriously consider for withdrawing his amendment in S. 1403 would be the Secretary's agreement to modify those performance standards which are particularly onerous to Appalachian steep-slope operators (i.e., bonding liability; hydrologic requirements; areas unsuitable provisions). Another assumption is that the Secretary can effectively control the process of amending the Act, despite evidence to the contrary as seen in the ill-fated agreement he concluded with Jackson, Udall, Hatfield, Byrd and Ford, limting S. 1403 to deadlines and the Federal lands issue. Any such effort would probably alienate Udall and the environmentalists permanently. They could justifiably view it as a sellout or (at best) an act of sheer desperation.

3. Split the western governors from the bill's supporters by promulgating or publishing all possible changes in the regulations immediately. This option assumes the process of gaining Secretarial approval for change in the regulations can move rapidly enough (i.e., within three weeks) to affect the vote in the House. It assumes that Gov. Herschler, as the persumptive leader of the western governors bloc, would be satisfied with the changes in the Federal lands program regulations suggested by the Secretary during the Senate consideration of S. 1403. Neither assumption is likely to be well-founded, since the approval procedure at the Department of the Interior is cumbersome, and since no definitive response to the proposal has been received. Although it is clear that governors must be offered something tangible if they are to be persuaded to retire from the fray, this may be too little and too late.

4. Mollify Rockefeller by agreeing to amend the Act to increase flexibility for State program submissions (State window). This option assumes that Gov. Rockefeller's legislative goal is limited to the State window-consistency issue (all parties are agreed on the need for extending deadlines for State program submittal and approval). However, there appears to be no assurance, based on discussions at regional levels, that this offer would satisfy the Governor. He has achieved a major victory in the Senate by the 26–20 passage of S. 1403 and can now reasonably expect that the momentum of the vote will carry the bill through the House. If a Presidential veto were an absolute certainty, this option might have more appeal. Unfortunately, absent any signal from the White House giving unqualified commitment to veto the bill, Gov. Rockefeller can always hope the President will back off in a pinch.

5. Propose direct negotiations between the Secretary and Rockefeller and Herschler. Assumption here is that the problem of determining the bottom-line position of the two key governors is insoluble as long as discussions are carried on at a lower administrative level. Until their positions are known, any attempt to split up the coalition of governors supporting S. 1403 is unlikely to succeed. Intense State lobbying in support of the bill must be expected in that case. Short of White House involvement, Secretary Andrus is the official in the Administration most likely to have the needed authority and prestige for opening meaningful negotiations with the governors. The aim would be to discover whether changes in the regulations or the Act in line with Options 3 and 4, would meet the basic requirements of either or both governors, and if so, to make a commitment to support or initiate such changes.

6. Propose an informal discussion between Andrus, Udall, Symms (?), Rockefeller and Herschler. This option assumes that none of the participants wants to gut the Act or to seriously jeopardize its implementation. It assumes a consensus that the Rockefeller amendment does address a genuine problem concerning lack of confidence on the part of the States in the validity of OSM's State window concept. It assumes that any agreement would not meet the same fate as did the agreement between the Secretary and the Senate leadership and Udall. It assumes Udall would be amenable to amendments in the Act responsive to Rockefeller's requirements. None of these assumptions are particularly well-founded. Much would depend on the credibility of Udall's stated threat to bottle up the bill in committee.

7. Rely on Udall to bottle up the bill in committee or subcommittee. Assumption here is that Udall has the votes in the House Interior Committee to block further action on the bill. Such does not appear to be the case. A massive lobbying effort by environmentalists and consumer groups who originally supported the Act might make the difference, but it is unlikely. Given their present state of disarray, as exemplified by the Senate debacle, the coalition of anti-S. 1403 forces cannot be reasonably expected to exert much of an impact. If Udall holds extensive hearings, their testimony could provide a strong record, such as was missing in the Senate debate. The general feelings of hostility toward the Administration on other environmental issues will probably sap much of the will to launch a really effective campaign.

8. Regional Directors proceed to lobby the governors of coal-producing States. It is perhaps a reasonable assumption that Regional Directors in general enjoy a greater degree of respect and rapport with governors than does Washington. However, this option also assumes that the Regional Directors would be lobbying from a unified OSM negotiating posture. It is very doubtful if the Regional Directors are in any position to affect a significant amount of negotiation on substantive issues surrounding S. 1403. Nor is it clear that they can clarify the true position of the governors. This option could lead to all kinds of confusion.●

U.S. Department of the Interior,
Washington, D.C., Aug. 10, 1979.

Memorandum.
To: Walter Heine, Paul Reeves.
From: Len Stewart.
Subject: Prognosis, S. 1403.

STATUS

As you know, the Senate adjourned on August 3 without having acted on S. 1403.

To a great degree, Senate inaction can be attributed to the last minute music applied on the Senate side. We should not fool ourselves into believing that the importance of the bill to its proponents has in any way diminished. They were straining at the leash in the last several days. Attached (Tab A) are copies of Floor statements by Senators Byrd and Hatfield.

On the House side, Udall has introduced at our request H.R. 4728, a simple seven-month extension bill, which he has referred to his own Subcommittee on Energy and the Environment. Due to the recent Flannery decision, and the failure of the Senate to act, the bill has received little attention to date.

This situation will not last much longer. Rep. Nick Joe Rahall, Chairman of the Coal Caucus, is a member of Udall's Subcommittee and has committed himself to pushing the Ford-Hatfield package on the House side.

OUTLOOK

Senate

Had a vote occurred soon after the Senate bill was reported from Committee, we would have lost. By having Senators Proxmire and Metzenbaum put a "hold" on the bill, we bought enough time to develop and circulate the Secretary's letter and the Environmental Study Conference Fact Sheet to all Senate offices (Tab B).

House

Udall will sit on H.R. 4728 as long as is possible to see what the Senate does. Should the Senate pass S. 1403 in its present form, Udall will be under increased pressure to act. He can then attempt to insist on a series of hearings, and I will work with his staff on choreographing them. One possible hearing could focus entirely on our analysis of the Consol study. Mark Boster believes we could put on a very good show on this subject, and Committee staff likes the idea.

If, after hearings, there is pressure to act, we can count on a firm 9 Subcommittee vote out of the total 24:

Udall, Bingham, Weaver, Carr, Markey, Kostmayer, Howard, Corrada, and Eckhardt.

At present against us are likely to be:

Rahall, Cheney, Marlenee, Huckaby, Marriott, Lujan, Symms, and Edwards.

Votes that could go either way are:

Mathis, Bereuter, Austin Murphy, Evans, Vento, Sharp, and Clausen.

The only potential immediate problem on the House side is that, if Rahall becomes impatient with Udall's pace, he could attempt to have the bill brought out of Subcommittee for Full Committee consideration through the process of a discharge petition, which requires a majority vote of the Full Committee. Generally speaking, the Full Committee is more conservative, has higher percentage of Westerners and coal State Representatives, and is therefore harder for Udall to control than the Subcommittee. Committee staff indicates that, were discharge petition to be brought up tomorrow, chances of it succeeding would be good.

NECESSARY NEXT STEPS

Generally, our visibility has not been good in the Congress. We need to make more personal contacts with both Members and staff, on everything from routine casework and periodic briefings on the status of their State's program to advance consultation and notice of OSM activities that affect them and their States/districts.

This will help us dispell the industry/State created myth that we are high-handed, rigid, and inflexible, and will also help us pick up advance warning of trouble spots and a chance to counteract what each Member is hearing from the operators in his State.

As a start, I have initiated a process whereby someone in my office will track every piece of casework from the Hill as it moves through OSM for either an answer or a decision, and will pick out those where it would be either appropriate or politically valuable for the answer to be delivered personally.

While this is by no means a definitive list, there are a number of specific actions which should be initiated in the future to turn the legislative situation to our favor.

1. Montana petition. As soon as a decision is made to go forward, the following should be personally notified, in advance of actual Record publication:

Senator Wallop. It was the likelihood that we would eventually move to rulemaking that persuaded him at the last minute to vote against the Ford-Hatfield package.

Senators Jackson and Melcher as a courtesy.

Senators Baucus, Young, Burdick, Garn, Hatch, and Simpson with the promise of a staff briefing on the details if they are unfamiliar with the issue.

Other Senators if the decision is to include more than the four cooperative agreement States.

Reps. Williams, Marriott, Marlenee, and Cheney, all Members of House Interior Committee, from the affected States, and likely to go against us at present.

Other Western House Interior Committee Members if the decision is to include more than just the four cooperative agreement States.

2. Virginia enforcement. We should cultivate Senator Warner, who is inclined to be reasonable on most issues. A personal call to him right away to explain the situation in Virginia and to assure him that we will proceed with discretion in the field could be invaluable.

3. Tug Valley. If anything of interest was noted during your trip, or if OSM is prepared to take any actions, it would be food to brief affected Members on your trip. A good forum for this will be the task force, which has been set up by the Virginia, West Virginia, and Kentucky delegations on the situation. They are scheduled to meet in several weeks, and I will work with Randolph's office on this.

4. State program submission. As State programs are submitted, we should meet with the State's Congressional delegation on those that look very good to discuss what future actions they can anticipate. Additionally, particular problems that may arise with a particular State program should be raised as they occur with affected Members of that State's delegation.

The above just represent the start. I will recommend additional actions as we get closer to Labor Day.

U.S. Department of the Interior,
Washington, D.C., January 17, 1980.

Memorandum.

To Walter N. Heine, Paul Reeves.

From Len Stewart, LCS

Subject Update—Congressional activities of interest.

1. West Virginia. I may have told you that Dave Callaghan followed up on his commitment to Paul Reeves last week and called Senator Byrd's office to praise our work with him and to outline the progress made to date and his hopes for early resolution in the legislature and submission of an approvable program. Byrd's staff was very much impressed, and has contacted Rahall's and Randolph's offices to pass the message along. More about Byrd under subheading 6 (DOE Authorization).

2. Virginia. We have gotten no expression of interest from the Virginia delegation over the recent Williams decision, and I have not initiated any contact. However, the ruling is bound to have some effect on Senator Warner's plans for an AOC bill. His staff was to have drafted a bill to amend P.L. 95-87 for introduction prior to the Christmas recess to relax both the AOC and highwall elimination requirements of the Act. I anticipate that they have had some difficulty in figuring out how to, or whether to bother reworking the AOC language, or just to add a practicality/economics test to the highwall requirement.

According to Warner's staff, the bill will be introduced next week. I, Gary Catron, and Ed Grandis have all asked for a chance to meet with Warner prior to introduction. Our requests have been met with interest, but have been refused to date supposedly because the provisions of the bill have not yet been determined. We'll just have to wait and see.

3. Energy Mobilization Board. You may recall that, although the EMB legislation deals almost entirely with so-called Priority Energy Projects, a Senate Floor amendment added language that would establish a one-year deadline for approving or denying all Federal oil, gas, coal, and uranium permits. The EMB legislation is still in conference, although most major substantive differences seem to have been resolved and final resolution could come next week. Early in the conference process, I slipped Stan-Scoville a memo outlining our potential problems with the one-year deadline in Region V. Luckily enough, the subsequent Administration position on the provision is consistent with ours.

It now appears that Jackson and a majority of the Senate Conferees agree with Dingell and Udall that the provision ought to be dropped in its entirety, but the next week to 10 days will tell for sure. We also provided Udall with a fall-back position in case it's necessary to clarify what constitutes a permit for purposes of the time deadlines. Unfortunately, the fall-back fix does not take care of BLM or USGS problems.

4. Land Surveyors. The land surveyors had their national convention several months ago and put together a position paper outlining their problems with P.L. 95-87. They have blanketed the Congress with the position paper and proposed legislation to amend the law to accord them equal status with professional engineers for the purpose of Section 507 of the Act.

A clever stroke was to neglect to mention anywhere in the position paper that P.L. 95-87 and its relationship to land surveyors only applies to coal mining. We have gotten a large number of Congressional calls on the subject from Members from Hawaii, North Carolina, California and other equally unaffected States.

All of this would be somewhat amusing if it weren't for the fact that, in the last week of the Session, a bill to amend Section 507 was introduced by Senators Thurmond and Hollings (South Carolina) for the purpose of alleviating the hardships caused to the land surveyors of South Carolina in the sand and gravel business. Thurmond's staff was inordinately embarrassed when I explained that the issue related to coal only, and I don't expect them to push very hard on this subject in the future. For insurance, I asked the National Association of Professional Engineers to initiate contact with Thurmond and Hollings.

5. *Regulatory Reform*. Senate Governmental Affairs Committee completed mark-up on an omnibus Regulatory Reform bill sometime late last summer, and the resulting product looked very much like the Administration proposal—rulemaking calendar and cost impact analysis requirements (much like current E.O. 12044). The bill was then sequentially referred to the Senate Judiciary, where it may be marked up early in the next Session. It is anticipated that the product emerging from the Judiciary Committee will look more like Subcommittee Chairman Culver's own Regulatory Flexibility legislation, which directs Agencies to investigate ways in which to reduce paperwork, reporting, and substantive regulatory requirements for small businesses where practicable.

As far as I can see, none of the possible provisions of the final Judiciary product will be terribly burdensome to OSM, since we are already complying with the requirements of E.O. 12044 and, by the time the bill is enacted, we should be substantially finished with major rulemaking (will that day ever come?). However, the legislation has a high potential for explosion when it reaches either the Senate or House Floor for debate, since there are some 200 other Regulatory Reform bills, many of which are pretty draconian, floating around the House and Senate, which could conceivably be offered as Floor amendments. This will bear watching.

On the House side, the Administration has not fared nearly so well, as its bill was sequentially referred to 3 Committees, and the one Regulatory Reform idea that seems to be moving in the House is a Sunset bill, which would set up a schedule for periodic review and/or termination of all Federal programs.

6. DOE Authorization/S. 1403. We came very close to another attempt to pass S. 1403 on the waning days of the first Session. In an effort to get a time agreement on the DOE Authorization, Majority Leader Byrd circulated a list of non-germane amendments he had been requested to have considered. S. 1403 was not on the list, which indicates that Byrd himself did not feel any particular pressure to act. However, the list came by mistake into the hands of the Senate Energy Committee minority staff who insisted, supposedly on behalf of Senator Warner that S. 1403 be added. S. 1403 was then added to the list as a Warner amendment, and the bill was scheduled for debate on the last day of the Session. Although the bill was never brought up due to a last minute glitch over the Fast Breeder Reactor, the interesting thing to this story is that, reportedly, when Warner heard that "his" mining amendment had been added to the list, he asked that it be removed, saying that it wasn't really his after all but would support the amendment if Senator Byrd or someone else wanted to push it.

If Byrd didn't want to push it and Warner didn't either, what is the driving force behind S. 1403? The answer is in a very critical Congressional Record insert by Senator Hatfield on the last day of the Session, which is attached for your information. Hatfield tries to make the case that, despite our "erratic, superficial, and, at times, misleading" flurry of new rulemaking, there is still a strong need for S. 1403, and that to allow us to continue to harrass the States and the industry spells doom for coal production.

Frankly, I'm not even certain that Hatfield's heart is really in continuing his offensive against us—I suspect that the real push is coming from Energy Committee Minority Staff. Our every action is colored and characterized to the Senator by Dave Russell, and staff is guarding Hatfield from environmental groups who have repeatedly been refused a meeting with him.

I think someone has to sit down with Hatfield personally in the near future and see just what his problems really are. I recall that the Secretary declined to contact him earlier in this drama, and that leaves you and Chairman Udall. I have mentioned this to Scoville who is considering it, and I would like to try to set up a meeting between you and Hatfield sometime before the end of the month if you concur.

7. Hearings.

a. General Oversight. Early indications are that the Senate Energy Committee does not at present have any plans for oversight hearings, but this could change when Ford returns next week. I have talked to Mike Harvey and Tom Laughlin and they agree with the importance of having no hearings before March 3.

On the House, side, I have lobbied Scoville very hard to postpone whatever hearings Udall may hold until after the March 3 deadline. I have also asked constituent groups to push him on this subject. To date, Scoville has not agreed, arguing that to hold hearings later in the year will look like collusion between us and the Chairman. I will watch Scoville very closely on this, and am almost persuaded that a call from the Secretary to the Chairman very soon on the subject might be a good idea. If you like, I can prepare a memo from you to the Secretary outlining the situation and asking for his involvement.

b. SOAP. Senator Huddleston's SOAP amendments have been referred to the Senate Energy Committee, and Huddleston is anxious to begin work on them in the Second Session. However, he understands our problems both with any amendments to the Act at this time, and our desire not to have hearings or mark-up of any sort until after March 3 at the earliest.

Additionally, I suggested that the Senate Small Business Committee might be a more neutral forum for exploratory hearings.

8. House Reorganization. In the waning days of the First Session, the House Committee on Committees, chaired by Representative Jerry Patterson, was able to report a proposal completely reorganizing House Committee jurisdiction over energy. The proposal represents, across the board, more accommodation and trading than good sense, and is made worse by some very sloppy staff work.

Essentially, the proposal creates a new House Energy Committee, while abolishing the Energy Subcommittee of the House Commerce Committee, meaning that Representative Dingell has the clearest shot at chairmanship of the new Committee, should it be established.

Reorganized into the new Committee would be jurisdiction over non-Federal coal, while jurisdiction over Federal coal would remain with House Interior. The environmental effects of coal production and utilization would remain shared between House Interior and House Science and Technology Committees. Where this leaves OSM and P.L. 95-87 is still in question, as the Committee proposal has not yet been finally printed (the mark-up and vote to report the measure was conceptual). However, it is highly likely that jurisdiction over P.L. 95-87 could be split between the two Committees, with Interior retaining sole jurisdiction over only the performance standards on Federal lands.

While Udall has promised to fight for us and Chairman Patterson has publically disassociated himself from the proposal, Speaker O'Neill has endorsed the proposal and Dingell will probably seek to make a deal with the Speaker and endorse it as well. This could become a major fight in the Second Session.

Professional betting is that Patterson's Committee won't be able to get to the House Floor for consideration until late in the Session, although even odds are being given on eventual passage.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, September 18, 1979.

To: Director.
From: Norm Williams.
Subject: Lobbying on S. 1403.

May I add my voice to those who are urging you to spend every possible moment during the next two weeks lobbying in the House against S. 1403?

Misperceptions of OSM and its regulations (as evidenced in the Senate debate) are rife. You are clearly the person most qualified to answer questions which key Congressmen may have about OSM's performance. I don't think we have much time.

In this effort, it might be well to assign Bruce Carroll to talk to members of the Massachusetts delegation and Rep. Santini on our behalf. I believe he could gain us some votes. While this may go against the grain somewhat, the issue is urgent enough to justify overlooking some of the usual inhibitions in the interest of stopping this bill.

RECOGNITION OF SENATOR WARNER

The PRESIDING OFFICER (Mr. HEFLIN). Under the previous order the Senator from Virginia is recognized for not to exceed 15 minutes.

LOBBYING ACTIVITIES OF THE OFFICE OF SURFACE MINING

Mr. WARNER. Mr. President, I wish to commend my distinguished colleague from Oregon for his very forthright and courageous manner in bringing to the attention of the Senate, indeed the whole of the United States, these allegations which raise most serious questions, questions which in my judgment must be promptly examined by the Senate in hearings.

My colleague from Oregon has long been identified as a champion with respect to the preservation of our natural resources in this country, and I fully recognize and appreciate the sensitivity with which he approaches this issue.

I have had the opportunity in the past day to examine several internal documents prepared by officials of the U.S. Department of the Interior's Office of Surface Mining, concerning efforts by that agency to educate and influence Congress on legislation currently being considered—legislation which directly affects the Office of Surface Mining. These documents are among those which Senator HATFIELD has just inserted in the RECORD.

I have found these documents to be extremely disturbing. They provide a basis for allegations that OSM officials have engaged in concerted activities which come dangerously close to violating—if they do not, in fact, violate—section 1913 of title 18 of the United States Code, which prohibits lobbying with appropriated moneys.

Section 1913 in essence states that no moneys appropriated by any act of Congress shall be used directly or indirectly in any manner to influence a Member of Congress to favor or oppose, by vote or otherwise, any legislation or appropriation in Congress.

Funds appropriated by Congress must not be used to lobby Congress on pending legislation.

Persons found guilty of violating or attempting to violate that section of the United States Code are subject to fines of not more than $500 or imprisonment for not more than 1 year, or both, and after proper notice and hearing are subject to removal from office or employment.

Those are serious penalties—for a serious offense.

It appears from these documents that OSM initiated and carefully orchestrated an intense campaign to block passage, in the House, of legislation which had previously been approved by the Senate.

Moreover, the documents imply that OSM, in its scheme to thwart the will of the Senate, enlisted the aid not only of other Government agencies, including high administration officials, but also recruited private, nongovernmental organizations. These documents imply that OSM strongly suggested which arguments the private organizations should put forth to their congressional representatives in opposition to the legislation, and that the agency provided printed material for members of those organizations to send over their own signatures to their Representatives in Congress.

After S. 1403 was passed by the Senate on September 11, 1979, by an overwhelming mandate of 69 to 26, I was contacted by persons and groups who opposed the bill.

As a cosponsor and a strong supporter of the measure, I willingly made myself and my staff available to any and all who wished to talk to me about S. 1403.

Interestingly enough, I found that many of the groups opposing the bill used much of the same phraseology and raised identical points in their arguments.

When I talked to some of these groups, including some mentioned in the documents introduced by Senator HATFIELD, I found that they had been asked to oppose the bill after being given only a cursory explanation of the bill's provisions and after having inadequate time to carefully review it. Moreover, I found that the information being disseminated about the bill—about its force and effect—was full of half-truths and, in many instances, dead wrong.

It appeared that whoever was leading the opposition to S. 1403 was trading on long-past mining practices and playing on the fears of concerned citizens.

When I was able to discuss the merits of S. 1403 in a rational, quiet atmosphere which allowed both sides to air their views, I found, more often than not, that the opposition to S. 1403 was dissipated.

I thought at the time that this was just another orchestrated lobbying effort by private interest groups advocating their own vested interests. It appeared from my conversations that the leaders of this lobbying effort were playing fast and loose with the truth.

Little did I realize at the time how massive was this orchestration of effort, or who was the conducter of the symphony of lobbying that I was hearing.

If the facts are as they seem, this course of conduct by a governmental agency is, at best, highly improper—at worst, violative of 18 U.S.C. 1913.

If a governmental agency is indeed, expanding its own appropriated funds to change Congress mind on legislation, in effect substituting its will for that of the Nation's, then it is past time for Congress to scrutinize that agency's actions—and, indeed, to consider appropriate budgetary action.

I wholeheartedly support Senator HATFIELD's efforts to investigate allegations of wrongdoing and improper conduct by OSM in its daily operations. I appreciate his bringing these charges to my attention, and to the attention of the Senate.

However, this is not the first time that my attention has been drawn to alleged improper or questionable activities by OSM—actions which may well have thwarted the will of Congress.

In travels and meetings throughout

the coalfields of the Commonwealth of Virginia, my staff and I have heard an enormous number of complaints of alleged unfair treatment of Virginia's surface coal mine operators at the hands of OSM.

Generally, the complaints are that arbitrary OSM actions and policies have caused Virginia's coal operators irreparable financial harm and have forced many of them out of business.

The operators believe that OSM employees, operating under their own regulations and internal policies, are carrying out a vendetta against Virginia coal operators—in reprisal for the fact that Virginia's coal operators have chosen to assert their natural independent spirit and fight OSM's arbitrary actions through court litigation. The ultimate result of OSM's actions is that badly needed coal—coal necessary for this Nation's energy independence—is not being mined.

Last month, these same allegations—that OSM policies and actions under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) have stifled energy production—surfaced once again, this time in the Nation's newspapers in the form of charges made by a former OSM official.

He charged that OSM's regulations are incomprehensible, counterproductive, and not in the best interests of environmental and energy concerns. I found these allegations to be highly disturbing and of sufficient gravity to require congressional investigation. Consequently, on February 15, 1980, I sent a letter to our distinguished colleague, Senator HENRY M. JACKSON, chairman of the Energy and Natural Resources Committee, noting the seriousness of the former OSM official's charges and suggesting that, when Senator JACKSON holds oversight hearings on OSM, his committee investigate these allegations thoroughly.

I ask unanimous consent to have printed in the RECORD at this point in my remarks a copy of my February 15 letter to Senator JACKSON.

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

U.S. SENATE,
Washington, D.C., February 15, 1980.

Hon. HENRY M. JACKSON,
Chairman, Energy and Natural Resources Committee, Dirksen Senate Office Building, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It has come to my attention that Ronald Drake, a high ranking official of the Interior Department's Office of Surface Mining (OSM), has been fired by the head of OSM following Mr. Drake's charges that the Agency's regulations are incomprehensible, counterproductive, and not in the best interests of environmental and energy concerns.

Although there can be no doubt that the Interior Department has the authority to dismiss its Schedule "C" appointees, Mr. Drake's dismissal is disturbing because of the reckless disregard it suggests for the balance between our Nation's environmental needs and energy needs—a balance called for in the law that Interior's OSM is responsible for carrying out.

OSM was created by the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), a detailed piece of legislation enacted to regulate surface coal mining and land reclamation operations nationwide. Within the Interior Department, OSM was charged with carrying out that regulatory responsibility on the Federal level.

One of the major purposes of P.L. 95-87 is to . . . "assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being, is provided and *strike a balance* between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy." (Emphasis added).

Mr. Drake, in various newspaper reports of his firing, has leveled some serious and highly disturbing charges regarding OSM's implementation of the Act.

He is quoted as charging OSM with attempts at enforcing "incomprehensible and counterproductive" reclamation regulations while buckling to pressures of "environmental extremists."

Mr. Drake, himself an environmentalist, states that OSM's regulations are so far beyond the intent of the Act "that they were improper, uncalled for and a political disaster, and not in the best interests of environmental concerns."

A recent newspaper account of the firing quoted Mr. Drake as follows: "This isn't a matter of Ron Drake and his job. The issue is whether or not we continue to over-regulate with a runaway bureaucracy that is stifling energy production without a sound environmental return." According to that press account, Mr. Drake is concerned because environmentalists have had absolute, and virtually unlimited access to the OSM Director, far beyond the access of the industry that is subject to OSM's regulatory power.

At a time when the United States is trying to utilize and develop its large coal reserves, and thus become energy independent, it is troubling to read that OSM's operations are said by one of its own environmentalists to be "without a doubt crippling the coal industry." It appears from the newspaper accounts that OSM, due to outside influences in its operations, has completely lost sight of the balance between the Nation's environmental and energy needs called for by the Act.

Your Committee played a major role in drafting P.L. 95-87 and retained oversight jurisdiction over the Act's implementation and OSM's performance.

Oversight hearings on the Act, to examine how well the energy-environment balance is being met, have been held by your Committee on a regular basis. I believe the events surrounding Ronald Drake's dismissal are grounds for a renewed oversight examination.

The charges raised by Mr. Drake call into question OSM's implementation of a direct Congressional mandate. His statements strongly imply that OSM's operation is one of the factors preventing America from achieving energy independence. These points are serious enough to be aired fully before your Committee when it holds its annual oversight hearings this year on P. L. 95-87. Because of the weight of these charges, such hearings should be convened as soon as practicable, given the Committee's schedule. It is important, I feel, that the witness list should include Mr. Drake, as well as top officials from OSM and appropriate regulatory officials of the States.

Copies of news stories on the Drake dismissal are enclosed for your information.

With your permission, I would like to sit with your Committee during its oversight hearings on P.L. 95-87, and, if you think it is appropriate, be accorded the privilege of questioning the witnesses after the Committee members have completed their questions.

Respectfully,

JOHN W. WARNER.

[From Coal Outlook]

FIRED OSM OFFICIALS BLASTS HEINE

President Carter made a mistake when he named Walter Heine director of the Office of Surface Mining, according to a former Heine aide.

The aide, special assistant Ron Drake, was fired late last month.

Drake charges that Heine pushed OSM into environmental extremism, creating an excessive regulatory burden that will cripple coal production and ultimately set back the cause of mine reclamation.

Although OSM accepts comments from states, industry and labor, Drake says the agency generally ignores their opinions.

Public involvement "has been form without substance," Drake charges.

"The only folks who had access to Heine were the more extreme environmentalists like Louise Dunlap Brown."

OSM's guiding principle is that "you can't trust the states," Drake says.

"Congress made the judgment that states were competent to regulate surface mining and the bureaucracy doesn't have the right to substitute its judgment for Congress," he says.

At the same time, Heine is being disloyal to the administration by ignoring calls for reduced paperwork and bureaucracy, Drake charges.

OSM regs were created in an atmosphere of arrogance, Drake contends. He gives this example:

When OSM defined what constitutes "Best Available Technology" in strip mining, the drafters said that means any technology in existence in any part of the world.

Even if the machine or process wasn't actually available to U.S. miners because of political or patent problems, it would still be considered "best available" technology.

The regs state that the technology doesn't have to be proven effective before OSM can require its use.

Writing regs this way "is not an intellectually honest process," Drake says.

Drake was listed as No. 3 in the OSM bureaucracy and was supposed to function as Heine's confidant and aide.

"It just hasn't worked out very well," Heine told *Coal Outlook*. "He had opinions with which I didn't agree."

Heine didn't want to go into details on the policy split between the two men. But sources said Drake had been the only top OSM official privately calling for a withdrawal of the agency's regs for complete re-writing.

Drake came to his position after working in the Carter election campaign and transition team.

Drake also served two terms in the Indiana legislature, working for better reclamation laws. His seat was gerrymandered out of existance as a result, Drake says.

[From the Kingsport Times-News, Feb. 7, 1980]

FORMER RECLAMATION OFFICIAL BLASTS OSM

(By Sheryl Morris)

WASHINGTON.—A former high ranking official of the federal Office of Surface Mining has charged the agency is enforcing "incomprehensible and counter productive" reclamation regulations while buckling to pressures of "environmental extremists."

Ron Drake, former special assistant to the director of OSM, said the agency is determined to usurp the power of the states in regulating strip mining and is "without a doubt crippling the coal industry."

Agency policymakers "don't make any substantial decisions that aren't first cleared" with environmental heavyweights, such as those from the Environmental Policy Center, Drake charged.

B. V. Cooper, executive director of a Virginia coal industry group which recently waged the first successful court challenge to federal reclamation laws, said he will ask for a congressional investigation of OSM.

Spokesmen for state and national coal industry groups this week echoed the call for an inquiry.

William Kelce of the Alabama Surface Mining Reclamation Council concurred with Cooper's observation that "Drake's comments confirm OSM is staffed with abolitionists and known environmental extremists that are out to wreck the coal industry.

"Every company and state association will tell you the same thing," Kelce said, "except those afraid of OSM retaliation."

Cooper said he will help press for a full congressional investigation of OSM "because of the gravity of Mr. Drake's charges—especially since he is knowledgeable of the inside workings of OSM as the number three man there."

OSM director Walter Heine could not be reached for comment at his Washington office, nor could spokesmen of the Environmental Policy Center and Institute.

Drake said he was fired by Heine Jan. 21 because of his continued opposition to the agency's complex and voluminous" reclamation regulations. "Although I've always felt strip mining should be regulated, it should only be in a reasonable fashion," Drake said.

His efforts to give industry complaints a closer look were ultimately met with demands for his resignation, then his firing, he said.

"This isn't a matter of Ron Drake and his job. The issue is whether or not we continue to over regulate with a runaway bureaucracy that is stifling energy production without a sound environmental return."

He charged environmentalists "have had absolute access to the director, far beyond the access of industry."

Ben Lusk, head of the Mining and Reclamation Council of America, said OSM officials are upset "because one of their people is breaking ranks."

While the coal industry is eagerly pouncing on Drake's comments as vindication of their claims, Lusk indicated it could have been more a boon if the public disclosures and attention had been generated while Drake was still with OSM.

Drake is, however, bringing attention "to the fact that just about everyone at OSM has a background of environmental activism."

Some allege Heine is the "fair-haired boy" of a leading figure in the Environmental Policy Institute, who reportedly has family ties to an official in the Department of Interior—the department which oversees OSM.

Drake said he saw it demonstrated repeatedly that OSM decision makers have "a basic distrust of the states and belief that OSM knows more about regulating surface mining than they do. I think that is a false assumption."

Kelce, the Alabama industry spokesman, agreed that industry has said all along that "OSM never had any intent to let the states regulate the coal industry."

Heine was quoted in the January edition of Landmark, a coal industry publication, as saying "it would be naive for anybody to think that there is ever going to be a lot of sweetness and light between OSM and the states."

The 1977 U.S. Surface Mining Control and Reclamation Act was "built on the premise that the states are not regulating well enough," Heine said in the interview. "Therefore it is necessary to establish a federal agency and federal minimum standards to see to it there is a certain minimum level of enforcement in the country."

Lusk argued OSM was instead "establishing maximum guidelines that no state can follow. It's unlikely most states will be able to submit their own programs in time. And I don't think OSM is going to give up its bureaucracy without a fight."

Heine addressed that point in the LandMarc interview, saying OSM would withdraw to a "primarily oversight role" in states that have their permanent enforcement program approved during the next year.

Drake took the position that it would be "premature to pass judgment" whether OSM would make a sincere effort to allow state primacy in enforcement. But he warned, "I don't really foresee any substantial change in OSM's policy."

A U.S. District Court judge questioned in a recent opinion the option given to states for assuming the primary reclamation enforcement role in strip mining.

Judge Glen Williams wrote in a Jan. 3 memorandum opinion that the federal reclamation act "allows the state to elect to have its own regulatory program instead of having federal regulation, but then mandates that the state law comply in complete detail with the federal law."

"The choice that is purportedly given is no choice at all."

Williams' precedent-setting decision, expected to be appealed by the Justice Department to the U.S. Supreme Court, overturned major provisions of the federal act in Virginia. A federal spokesman said yesterday a decision could come in the next few days on the appeal.

Drake said his main concern was OSM's "addressing the means" for reclaiming strip mined land, rather than following the "intent of the act" to oversee the end result of reclamation efforts.

"The regulations just have to be modified, he said."

[From the Richmond (Va.) Times-Dispatch, Feb. 7, 1980]

U.S. Mining Official Is Fired

Roanoke.—A high-ranking U.S. Office of Surface Mining official who suggested the agency's regulations should be withdrawn and revised has been fired.

Ronald Drake, special assistant to OSM Director Walter Heine for nearly two years, told agency officials that proposed permanent regulations to enforce the 1977 Surface Mining Control and Reclamation Act went far beyond what Congress had in mind.

He criticized the regulations as too voluminous and so far beyond the intent of the act "that they were improper, uncalled for and political disaster, and not in the best interests of environmental concerns."

Surface mine operators in Virginia made similar complaints in their suit challenging the act. U.S. District Judge Glen Williams found parts of the act unconstitutional. OSM officials are appealing the decision.

Heine asked for Drake's resignation Jan. 21 and, when Drake refused to resign voluntarily, Heine fired him, The Roanoke Times & World-News has reported.

Drake said the main reason Heine gave was basic philosopical differences between them, mostly over the regulations.

"The reason given to me in writing was that my services were no longer needed," Drake said.

As an OSM official, Drake said, he kept his misgivings within the agency but now he was willing to express them publicly.

He said he thought small but vocal environmental groups—some of which were out to abolish the strip mine industry nationally—exerted an inordinate influence over the agency.

Drake and other OSM officials listened more to them than to industry spokesmen, state representatives and others, Drake said.

"I am requesting full and complete congressional hearings on Mr. Drake's charges," said B. V. Cooper, executive director of the Virginia Surface Mining and Reclamation Association Inc., which filed the suit challenging the constitutionality of the federal act.

Steve Griles, with the Virginia Department of Conservation and Economic Development, expressed surprise at Drake's dismissal.

"I'm really disappointed because he was one of the few people, I think, who understood the state's problems," Griles said.

Heine said he absolutely rejects the idea that environmental extremists have too much influence over OSM and that the matter had nothing to do with Drake's being fired.

"Well, he's obviously entitled to say anything he wants," Heine said when told of Drake's charges.

"He was hired to be my special assistant, my aide and confidante, and after a year and a half it was just clear that he had not gotten the confidence of the staff."

"I've thought of resigning any number of times," Drake said, but he felt his was the only moderating voice in OSM. "I stayed and this, of course, has been the end result.

[From the Roanoke (Va.) Times & World-News, Feb. 7, 1980]

Criticized Regulations—U.S. Official Fired From Mining Post

(By Paul Dellinger)

A high-ranking U.S. Office of Surface Mining Official who suggested the agency's regulations should be withdrawn and revised has been fired.

Ronald Drake, special assistant to OSM Director Walter Heine for nearly two years, told other top officials in the agency that its proposed permanent regulations to enforce the 1977 Surface Mining Control and Reclamation Act went far beyond what Congress had in mind.

He criticized the regulations as too voluminous and so far beyond the intent of the act "that they were improper, uncalled for and a political disaster, and not in the best interests of environmental concerns."

Surface mine operators in Virginia made similar complaints in U.S. Western District Court last year, in a suit, where parts of the federal act were found unconstitutional. OSM officials are appealing the decision.

On Jan. 21, Heine asked for Drake's resignation and, when Drake refused to resign voluntarily, fired him.

Drake said the main reason Heine gave was basic philosophical differences between them, mostly over the regulations.

"The reason given to me in writing was that my services were no longer needed," Drake said.

As an OSM official, he told the Roanoke Times & World-News, he had kept his misgivings within the agency, but now he was willing to express them publicly.

He said one of those misgivings was that small but vocal environmentalist groups—some of which were out to abolish the strip mine industry nationally—exerted an inordinate influence over the agency. Drake and other OSM officials listened more to them than to industry spokesmen, state representatives, and others, Drake said.

"I am requesting full and complete congressional hearings on Mr. Drake's charges," said B. V. Cooper, executive director of the Virginia Surface Mining and Reclamation Association Inc., which filed the suit challenging the constitutionality of the federal act.

He said operators in the association had been making the same charges for the past 2½ years, and they had been ignored by Rep. Morris Udall, D-Ariz., chairman of the House Interior Committee, and others "and now Mr. Drake is just confirming what we have been saying."

Steve Griles, with the Virginia Department of Conservation and Economic Development, expressed surprise at Drake's dismissal.

"I'm really disappointed because he was one of the few people, I think, who understood the state's problems," Griles said. OSM needed someone with the state perspective in working with coal-mining states in setting up their own programs to comply with the act, he said.

Heine said he absolutely rejects the idea that environmental extremists have too much influence over OSM, and said that matter had nothing to do with Drake's being fired.

"Well, he's obviously entitled to say anything he wants," Heine said when advised of Drake's charges. "He was hired to be my special assistant, my aide and confidante, and after a year and a half it was just clear that he had not gotten the confidence of the staff."

"Drake had held the position since April 1978.

"I've thought of resigning any number of times," he said, but he felt his was the only moderating voice in OSM. "I stayed and this, of course, has been the end result."

Drake, who now finds himself in the position of defending the surface mine industry, used to be seen as its opponent in environmental matters.

He ran for the state legislature in Indiana, where his family had been involved in coal mining for nearly 100 years and had helped organize the United Mine Workers union when it was established there.

He was elected from the coal-mining counties of Sullivan and Clay in southern Indiana, largely on an environmentalist ticket. He said his legislative career came to an end largely because the surface mine industry became vehement in its opposition to him.

He said he thinks the industry would now agree that he was on the right track at the time. But the result then was that he lost the seat he had held from 1962 to 1968.

He had been attending Indiana University law school while in the legislature, graduating in 1964. He practiced law in southern Indiana, taking many cases for citizens charging surface mine operators with illegal blasting, trespass and other offenses.

He participated in Robert Kennedy's 1968 presidential campaign in Indiana and California. In 1971, he coordinated the southeastern presidential campaign of U.S. Sen. Birch Bayh, D-Ind., working out of Georgia.

He stayed in Georgia and practiced law, and was Democratic Party chairman of his congressional district. He coordinated Bayh's southern campaign efforts in 1976 and, when Bayh withdrew, endorsed Jimmy Carter and joined that campaign.

His appointment to OSM came after that.

"I find myself in a rather uncomfortable position," he said of his defense of the industry. "The issue has been turned on its head for whatever reason."

Drake said he began finding himself in disfavor within the agency when he pushed for some of the same things that were in Senate Bill 1403, which U.S. Sen. John Warner, R-Va., took under his wing. The bill would have extended the deadline for states to submit their proposed permanent regulatory programs to OSM for approval.

An amendment to cancel OSM's implementing regulations and let the state come up with its own rules under the federal act, was incorporated in the bill at the urging of West Virginia Gov. John D. Rockefeller IV. The Senate passed it Sept. 11 by a 68-26 vote; it is pending in the House.

Drake said he felt that bill was a last resort for coal states because they had been unable to get a sympathetic ear from OSM. He termed it a political process to right bureaucratic wrongs and said he agreed with it.

When the amendment came forth, he said, he stated at a senior level staff meeting of OSM that the agency should withdraw its regulations and revise them. He said he felt complaints from the industry and from congressional critics were justified, and that was the only way the agency could deal with their objections.

"That was rejected out of hand by the director," Drake said. "And from that time forward my position with the agency became almost untenable."

He said he was left out of any agency policy decisions and got no regular assignments from that time until his dismissal.

Drake referred specifically to a Washington-based lobbying group called the Environmental Policy Center, which, he said, had an inordinate influence on OSM. "I think that the environmental group which has had an influence over the agency has an abolitionist leaning (toward strip mining)," he said.

The agency listens to such groups with a more sympathetic ear than to the industry or other parts of its constituency, he said.

"My position has not changed," he said. "If the coal operator is going to strip, he should put the land back in as good or better condition as he found it."

But Drake said the agency should establish the requirements for reclamation and then let the operator achieve them, rather than forcing voluminous requirements that might not achieve them on the operator "because I don't think that expertise exists within the agency."

He said he told others in OSM that the agency had gone far beyond the intent of Congress when the act was passed, and that the result could be a political disaster not only for the agency but the Carter administration too.

Mr. WARNER. On March 7, Senator JACKSON responded to my letter, indicating that he was asking the Director of OSM to report on the policy matters I raised.

I ask unanimous consent that Senator JACKSON's letter of March 7 to me, with enclosures, be printed in the RECORD at this point.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C., March 7, 1980.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WARNER: Thank you for your letter of February 15, regarding the dismissal of Ronald Drake from the employ of the Office of Surface Mining—Reclamation and Enforcement.

I have asked the Director of that Office to supply me with an explanation of Mr. Drake's departure. Enclosed is a copy of my letter. I will be happy to share his response with you.

Sincerely yours,
HENRY M. JACKSON,
Chairman.

COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C., March 7, 1980.

Mr. WALTER N. HEINE,
Director, Office of Surface Mining—Reclamation and Enforcement, Department of the Interior, Washington, D.C.

DEAR MR. HEINE: Enclosed is a letter I received from Senator John Warner asking the Committee on Energy and Natural Resources to hold hearings on the dismissal of Ronald Drake from the Office of Surface Mining—Reclamation and Enforcement.

It has always been Committee policy not to hold hearings on personnel matters. However, I believe that the policy issues raised by Senator Warner in his letter should be addressed.

Please explain the circumstances of Mr. Drake's departure from the employ of the Office of Surface Mining.

Sincerely yours,
HENRY M. JACKSON,
Chairman.

Mr. WARNER. Believing that it was imperative to our Nation's energy balance to investigate in a timely manner, by Senate Energy Committee oversight hearings, the charges raised against OSM, I renewed my request for such hearings to Senator JACKSON in a letter dated March 20, 1980.

I ask unanimous consent that my March 20 letter to Senator JACKSON, with enclosures, be printed at this point in the RECORD.

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

UNITED STATES SENATE,
Washington, D.C. March 20, 1980.

Hon. HENRY M. JACKSON,
Chairman, Energy and Natural Resources Committee, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your response to my letter of February 15 concerning the serious policy issues raised by Mr. Ronald Drake following his dismissal from the Interior Department's Office of Surface Mining (OSM). I appreciate your asking the OSM Director to report on the policy matters I discussed.

Let me emphasize, however, that Mr. Drake's actual separation from OSM is not at issue. As I noted in my February 15 letter, Mr. Drake's dismissal seems to have been within the authority of the Department of the Interior. I wholly concur with the policy of your Committee not to hold hearings on personnel matters, and it was not my intention to suggest that Mr. Drake's dismissal should be made a subject of the Committee's oversight hearings. I regret any misunderstanding on this score which may have occurred.

What is at issue, instead, is the clear policy significance of Mr. Drake's allegations that OSM's implementation of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) has been unbalanced, counterproductive, and against the interests of both environmental and energy production interests.

It is this critical policy question, rather than Mr. Drake's dismissal, which I wished your Committee to address in a timely oversight hearing—a request which I now respectfully renew.

In particular, I am deeply concerned that OSM's rulemaking actions may have lacked the balance between coal production and environmental protection called for in P.L. 95-87, and thus may have stifled energy production without a sound environmental return in clear contradiction of Congressional intent. Mr. Drake's statements, from his perspective as former Special Assistant to the OSM Director, have served to reinforce that concern.

Further, Mr. Drake has alleged that OSM's rulemaking activities have been dominated by environmental extremists, and that OSM has systematically and deliberately ignored input to the rulemaking process offered by representatives of the coal industry subject to OSM regulations.

While such allegations have been made before by persons within the coal industry, never to my knowledge have they been made by an OSM official who, by virtue of his position while with the agency, had intimate knowledge of OSM's policy-making process.

If Mr. Drake's allegations should prove to be well-founded, it would mean that a program vital to this nation's goal of energy independence is being subverted and the will of Congress is being ignored. It would be unconscionable if a federal agency were allowed to thwart the production of our most abundant domestic energy resource—coal.

A thorough review of these charges by your Committee would be a proper and, in my view, a necessary exercise of its oversight responsibilities. I cannot doubt that OSM and all other interested parties—including environmental groups, industry leaders, the Administration, and Mr. Drake—would warmly welcome the opportunity of appearing before your Committee, in order to air these policy issues openly, remove the cloud of suspicion, and determine the true facts.

As you are undoubtedly aware, the House Committee on Interior and Insular Affairs, after receiving a similar request from eleven Congressmen, has scheduled hearings on this matter for March 27 and 28. Enclosed are copies of letters to Chairman Morris Udall, dated February 25, 1980, and his response dated March 11. It is my hope that the Senate will be accorded a similar opportunity.

Accordingly, Mr. Chairman, without contesting in any way the Administration's authority to dismiss Mr. Drake for any reason it sees fit, I respectfully renew my request that the substance of Mr. Drake's allegations about OSM be examined in timely fashion during your Committee's oversight hearings on P.L. 95-87.

Though there is no need to dwell on Mr. Drake's separation as an OSM personnel management issue, I believe there is an obligation to examine the validity of the serious questions Mr. Drake's statements have raised about OSM's subtantive policy and procedure.

Sincerely,

JOHN W. WARNER.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., February 25, 1980.

Hon. MORRIS K. UDALL,
Chairman, Subcommittee on Energy and the Environment, Cannon House Office Building, Washington, D.C.

DEAR MO: As you may know, there has been considerable controversy surrounding the recent firing of Mr. Ron Drake with the Office of Surface Mining (OSM). The former special assistant to the Director of OSM, Mr. Drake has made some very serious accusations concerning the manner in which OSM functions. For example, Mr. Drake alleges that Mr. Walter Heine has managed OSM in a manner that can only be characterized as one of "environmental extremism." Mr. Drake was also quoted as saying that public involvement in drafting surface mining regulations "has been form without substance."

This is an extremely serious matter which we, the undersigned, believe warrants an investigation by the Energy and Environment Subcommittee. Since you have previously indicated your commitment to hold oversight hearings annually over the implementation of the Surface Mining Control and Reclamation Act, we believe that Mr. Drake should be afforded an opportunity to testify at that time. Perhaps it would be timely if Mr. Drake could be available to testify at the upcoming OSM FY '81 authorization hearing.

We look forward to your early response to our request.

Sincerely,

Dan Marriott, Dick Cheney, Manuel Lujan, Nick Rahall, Steve Symms, Jerry Huckaby, Dawson Mathis, Mickey Edwards, Austin J. Murphy, Ron Marlenee, Doug Bereuter.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., March 11, 1980.

Hon. STEVE SYMMS,
Rayburn House Office Building, Washington, D.C.

DEAR STEVE: This is in response to your request of February 25 that the Subcommittee on Energy and the Environment undertake an investigation of charges raised by Mr. Ron Drake regarding the Office of Surface Mining (OSM). You indicated that you believe Mr. Drake should be given an opportunity to testify at the Subcommittee's upcoming oversight hearings on the implementation of the Surface Mining Control and Reclamation Act.

Because the charges made by Mr. Drake referred to in your letter were of a very general nature, I asked a member of the majority staff to determine the basis of Mr. Drake's allegations. As you may know, two members of the minority staff were consulted about the possibility of a preliminary interview with Mr. Drake by staff and/or designated Members under groundrules of confidentiality agreed to by all parties. I am informed that a member of the minority staff has been told by Mr. Drake subsequent to these staff conversations that Mr. Drake is not interested in any preliminary discussions but seeks access to a public forum only.

Without knowing the substance of Mr. Drake's charges I am unable to determine whether this case involves allegations of a substantive nature meriting formal inquiry or strictly a personnel issue of little relevance to our oversight responsibilities. In any event, as is my custom in response to Member requests, I will schedule Mr. Drake to appear before the Subcommittee.

Sincerely,

MORRIS K. UDALL,
Chairman.

OSM INFLUENCED MOST BY SMALL EXTREMIST GROUPS, SAYS FORMER NO. 3 MAN

You either agree with Walter Heine or you don't work for OSM. That's why Ron Drake, the number three man in the Office of Surface Mining, was fired last month.

Drake, who was supposed to be Heine's confidant and first aide, got the OSM job after working in the Carter campaign and on the transition team. He had served in the Indiana legislature and was responsible for many of the reclamation laws in that state.

Here is what he told our Washington correspondent:

"From the time the regs were proposed, I felt that they had gone far beyond the Act, that they were too voluminous, almost incomprehensible, and in many instances, punitive.

"It's my perception that the agency has been in the thrall of small, extremist environmental groups. That in turn, has impacted the Director's decisions.

"Comments made by the states and the industry do not get the consideration to which they are entitled.

"On the other hand, others have inordinate access to the Director, and as a result of that, to the agency. They impact the direction of governmental regulations far beyond their numbers, their investment, and can skew the regulations to extreme positions.

"After all, if you have not lived in the coal regions of the country, and directly impacted the production and utilization of coal, and know the impact that that has on the society—and if you haven't lived in the struggle to try to get good and reasonable regulation, and if you haven't met a payroll, and you don't understand what it is to come up on Friday and be concerned whether you can make that payroll, and where your markets are, and where your cash flow is—then why should you be allowed to be the last voice, and get the last consideration given, before the regulations are finalized."

"During my experience with OSM, the Environmental Policy Center, under the direction of Louise Dunlap Browder, has had such an inordinate influence over the Director, and has had such pervasive impact through the various levels of the agency, that it has been contrary to good government. It has skewed the regulations, and it has harmed a cause that I had dedicated 20 years of my life to—the issue of reasonable and good reclamation and regulation. I'll put that up against any of these Johnny-Come-Latelies, who now substitute their judgment for mine, and for yours, and for labor's."

"My primary objection to OSM has been that a small group of people—the Environmental Policy Center—are extreme evironmentalists, whose judgments are substituted for a Gov. Rockefeller, whose career I have followed and observed all through the years as he involved himself first in the call for abolition of surface mining to where he has arrived today.

"I think the agency was started off with the leadership having been persuaded that you can't trust the states. When you consider the expertise the states have in coal mining, one can only wonder why Washington is the only repository of wisdom, particulary in the regulation of strip mining. It definitely is not.

"I do not think the bureaucracy has the right to substitute its judgment for a determination that has been made by the legislative process."

"Consistently, when regulations were discussed, or when any major decision of the agency was discussed, almost invariably the question arose in those staff meetings, what will Louise think? And we didn't have to put a last name on her to know who that referred to."

"I never really felt what Louise thought was the most important issue. I thought the most important issue was how would the regulations work in W.Va.? How will they work for Gov. Rockefeller? How will it work for Gov. Carroll in Ky.? Or how will it work for Gov. Hershler in Wyoming? Those were the issues I felt to be the most important.

"As a result of the Rockefeller amendment in S. 1403, there has been a change in OSM. I would call it primarily one of backing and filling and salvaging what you can, specifically, once S. 1403 passed the Senate, it was less than a week later at a staff meeting I was reminded very much of the Watergate process: how can we contain this, how do we best deal with it, how do we give the appearance of cooperating without giving away what we believe is right?"

"I've been surprised to see that there has consistently been a denial by the Director that S. 1403 had any impact at all. That's certainly an error."

Drake said that in that meeting after S. 1403 was passed by the Senate, he called for a complete withdrawal of the regulations for rewriting. This is when his downfall began, and eventually lead to his firing.

What was Heine's response to Drake when he called for a withdrawal of the regulations?

"Well it struck a sudden silence to begin with, his face just totally fell, the issue was glossed over, they merely returned then to the process of how do we contain it, and how do we deal with it."

"To a great extent within the agency there has been what I call a bunker mentality—it's we're right, I'm O.K., you're O.K.—and it's all those people out there who are raising the objections. Who just don't understand. And my position has been that those people out there are primarily the ones who do understand."

Officially, Drake was fired because Heine said he had failed to gain acceptance within the agency. Heine asked him to resign. Drake was not willing to resign, so he was fired.

How does Heine see OSM's future role?

"Past experience indicates that the agency has primarily felt it cannot trust the states." "There is an indication that contrary to what the Director said in his interview in LandMarc magazine that OSM does not appear to have the intent of fading away into the sunset."

"I think that if you watch closely now, the impact of S. 1403 has been so pervasive within the agency that there is a retrenchment going on within the leadership and the process itself."

S. 1403 is a sword hanging over their heads. It's one way to keep them responsive. If it were to go away, I don't know what would happen. I think that at this point the OSM leadership is confused, and they do not have a well thought out direction in which to go.

"I think the state regulatory agencies have felt themselves imposed upon and pressed from the very commencement of the program because of the arrogance they found within the agency (OSM)."

"Finally, I think that the states concluded they could only get the best of a bad deal."

"In many instances, the states have tired of the battle and have decided in fact that the only solution at this time is to substantially clone OSM's regulations."

"I do not believe that 1403 would ever have come into existence, would never have become an issue, had OSM been responsive to the authorities and the elected officials of the coal producing states."

"I believe S. 1403 came about as a political response to an out of control bureaucracy, an out of control agency, that would not respond in any other way. They would go to oversight hearings and be dressed down . . . and then walk away and shake their heads and say 'well that's over', and then we go on. Instead of really addressing the problems: Are we wrong? Are we going in the wrong direction? Are we on the wrong path? Consistently the attitude has been, why are they picking on me? What's wrong with them? Not, that they might have made a mistake."

Mr. WARNER. As of this date, I have not received a response to my renewed request.

As I noted in my letter, the House, upon receiving a similar request for hearings on this matter, promptly scheduled oversight hearings—which begin today.

Mr. President, 9 months have passed since the Senate, through oversight hearings, has had the opportunity to examine the implementation of Public Law 95-87 by OSM.

Much has happened in the last 9 months, including Senator HATFIELD's disclosures of today, to cast a cloud of doubt and suspicion over OSM's operations.

The events of the past 9 months bring several critical questions sharply into focus:

First. Will one agency's policies and actions be allowed to thwart the will of Congress?

Second. Will an agency, through unilateral, questionable and arbitrary action, be allowed to bring economic hardship upon the people of the United States?

Third. Will an agency, through its policy and action, be allowed to subvert the energy goals of this Nation?

These questions will only be answered through the investigatory process of timely oversight hearings.

I renew my request for such hearings. I hope that my colleagues will join with me in my request.

Without in any way prejudicing the issue, Mr. President, it is my firm conviction that the Senate needs and deserves the opportunity for a full, fair and formal hearing to examine these numerous and serious allegations.

Again, I wish to commend my colleague from Oregon and yield the floor to Mr. HATFIELD.

Mr. HATFIELD. Mr. President, I merely wish to express my appreciation to the Senator from Virginia (Mr. WARNER) who has been very much in the forefront of this whole battle on the issue as well as on this matter relating to the lobbying activities of the Office of Surface Mining.

He has indicated his desire, as I mentioned in my comments, to have oversight hearings, and I assure him of my cooperation in seeking out that because I do believe this is one of those matters that should be clearly investigated and clearly assessed before it proliferates in other agencies where I am sure it does exist to some degree.

If we can bring into focus one such flagrant violation it may call the dogs off, so to speak, on this kind of activity in other agencies.

I think especially in a time when we are reducing budgets and cutting down programs we should make sure that the investments in those agencies, in the personnel, the materials, and programs are bringing the greatest returns to the taxpayers who are paying the bill.

I do feel this kind of activity is not only in direct violation to law but it is not giving the best return on the tax dollar.

Mr. WARNER. I thank my colleague for those remarks, and I also wish to mention that there are literally thousands of people out of work today as a consequence of some of the very rulings that are the subject of this inquiry.

I hope that this can be addressed in a most expeditious manner by the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond 10 minutes and that Senators may speak therein.

The PRESIDING OFFICER (Mr. METZENBAUM). Without objection, it is so ordered.

The PRESIDING OFFICER. Is there further morning business?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ENERGY—THE DECADE AHEAD

Mr. HEFLIN. Mr. President, a friend of mine, Robert E. Strain, of Birmingham, who is connected with the United States Steel Corp., recently made a statement before the Alabama congressional delegation on the subject of energy—the decade ahead.

Bob Strain is an old friend. We played football together in college. I ask unanimous consent that his remarks be printed in the RECORD.

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

ENERGY—THE DECADE AHEAD

Few things are more vital to the future well-being of our nation than those revolving around sources of energy. And none, perhaps, is more complicated: Where to get it? What sources to develop? How to pay for the research and the hardware to get it?

The task is clearly enormous. It is predicted that by 1990, the nation will need more than 450,000 new oil and gas wells. More than 20 new refineries will need to be built. More than 200 new large coal mines will have to be opened. Twenty-seven hundred unit trains will be required to haul the coal, along with 30 uranium mining and milling complexes and 17 synthetic fuel plants.

The capital requirements for these new facilities alone, without allowing for inflation, may amount to roughly $30 billion a year over the next ten years, which will probably more than double the energy industry's annual investment rate of the past ten years.

If the United States is to maintain a strong and healthy economy and provide for America's future needs so that life styles remain a matter of choice and not limited by the unavailability of energy, heavy investments will be required.

Even so, after two years of debate and compromise, our government has still fallen short of adopting a clear and comprehensive national energy policy that will make maximum use of this country's abundant energy reserves and lessen the dangerous dependence on unstable foreign sources of supply.

The problem isn't that there is not enough energy available; there is, when all the forms of energy are considered. Part of the problem is to get it into forms people can use, and to get it to them economically.

Implicit in the background of energy use and resource outlook are five major requirements:

(1) Unnecessary and wasteful use of energy must be reduced and energy-use efficiency must be improved.

(2) since the nation continues to rely heavily on oil and gas, it must explore, develop and produce domestic sources of petroleum and natural gas and synthetic fuels to avoid an even more precarious position than now exists.

(3) Use of oil, gas and coal for production of chemicals, plastics, synthetics and pharmaceuticals.

(4) The use of coal and nuclear energy must be increased.

(5) New forms and sources of energy must be developed.

With reference to these requirements, energy consumption has already been reduced by the equivalent of nearly 7 million barrels of oil per day. By 1990, conservation efforts are projected to be achieving a demand reduction equivalent to 17 million barrels per days, or a 25% reduction.

While conservation efforts must continue, there must be development of existing energy sources and a search for new ones.

Coal, for example, is our country's most abundant fossil fuel. More than half the coal deposits in the non-Communist world lie within U.S. borders. An estimated 1 trillion, five hundred billion tons of coal—of which more than 425 billion tons are believed to be economically recoverable with today's technology. That's enough coal to last us for 400 years, even if coal consumption were to double over current use. The Administration's proposed energy program calls for greater emphasis on the use of coal, but little will be done until capital is invested to make it happen, and building new coal facilities already is very costly.

But, here again, there are significant impediments to boosting coal production that go beyond the massive dollars involved. For instance, current air quality standards bar the use of millions of tons of coal, even though there is a strong possibility that environmental rules could be eased with no adverse effect on public health. A major deterrent to the mining and burning of coal is the Clean Air Act and its 1977 amendments which under the Environmental Protection Agency has issued new Source Performance Standards. These standards require, among other things, reduction in sulfur dioxide emissions regardless of the sulfur content of the coal burned. To meet the standard, every new coal-burning electric generating plant fueled by unrefined coal will require "scrubbers"—to remove sulfur from smokestack emissions—adding an estimated 25 per cent to the cost of building the plant, plus a significant amount to operating costs. Such a requirement could serve to eliminate coal as a reasonably priced source of raw energy to the detriment of Alabama and the nation. At the same time, the federal government could—but hasn't—stepped up the leasing of low sulfur coal fields in the Western states.

Government policies and legislation that hinder use of existing sources of fuel and the exploration and development of new sources can only result in higher energy costs. Only by stimulating investment in our domestic energy resources—coal, oil, natural gas, uranium, biomass and other sources—can energy supplies be increased, and the energy costs reduced.

Enactment of legislative proposals—such as Senator Kennedy's bill, S. 1246—to prohibit or restrict large oil companies from acquiring other firms, in or out of the energy business, would seriously complicate the solution of national energy problems. Such legislation would discourage needed investment in the petroleum industry and would hold back efforts to increase domestic energy production, to speed up development of synthetic and alternate fuels and to reduce the dangerous U. S. overdependence on foreign oil imports.

Solar energy is an alternate energy source for some applications in certain parts of the country and may be economically competitive for domestic hot water and air heating in those regions. This, too, may be many years away, but efforts should be directed to the earliest commercialization of solar energy as an alternate fuel.

AIA knows that you gentlemen support greater reliance on coal, exploration for oil and gas, production of synthetic fuels and the development of new forms and sources.

We are encouraged by President Carter's recent statement endorsing nuclear power, which he called "an option we must keep open," and by recent votes in the Congress favoring nuclear power, especially the overwhelming rejection of efforts to stop the construction and operation of nuclear generating plants. We appreciate the support of nuclear power by members of our Alabama Congressional Delegation.

A national energy policy and program should include those elements that would ensure a viable investor-owned electric utility industry capable of reliably responding to the requirements of all users of electrical energy and utilizing domestic fuel sources to the maximum extent practicable. Primary among such elements should be:

(1) Improving generation and transmission efficiencies.

(2) Encouraging development of efficient consumption patterns between utilities and industry and between industries.

(3) Reducing regulatory lag.

(4) Improving environmental programs to expedite new utility plant siting and licensing procedures.

Electric power rate structures should yield an equitable and adequate return from all customer service classifications, based on realistic "cost of service" determination for each classification rather than flat, inverted or incremental rates. Systems such as "lifeline" that are based on social and political considerations are not appropriate in the ratemaking area.

The establishment of industry/utility steam-power generation (co-generation) plants should be encouraged. One means would be the elimination of unnecessarily restrictive regulations that inhibit this mechanism for potentially more efficient service of industrial, commercial and residential energy needs.

More than one-third of the nation's energy consumption—37%—is devoted to residential and private auto use. Industry uses 41% of the total, providing jobs for the nation's work force, while 14% goes to commercial use and another 7% to other kinds of transportation. While these are national percentages, they could just as easily apply to Alabama.

When we as business representatives of Alabama observe our government's continuing lack of a clear and comprehensive energy policy, it is as if Congress has failed to see that the main road to solving the energy problems lies with action by private enterprise rather than by legislation. The energy program that was adopted will essentially extend government further into the workings of the energy industry. This will continue to frustrate and hamstring private enterprise, which is the one segment of our society that could do the most to ease the problem.

Industry of Alabama is already addressing itself to energy conservation. New and more technically advanced facilities are engineered for the greatest energy efficiency. Computers provide efficient use of electricity and fuel. Training programs have long been in use on energy efficiency. Energy saving ideas of employees are solicited. Energy conservation goals are established. Energy audits are conducted to identify practices and facilities where conservation can be achieved. But conservation alone is not enough if business and industry meets its obligations to its employees and to the public.

We believe that the companion roles of the private sector and the government can be performed most efficiently, and in the best interest of all, by allowing energy supply and demand to be established in the market place.

In recent years, government regulators have relaxed controls somewhat on oil products, but these, too, remain—largely on gasoline—as an outgrowth of the Arab oil embargo. These remaining controls should be lifted, as controls have a way of distorting markets and prices, no matter what the product.

The benefits of lifting controls on crude oil and petroleum products will be largely negated if punitive, excessive taxes are imposed on oil companies and other energy-producing firms which are already heavily taxed. Such taxation would deprive the petroleum industry of the capital needed to generate the level of domestic investment required for the U.S. to significantly reduce its reliance on the OPEC oil producing nations. It would also slow down efforts to develop more coal, uranium and other sources of energy within the U.S.

Yet, in view of that which government has done, there is something that clearly it should not have done: adopt the concept of incremental pricing of natural gas.

Under incremental pricing, large users pay more not only for their total consumption of the fuel, but more per unit of consumption than do smaller users. In effect, incremental pricing artificially lowers natural gas prices to groups of residential, small industrial and commercial gas users served through interstate pipeline systems by providing them with a subsidy at the expense of larger industrial users.

The Natural Gas Policy Act of 1978 provides for the gradual removal of federal price controls on natural gas. However, the political price of achieving decontrol was the inclusion of the concept of incremental pricing. Under this concept, the most increases resulting from the removal of these price controls must be passed on to the industrial users until their gas cost equals the price of fuel oil. The increased revenues resulting from incremental pricing are deducted from the rates charged residential and commercial customers.

The incremental pricing provisions of the Act take effect in two phases. The Phase I program started January 1, 1980. Pursuant to Phase I, the incremental price ceiling for interstate natural gas for certain large industrial boilers is pegged to the equivalent cost of No. 6 high sulphur fuel oil. The scope of Phase II, which will begin November 1, 1980, is indefinite, but the proposed Phase II regulations issued by the Federal Energy Regulatory Commission (FERC) include almost all industrial uses of natural gas. Also under the Phase II regulations, the incremental price ceiling for an industry would be based on the price of No. 2 fuel oil unless that industry has the installed capability of using No. 6 fuel oil. The final Phase II regulations must be issued by FERC by May 9, 1980.

The implementation of the incremental pricing program has caused confusion among industrial gas users and has left those users with no meaningful basis for future planning. Under incremental pricing the gas prices to industrial users will fluctuate monthly in response to changes in alternate fuel prices as fixed by the Department of Energy. Indeed, the prospect of such constantly changing natural gas prices, combined with the uncertainty of gas supply and the burdensome administrative requirements of incremental pricing, may force many industrial users to convert from natural gas to fuel oil. The result, of course, would be that the portion of the gas suppliers' fixed costs that are currently being borne by industrial customers will be shifted to other customers with a corresponding increase in residential gas rates and a further switch to imported fuel oil—the very result Congress wanted to avoid.

The administrative complexities of the incremental pricing program have created a nightmare for pipelines, distributors and industrial users alike. The orders implementing Phase I (nearly 300 pages long) require complicated surcharge reporting requirements, billing and rebilling procedures, special meter reading dates, expensive and unworkable submetering requirements, complicated bill calculation procedures and an intricate data collection process. As the effects of incremental pricing drive industrial users from natural gas, the substantial administrative expense involved in the effort to comply with these regulations will be increasingly borne by other customers. And for what purpose? The immediate run up in the cost of natural gas to industrial users will result in an increase in the cost of products produced by those users. The ultimate irony of the incremental pricing program, therefore, is that it will be paid for by all Americans in the form of higher prices for consumer goods manufactured by industries using incrementally priced natural gas. Furthermore, the higher gas costs associated with the production of many goods could significantly detract from their competitiveness in the marketplace.

Finally, under the proposed incremental pricing regulations, those consumers exempted from the incremental surcharge would not be paying the true cost of natural gas, thereby discouraging the national efforts for conservation of resources.

In short, incremental pricing offers much that is bad for America, and little that is good, when viewed in a national context.

Fortunately, there are two solutions open to the Congress to the incremental pricing problem. First, H.R. 5862 would repeal the incremental pricing provisions of the Natural Gas Policy Act of 1978. If this bill is passed, both Phase I and Phase II of the incremental pricing provisions would be removed. Secondly, the regulations covering Phase II of the incremental pricing provisions must be filed with the Congress not later than May 9, 1980 and within 30 days after the regulations are filed with Congress if either house should adopt a resolution vetoing the Phase II regulations, they will not go into effect. Since the Phase II regulations affect almost all industrial users of gas, it is imperative that a resolution vetoing Phase II be adopted.

Without doubt, more technological innovations will occur in the future, with consequent improvements in productivity, provided energy supplies remain adequate and competitively priced on world markets. Gains in output per worker and an expanding labor market (one study shows that at least 13 million more workers in the next decade) mean that the economy must continue to expand at a substantial rate if jobs are to be available to those seeking and needing work. The economic growth needed by the United States in coming years can be achieved only with adequate and reasonably priced energy.

With all that government can, could and should do, no one questions that it has a role to play in addressing America's energy problems. But the actions government should take are those which get it out of the energy business by removing controls which have already been imposed by government. Government can best serve the people of the nation if it first realizes that it is private enterprise, competing within our economic structure, that is best suited in the long run to solve our energy dilemma. And it is well past time for government to recognize this fact.

We are confident that American ingenuity can provide solutions to the critical energy crisis which the United States faces today, but it can do so if, and only if, politics and expediency give way to economically and environmentally sound decisions.

SMALL BUSINESS 1980

Mr. HEFLIN. Mr. President, I ask unanimous consent that a statement given before the Alabama congressional delegation by Mr. Frank L. Mason, of the Mason Corp., on the subject of small business in the year 1980 be printed in the RECORD.

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

SMALL BUSINESS 1980

In recent months, small business has united across the country and built a new awareness in Washington of its impact on the national economy. The time is right for the voice of small business to be heard and to influence the expansion of the Free Enterprise System for a healthier America.

There are 14 million businesses in the U.S. and 13.4 are small, including nearly three million farms. Together, they provide employment for 58 percent of the labor force and account for nearly 50 percent of the gross business product. They are an important source of the major innovations that create new markets and improve our quality of life. They have spurred the economy and played a vital role in the economic backbone of our country. Possibly, small business is America's most plentiful natural resource when we consider the amount of raw talent, innovative ideas and concentrated effort it has provided. As a resource and an institution, small business deserves not only our attention, but also our care and respect.

In April 1978, the President called for a White House Conference on Small Business to identify the many special problems facing small business and design a course of action to correct these problems. The initial stages of the conference began with a series of 57 open forums and regional conferences held throughout the country. The culmination of these various meetings, along with appointments by Governors and members of Congress, was the selection of more than 2,000 delegates and the staging of the White House Conference on Small Business held in Washington, D.C. on January 13–17, 1980. During the conference, delegates deliberated issues and prepared a report recommending policies that will significantly influence the future of business in America.

Some of the major areas of concern included: Capital Formation and Retention; Regulations and Paperwork; Innovation and Technology; Federal Economic Policy and Governmental Programs; and Inflation.

In concurrence with the White House Conference on Small Business, Associated Industries of Alabama has studied the policy recommendations prepared at the conference and have elected to adopt and support the following fifteen (15) positions:

(1) Replace the present corporate and individual income tax schedules with more graduated rate scales, specifying the graduated corporate tax scale up to $50,000.

(2) Adopt a simplified accelerated capital cost recovery system to replace the present complex Asset Depreciation Range (ADR) regulations, with provisions such as (A) immediately expensing capital costs less than a specified amount (B) immediately expensing government mandated capital costs, and (C) the creation of a maximum annual benefit that may be derived from the system.

(3) Balance the Federal Budget by statute in Fiscal Year 1981 by limiting total Federal spending to a percentage of the GNP, commencing with 20 percent and declining to 15 percent.

(4) Revise estate tax laws to ease the tax burden on family-owned businesses and encourage the continuity of family ownership.

(5) Congress shall exercise its oversight function with the assistance of the General Accounting Office, instituting sunset reviews of all laws, regulations, and agencies, to ensure that none exceeds original congressional intent. Sunset reviews, in an appropriate time frame (not less than every five years) should include economic impact analysis and proposed agency budget reductions, leading to reenactment of each agency's enabling legislation to permit its continued existence, or to reduce its size and cost.

(a) Establish a Regulatory Review Board composed of representatives from the Executive Branch, Congress and small business owners, with responsibility for impact statements and cost controls.

(b) Congress shall exercise line-item veto over regulations within a specified time through congressional oversight committees, with one-house floor vote.

(6) Support and urge passage of S. 1860, the Small Business Innovation Act of 1979, and companion bill H.R. 5607, as presently drafted with flexibility for minor future amendments, covering: small business research and development set-asides; small business innovation and research programs (as already encompassed by H.R. 5126 and S. 1074); patents, retention; amendments to the Internal Revenue Code; and regulatory flexibility.

(7) Provide for a tax credit for initial investment in a small business, and permit deferral of taxes for roll-overs of investments affecting small businesses.

(8) Reform the Social Security System by including, where constitutionally possible, all public and private sector employees as contributors and more closely tie benefits to contributions to move the system toward acturial soundness. Limit benefits to the original old-age and survivors benefits. Freeze the tax base and tax rate at the January 1980 level. Eliminate double dipping.

(9) Provide tax incentives in the form of a new security called a Small Business Participating Debenture (SBPD) to provide a source of capital for small businesses.

(10) The Office of Advocacy of the Small Business Administration must be maintained, reinforced and expanded so that activity be not less than 5 percent of the SBA salary and expense budget. The legislative mission of Advocacy must be considered the number one priority of SBA and the Office of Advocacy. The independence of that function of the Office of Advocacy must be protected so that it may continue to have the confidence of the small business community. SBA's Advocacy budget should be devoted to economic research and analysis as well as, small business advocacy. Small business advocates, under the direct supervision of the SBA Office of Advocacy, shall be assigned to OMB, Federal Reserve Board, Treasury, International Trade Policy Committee and other regulatory agencies.

(11) Small business should be eligible for magistrate review of agency civil penalties, and reimbursed for court costs, reasonable attorney's fees, and damages from administrative action, if successful in civil disputes with the Federal Government, including IRS.

(12) Revise minimum wage standards by freezing standards in January 1980 levels and establishing a two-tier minimum wage by exempting teenagers, seasonal workers and part-time workers.

(13) Require that all government agencies which develop fiscal, monetary, legislative and regulatory policies/practices shall submit small business "economic impact" statements that require the regulatory agencies to identify the anticipated benefits and to justify the costs of federal regulatory requirements to small business. In addition,

all regulatory policies shall be subject to sunset provisions to be reviewed every five (5) years in order to insure that only cost effective regulations shall be maintained and retained in the future.

(14) Repeal the Davis-Bacon Act.

(15) Provide greater incentives for savings and investments by eliminating income tax on investments and interest income up to $10,000.

Smaller companies, like the larger ones, cannot make notable progress if economic and political conditions are unfavorable to business as a whole. Therefore, it is imperative that elected representatives develop an ongoing effort for an environment conducive to the continued good health of the private competitive system, of individual initiative and freedom.

FRANKING—AMENDMENT OF REGULATIONS

Mr. HEFLIN. Mr. President, a "Dear Colleague" letter dated March 26, 1980, was sent out over the signatures of the chairman and vice chairman of the Select Committee on Ethics to each Member of the body. This letter discusses a problem concerning the franking of mass mailings and is of particular importance to Members who are candidates for reelection this year. To insure that each Member is informed to the contents of the letter and the revised franking regulations, I want to read it into the RECORD at this time. The letter is as follows:

U.S. SENATE,
SELECT COMMITTEE ON ETHICS,
Washington, D.C., March 26, 1980.

DEAR COLLEAGUE: The Select Committee on Ethics has the responsibility for the administration of the Franking statute, 39 USC 3210 *et seq.*, and Senate Rule 48.1, which imposes a 60 day moratorium upon the use of the frank by candidates for purposes of a mass mailing prior to an action.

Chapter Four, paragraph 7, p. 15 of the Regulations Governing the Use of the Mailing Frank promulgated June 26, 1979, states in effect that a candidate who delivers material to the Senate Services Department for preparation more than 64 days prior to an election will be deemed to have complied with Rule 48.1. This was predicated upon the supposition that four days was an adequate time for the Service Department to complete its work and to make delivery to the Postal Service before the 60 days deadline.

On March 14, 1980, the Service Department advised the Committee that it was faced with a 22 working day backlog of requests for preparation of mass mailings, some of which were subject to the Rule 48.1 moratorium, and that the situation cast doubt upon its capacity to assure its users that their work orders could be completed in time for delivery to the Postal Service prior to the sixty day deadline.

Accordingly, effective Friday, March 21, 1980, paragraph 7 of the regulations have been amended to provide as follows:

"No mass mailings in behalf of any Member who is a candidate for re-election may be sent out under his or her frank unless such mailing is delivered to a postal facility more than 60 days prior to the date of a primary, its equivalent, or a general or special election."

It is incumbent upon each Member who is a candidate to ascertain from the Senate Service Department what its workload is and how many days in advance of printing, delivery of the material must be made and how many pieces it can prepare for timely delivery to the Postal Service as the Service Department is not authorized to deliver all or any part of a printing after expiration of the 60 day deadline.

Since the Ethics Committee does not have jurisdiction over the operation of the Service Department, additional questions, if any, should be directed to the Office of the Sergeant at Arms or the Committee on Rules and Administration.

Sincerely yours,

HOWELL HEFLIN.
MALCOLM WALLOP.

Mr. President, we enclosed with the letter a number of interpretative rulings which are related to the problem and I ask unanimous consent that the attachments to the letter be printed in the RECORD.

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

INTERPRETATIVE RULING NO. 112

Date issued: April 7, 1978.

Applicable Area: Franking.

Questions considered:

(1) May the frank be used to send an autographed picture of a Senator in his former occupation in response to a request for the picture; and

(2) May the frank he used to send such an autographed picture along with a written response on a legislative matter; and

(3) May the frank be used to return an item which was sent to the Senator with a request for an autograph?

Ruling:

Title 39 U.S.C. 3210(a)(3)(J) provides that frankable mail includes mail matter "which contains a picture, sketch or other likeness . . . and which is so mailed as a part of a Federal publication or in response to a specific request therefor. . ." Thus, the statute specifically allows use of the frank on autographed photographs when in response to a specific request and, by implication the statute allows for the return of items having been autographed as requested. The statute does not appear to allow either autographed items or photographs to be routinely sent along with other franked mail absent a specific request for such an item.

INTERPRETATIVE RULING NO. 137

Date issued: May 24, 1978.

Applicable Rule: 48.

Question considered:

Do the restrictions of Rule 48 on the use of the Senate Recording Studio and "mass mailings" prior to an election in which a Senator is a candidate for a federal office apply to the sixty days immediately prior to a primary election when the Senator has received his party's nomination at a preprimary convention and under state law, such a nominee is not considered a candidate for the primary and the Senator's name will not appear on the primary ballot?

Ruling:

The Senator has been nominated by his party as its candidate for election to the Senate. This nomination was conferred at a party convention held prior to the date of the state's nominating primary election. Under state law, since the Senator had received the nomination and was the only candidate within his party for the office of Senator, he was declared the nominee and was thus no longer considered a candidate in the primary and his name was removed from the primary ballot.

Because of applicable state law, the Committee ruled that the Senator was not a candidate for the state primary and therefore that the restrictions of Rule 48 would not apply to the sixty day period immediately prior to the primary election.

INTERPRETATIVE RULING NO. 152

Date issued: June 22, 1978.

Applicable Rule: 48.

Question considered:

Is a Member a "candidate" for purposes of the franking and studio restrictions of Rule 48 if his name is on the primary ballot but he will have no primary opposition and no write-in votes are allowed under the applicable state law?

Ruling:

The restrictions of Rule 48 are intended to reduce the advantage of incumbent Senators over challengers.

Under the circumstances described, there will be no challengers in the primary election. The Committee therefore believes that the restrictions of Rule 48 are not applicable.

INTERPRETATIVE RULING NO. 154

Date issued: June 22, 1978.

Applicable Rules: 48, 49.

Questions considered:

(1) Is a Senator whose name appears on a primary ballot considered a "candidate" for purposes of Rule 48 restrictions when the Senator faces no announced opposition but state law authorizes write-in candidates?

(2) May a part-time staff assistant to a Senator, who also works half-time for the Senator's reelection campaign committee, engage in fund-raising activities for the campaign committee?

(3) Is it possible for a staff assistant, while engaged in Senate duties, to become involved to a minimal degree with a campaign-related activity without violating the Code of Official Conduct?

(4) Is it permissible for a staff assistant on the Senate payroll to engage in campaign-related activities during other than normal Senate office hours?

Ruling:

(1) The prohibitions imposed by Rule 48 on the use of the frank in mass mailings and on the use of the Senate Recording Studio were intended to restrict the advantages which incumbent Senators might have during a reelection campaign. The Committee previously ruled (Interpretative Rulings No. 137, dated May 24, 1978 and No. 152, dated June 22, 1978) that Senators who do not face a primary election or whose names appear on a primary ballot unopposed, and where no write-in candidates are authorized, are not "candidates" for the purposes of Rule 48. However, when a Senator's name is listed on a primary ballot and state law specifically authorizes write-in candidates, there is a possibility for a contested primary election. As such, the Senator would be considered a "candidate".

(2) A staff assistant, whether full or part-time, may not engage in any fund-raising activities on behalf of a Senator's campaign committee, unless that staff assistant had been previously designated by the Senator under Rule 49 as one of the two staff assistants to the Senator who may handle his or her campaign contributions.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business now be closed.

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

WINDFALL PROFIT TAX ACT OF 1980—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume its consideration of the conference report.

The PRESIDING OFFICER (Mr. HEFLIN). The clerk will report.

The assistant legislative clerk read as follows:

A conference report on H.R. 3919, an act to impose a windfall profit tax on domestic crude oil.

The Senate resumed consideration of the conference report.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the controlled time not start running until 10:25 a.m. today as per the order entered previously.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Reserving the right to object, I reserve for the purpose of inquiring from the majority leader—I believe he has already covered the point—that notwithstanding that we are prepared to start that this will not change the times allocated, I mean the times appointed, for votes under the previous order.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. BAKER. I might say I previously advised the majority leader that the Senator from Oklahoma (Mr. BELLMON) has indicated that he will not now wish a vote on his motion, the motion to refer to the Appropriations Committee, and I believe there may be a request, after we begin consideration of this matter, to transfer the time for the Bellmon motion to the control of the Senator from Louisiana and the Senator from Kansas on the Dole motion.

They are not now on the floor so I will not suggest that request at this moment, but I would advise the majority leader and my colleagues I think that that is the prospect.

Mr. ROBERT C. BYRD. So the prospect therein is that Mr. BELLMON will not make his motion at all?

Mr. BAKER. That is correct. I think the Senator from Oklahoma will wish to make some remarks in that respect but then probably will ask unanimous consent to transfer the time remaining to him to the Senator from Kansas.

Mr. ROBERT C. BYRD. All right.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, is the Senator from Ohio correct in his understanding that the debate on the windfall profit tax bill is now in order?

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. Mr. President, today we have arrived full circle on the issue of deregulating domestic oil prices and on the windfall profit tax.

The administration is hailing the legislation before you today as "a great victory," and others have described this conference report as a true compromise between the House and Senate bills.

This legislation surely is a compromise, Mr. President, but the compromise is with the interests of the people of this country.

I say again what I have said many times before—that the windfall profit tax bill is legislation that never should have been. That is so because there never should have been a windfall in the first place.

I think it is important, as we debate this conference report, to review the history of this legislation.

The origins of this bill can be found in President Carter's decision, announced in the middle of a gasoline shortage, to end the price controls that have been in place since 1973 on domestic crude oil. With that single stroke of the pen, President Carter imposed on the people of this country a tax that will cost Americans more than $1 trillion over the next 10 years. They will pay that tax every day in the form of higher gasoline prices and home heating costs and more additions to the spiral of inflation.

A trillion dollars—that comes to $5,000 for every man, woman, and child in this country. It means that, in the next decade, a family of four with a $20,000 annual income will sacrifice the equivalent of a year's pay for the benefit of the oil companies and the Federal Treasury.

But since the decision was made to decontrol, the issue has been not the wisdom of decontrol itself—as I believe it should have been. Instead, the debate has been over how much of that excessive increase in domestic oil prices will be recovered in the form of a windfall profit tax.

Now we have the answer to that question.

This legislation will impose a windfall profit tax of $227.3 billion over the next 10 years. That is only a small fraction of the money that will flow into the coffers of the oil companies in that period—about one-fourth of the total cost of deregulation.

That figure is far below the $300 billion goal originally set by President Carter when he first asked Congress to impose a windfall profit tax.

The House came close to meeting that modest goal when it passed a tax bill—drafted by oil-State Congressmen—that would have raised $278 billion. But the Senate said "no" even though it was drafted by those oil-State Congressmen.

The Senate saw fit to pass a weaker bill that would have cut the windfall tax to only $177 billion.

Thus, we have today's compromise figure—a figure that falls far short of what we should have demanded as a matter of fairness and equity for the people of this country.

Furthermore, Mr. President, one of the administration's strongest arguments for decontrol was the need to use windfall profit tax revenues to launch a major program to develop alternate energy resources here at home.

If I heard that representation made once, I heard it made 50 times. I heard it on the TV tube; I read it in the editorial columns. Wherever I looked I found that this great windfall profit tax program was somehow going to solve the energy needs, the energy shortage of the future; and with this windfall profit tax, we were indeed going to develop a synthetic fuels program.

It was to be a truly massive effort with projected investment of $88 billion by 1990. That investment was to bring about production of 2.5 million barrels per day of oil substitutes in areas like coal liquids, coal gases, peat, shale oil, and conventional natural gas.

But, indeed, Mr. President, the oil companies find no particular solace in the development of alternative energy resources. Because it is just possible that if you develop one or more of those alternative energy resources you may find that you do not have to import as much oil from the OPEC nations; you may find that the price of oil might come down; and you may find that the domestic producers will not be able to get that price which is permissible under decontrol in equaling the OPEC price.

So we have before us today a bill that has very little emphasis on the development of synthetic fuel.

It is a fact that we may yet have that program. But it does not appear in any substantial way in the conference report that is before us today. And if we have a development of a syntheic fuels program, it will be in spite of the conference report, not because of it.

The administration's proposal would have provided $2.4 billion annually for low-income energy assistance. The conference report authorizes this vitally needed assistance only for fiscal year 1981. It imposes one requirement that states administering the program provide assistance to all households defined as eligible under the act.

Once again, we see weakened one of the few redeeming features of the President's decontrol decision.

Once again, the people of this country are let down. Once again, the people are promised one thing and they find that they get something totally different when all the fine print is analyzed.

And once again, we see the people of this country having to bear the sacrifices that will occur under the misguided policy of decontrol, without any way being rewarded for their efforts.

There is something in the conference report that takes care of something called production incentives in the future, tax reductions in the future, and tax reductions for the corporations of this country.

But those for who are going to have to bear the burden of decontrol, there is very little for them that is left in the conference report.

I also find fault with this conference language because it leaves out a number of important provisions that were in the original Senate bill. The original bill passed by the Senate provided tax credits to residential consumers for passive solar construction, heat pumps, woodburning stoves, replacement of coal furnaces, radiant heat panels, and more efficient oil and gas furnaces.

But, of course, those tax cuts had some merit: They would mean something to the American consumer, they would mean something to the people of this country, they would help us to alleviate our energy problems in this Nation. But the conference committee has now rejected all of those credits.

The conference committee also rejected business credits for vanpooling, electric motor vehicles, heat pumps, and radiant heating panels.

In the residential area, the Senate bill included $8.7 billion in tax breaks to consumers who take steps to conserve energy and to cut their energy costs. But the conference committee cut that figure to only $600 million. And the conference cut in half the $11.9 billion in additional business energy incentives included in the Senate bill.

I believe the Senate was on the right track in including these tax incentives in the original bill. That action showed a concern for conservation and a commitment to innovative technologies.

And I am disappointed that so few of these Senate initiatives survived the conference.

So we have a conference committee report that nowhere resembles anything that the President originally talked about as far as using these funds for the development of synthetic fuels, a conference committee report that now has in it something about future tax reductions and uses 75 percent of the total amount for that.

That is a total letdown to the American people. That is not what we were promised. That is not what was debated. That was not the thrust of the Senate bill. As a matter of fact, Mr. President, it was not the thrust of the House bill. But it is the concoction of the conference committee, which is but a nullity and but a shadow of what the original legislation was intended to be.

Mr. President, this legislation is no victory for the administration. It falls woefully short of what the President promised the American people. It is no victory for the consumers of this country. It is all cost for the consumers and very few benefits, and it is no victory for Congress because if this is the best that we can do then it is too little, to late, and it is a far cry from that which the American people were told we were doing.

The only winners under this bill are the oil companies who will always, in the Congress, write their own rules. They dictate the terms. They indicate the way they want the legislation to go. They always wind up being the winners, no matter what it may appear on the surface. When push comes to shove, when all of the fine print is read through, we find that the windfall profit tax bill has pretty well been fashioned to their concerns and their directions.

Mr. President, I am going to vote for this conference report. I am going to vote for it reluctantly, and in the hope that we will begin someday to worry less about the oil companies and more about the American people.

I am going to vote for it because I believe that the alternative is one of taking this bill or no bill at all.

Too often in the political system we are given that kind of horns of a dilemma choice. That is, you get a bad piece of legislation or no legislation at all.

This legislation is not that which it should be. This legislation is a letdown to the American people. This legislation is nothing for the administration or for the Congress to crow about. It is a great victory, again, for the oil companies of this country, and it is a great disappointment to the American people. Anyone who would suggest that somehow with the windfall profit tax we are going to solve synthetic fuel problems in this country and provide the wherewithal to do it just is not going to find that solution, just is not going to find the money in this legislation. This is not the way it should have been. Unfortunately, this is the way it will be.

The PRESIDING OFFICER. Who yields time?

Mr. BELLMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BELLMON. Mr. President, I wonder if the special order relating to the motion to refer to the Appropriations Committee could be read. I understand we are to go into that matter at 10:25.

The PRESIDING OFFICER. Under the previous order, the hour of 10:25 having arrived, the Senate will now resume consideration of the conference report on H.R. 3919 which we have previously been considering because other business was not demanded.

Under the previous order when the hour of 10:45 arrives, the Senate will proceed to vote on the motion by the Senator from Oklahoma to refer the conference report to the Committee on Appropriations with instruction. It is my understanding that that is being withdrawn. Maybe the Senator had better make a statement.

Mr. BELLMON. Mr. President, the motion has not yet been made. I simply wanted to be recognized at this time to to discuss the matter. It is my intention a little later in my remarks to ask unanimous consent that that part of the special order be vacated, that we not take the matter up for a vote.

Mr. President, I might say the reason for my decision not to have a vote on the motion is very simply the fact that yesterday there were a series of colloquies on the floor that seemed to fairly well resolve the issue, at least so far as the Senator from Oklahoma is concerned.

The language in the report, which has been read many times and does not need to be repeated here at length, would appear on the surface to earmark these funds or allocate the funds for certain purposes.

It seemed very clear to the Senator from Oklahoma that that was what the bill did.

Yesterday, in lengthy colloquies with Senators MOYNIHAN, MUSKIE, LONG, and DOLE, the matter seems to have been fairly well worked out, although I have to confess I am still slightly confused.

When we got into the Budget Committee markup yesterday, we asked the question whether or not these allocations were going to be binding upon our decisions, whether or not we need to make provision for the tax cut that is indicated by the language on page 29 of the report. We were told that we did not need to pay any attention to that language.

Senator MOYNIHAN, who was there, became somewhat concerned that this language relating to flow income assistance was also meaningless. He came to the floor and a colloquy with Senator MOYNIHAN and Senator LONG then transpired.

I would like to read briefly from that colloquy to get the matter into the RECORD again.

Senator MOYNIHAN said:

> The Budget Committee should so understand this as being something of substance and not just a gesture.

He is talking about the allocations. Continuing:

> It is an undertaking to do everything within our power to see that a quarter of this revenue goes to these programs.

He asked Senator LONG if he shared his judgment. Senator LONG said:

> Yes, I do. I regard this as a good-faith commitment.

This is all on page 6664 of yesterday's RECORD.

Senator LONG goes on to say:

> It is a statement of intent, as the Senator has so well said, but it is a good-faith commitment.

Then he goes on to say:

> It is a commitment, but it does not bind anyone.

Mr. President, I have heard of a lot of commitments but I never heard of a nonbinding commitment before. Apparently that is what we have here.

Yesterday, on page 6650, in a colloquy between myself and the Senator from Louisiana, he said:

> You can spend the money any way you want and give it no further thought.
>
> You go ahead and appropriate any amount of money you want to, for any purpose.
>
> This is a mere statement of desire and intent, and it does not bind anybody.

Well, Mr. President, in light of that it seems to me, then, that the Budget Committee and the Appropriations Committee are totally free to regard these funds as being general revenue funds, with no strings attached. We can use them any way we like. If that is the case, there is obviously no purpose in sending the bill back to the Appropriations Committee to see what impact it will have on our ability to meet our responsibilities in appropriating funds for what we consider to be the most necessary purposes of Government.

I have in hand, and I will ask unanimous consent to insert it into the RECORD, a table showing the controllability of budget outlays. This shows that already there are 97.9 percent of the funds available to the Appropriations Committee that are "uncontrollable" without some changes in the law.

If we had gone ahead the way the conference report seems to read, it would make it almost total. I did not want to make it any worse. I ask unanimous consent that this table be printed in the RECORD.

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

WORST CASE (CURRENT YEAR)—CONTROLLABILITY OF BUDGET OUTLAYS (FISCAL YEAR 1979)

	Actual spending (billions)	Percent of Federal budget
Payments to individuals	$214.5	43.4
Interest and other fixed costs	61.2	12.4
Nondefense outlays from prior year contracts and obligations	49.1	9.9
Civilian personnel costs	28.8	5.8
Subtotal	353.6	71.5
Defense:		
Personnel costs	45.7	9.3
Military retired pay	10.4	2.1
Prior year contracts and obligations	30.9	6.3
Other defense outlays	30.7	6.2
Subtotal	117.7	23.9
Domestic crude oil excise tax [1]	13.4	2.5
Total uncontrollable	484.7	97.9
Total controllable	9.0	2.1
Total budget outlays	493.7	100.0
OUT-YEAR CONTROLLABILITY		
Subcontract out nondefense outlays from prior year contracts and obligations	−49.1	−9.9
Added to total controllables above	+9.0	+2.1
Total uncontrollable	435.6	88.0
Total controllable	58.1	12.0
Total budget outlays	493.7	100.0

[1] Assumes 1st full-year impact of the domestic crude oil excise tax at $35 plus 2-percent per barrel and reduces estimates by 25 percent to adjust for the difference between fiscal year 1979 outlays and estimated fiscal year 1981 outlays, so the figure should be roughly comparable.

Mr. BELLMON. Mr. President, I want to make a few general comments about the bill before I yield back the time and ask that the motion be vacated.

First, I want to call attention to an editorial that appeared in this morning's Wall Street Journal. The title of the editorial is "Death of Reason."

It talks about how, in passing this bill, Congress is going to seriously weaken the ability of the petroleum industry to meet the energy needs of this country, now and in the future. The article says:

But even with that record, we would have thought it beyond belief that Congress would set out to destroy *this* industry in *this* decade, hamstringing the domestic oil industry just when energy is a paramount concern not only economically but politically and militarily.

Looking on the spectacle of Congress slapping a huge tax on domestic oil production just when it needs to reduce oil imports, our friends abroad look on with alarmed incredulity. Why is the United States doing this to itself? a cabinet member of one ally asked us recently. We could only reply, tongue-tied, that simple logic sometimes falls victim to complex political forces.

The evolution of this latest self-inflicted blow is bound up in the broader history of U.S. economic policy through the 1970s. It began when Congress, led by many of the same people who lead it today, embraced wage and price controls as the remedy for the inflation its overspending had generated, and finally succeeded in inducing President Nixon to apply them in 1971. Most of the controls were blown off by inflation in 1973 and 1974, but the ones on energy continued. They indeed blossomed into a huge regulatory bureaucracy, the Department of Energy. The DOE became an instrument for strangling domestic energy production.

The article concludes:

To find a similarly destructive single piece of legislation, you have to hark back to the Smoot-Hawley Tariff, which helped throw the world into the Great Depression.

Mr. President, I ask unanimous consent that the full text of this editorial be printed in the RECORD at this point.

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

DEATH OF REASON

Barring a redemptive miracle, the United States Senate today will sacrifice the nation's future security to its own unslakable thirst for revenues. It will give final approval to the massive falsely labeled, "windfall profits tax."

It is hard for us to understand how the Congress could actually pass so misguided a piece of legislation. Admittedly, Washington has been picking off one major industry a decade: the steel industry with the price "jawboning" of the 1960s, and the auto industry with the safety, emissions and fuel standards of the 1970s. But even with that record, we would have thought it beyond belief that Congress would set out to destroy *this* industry in *this* decade, hamstringing the domestic oil industry just when energy is a paramount concern not only economically but politically and militarily.

Looking on the spectacle of Congress slapping a huge tax on domestic oil production just when it needs to reduce oil imports, our friends abroad look on with alarmed incredulity. Why is the United States doing this to itself? a cabinet member of one ally asked us recently. We could only reply, tongue-tied, that simple logic sometimes falls victim to complex political forces.

The evolution of this latest self-inflicted blow is bound up in the broader history of U.S. economic policy through the 1970s. It began when Congress, led by many of the same people who lead it today, embraced wage and price controls as the remedy for the inflation its overspending had generated, and finally succeeded in inducing President Nixon to apply them in 1971. Most of the controls were blown off by inflation in 1973 and 1974, but the ones on energy continued. They indeed blossomed into a huge regulatory bureaucracy, the Department of Energy. The DOE became an instrument for strangling domestic energy production.

Public frustration with the fruits of this process—gasoline lines, rising energy costs and increased dependence on imports—was diverted by American political leadership to the oil industry, which, guided by its traditional opportunism, was an easy victim. This exercise in political cynicism was augmented by more virulent anti-business, anti-capitalist forces. Soon the attack on oil lost whatever rationality it ever had and became a religious movement bent on punishing the oil industry and diverting its cash flow into the public treasury. As it happened, this was just the ticket for a government that had through most of the 1970s enormously overspent its budget and generated progressively worse inflation. President Carter conceived the brilliant idea of removing price controls on domestic crude oil but taxing away most of the added revenues that he presumed would flow from letting prices rise above the ceilings. The DOE bureaucracy found ways, as we noted in this column yesterday, to preserve and expand its power even after decontrol.

The oil revenues tax Congress will pass today—again barring some last-minute conversion—will combine with raging inflation to run the American crude oil production industry into the ground. It will solidify OPEC's grip on oil prices, leave us politically and militarily exposed from further dependence on imported oil, drain huge funds out of the savings/profit pool needed to stimulate investment and productivity, and increase the incentives for inflationary money creation. To find a similarly destructive single piece of legislation, you have to hark back to the Smoot-Hawley Tariff, which helped throw the world into the Great Depression.

Mr. BELLMON. Mr. President, my concern about this bill, having nothing to do with the earmarking part of it, is that we are making an enormous blunder here that we are going to have a difficult time recovering from because, once Congress gets hooked on spending these revenues, it is certain that these taxes will never be repealed. What we are doing here is taking away not $227 billion over the next 10 years, but probably $400 billion from oil producers and using it to buy more Government, which the country could certainly do without.

I was interested yesterday, in the colloquy between some of the Members, to hear references as to how this tax was justified because the price of oil in this country is somehow controlled by the foreign, OPEC cartel. Mr. President, that simply is not true. There may have been a time when there was some justification for that charge, but it is not true any longer. The fact is that we now have a free market in oil, not only in this country but worldwide, except in those cases where controls have been applied by the Government.

The top price for oil is not set by OPEC. Rather, it is set by the free market. For instance, the Federal Government recently sold its Elk Hill soil at $41 a barrel. Teapot Dome oil sold at prices up to $46 a barrel. OPEC certainly had nothing to do with setting those prices. Those prices were set by the free market. The fact is that there is now a very close balance between the world's supply and the world's demand for oil and the market has begun to operate. There may have been a time when OPEC did set prices, but that time has now passed. Saudi Arabia, the leader of OPEC, is actually selling its oil below the world prices, so there is certainly no justification for any windfall profit tax except our greed to get our hands on some additional tax dollars.

Mr. President, the Senator from Oklahoma once served in our State legislature. I recall a time when the State legislature's greed overcame its good judgment and we passed a bill which later came to be known as the "red worm" bill. This bill put a tax, which the legislature called a license, on every citizen who took a cane fishing pole and a can of red worms and went out to sit on a creek bank for a few hours of relaxation. This did produce some revenue, but it also produced the defeat of most legislators who voted for that bill. It came to be known as the "red worm bill" and any bill in the future that seemed to be loaded with the same kind of danger was always likely for that kind of treatment.

It seems we have the same situation here. This is not a tax on independent oil producers, as it is said to be. It is not a tax on foreign oil. It is a tax on every consumer in this country, because this tax is passed on by the big companies; but it is also a tax on the small producers, who simply cannot pass it on. It is particularly a burden on the small royalty owners.

Last night, I was in my office a little late and I had a call from one of my constituents in Keata, Okla. He sounded like an older person. He told me he had received from Exxon his royalty check, $17.23.

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

Mr. LONG. I yield 5 minutes to the Senator.

Mr. BELLMON. I thank the Senator.

Mr. President, he told me the royalty check was $17.23. He asked me if he were going to have to pay a tax on that royalty in future months. Seventeen dollars and twenty-three cents. I hold him sadly that he would, that his tax on the future royalty checks would be 60 percent above the $16 that is allowed in the law.

He was, naturally, very upset about this and wondered what could be done about it. He told me how much this small check meant to him and his wife in trying to cope with the constant increases in the cost of living.

Mr. DOLE. Will the Senator yield at that point?

Mr. BELLMON. I am glad to yield.

Mr. DOLE. I hope all those Senators who are present, whether they be from Alabama, Kansas, New Mexico, Oklahoma, California, or Louisiana, keep in mind what the Senator just said about the royalty owners. Here is a man who got a check for $17.23. These are not big oil people, they are little landowners living on social security. They are going to get to pay a 60-percent tax rate.

We did not do too badly when this bill left the Senate. When they finally added $52 billion on the revenue side in conference, everybody got their tax increase. I suggest these royalty owners are now starting to get the message.

I hope my colleagues who may not be on the floor and may be listening in their offices will make a little check, before they vote on the motion I shall offer later, to find out how many royalty owners they have. There are thousands and thousands. The Senator from New Mexico estimated that there are 2 million royalty owners in this country. They are all reflected in the Senators on the floor right now. They are not big-income people. They use this to supplement what little income they have. I hope we shall be able to send this back to the Finance Committee, at least for hearings on this issue

Mr. BELLMON. I thank my friend from Kansas. He is exactly right. This bill puts an enormous burden on small defenseless people, the royalty owners, particularly the operators of stripper oil wells. In many cases, they are going to be forced to plug those wells because they cannot afford the high operating tax. And this country is going to have to do without that very substantial amount of production.

Mr. President, my time has expired. I ask unanimous consent that the order for me to offer a motion to refer this matter to the Appropriations Committee be vacated.

The PRESIDING OFFICER. Is there objection?

Mr. LONG. Objection to what, Mr. President? Reserving the right to object.

The PRESIDING OFFICER. The Senator wants an order to have rescinded a vote on the motion to refer the conference report to the Appropriations Committee.

Mr. LONG. We are agreeing that there would not be a motion to refer?

Mr. BELLMON. That is correct.

Mr. DOLE. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. Can we use that time that we shall not be using for a rollcall to debate the other motion?

The PRESIDING OFFICER. It will take unanimous consent.

Mr. DOLE. Is there any objection to that from the distinguished majority leader?

Mr. ROBERT C. BYRD. No objection.

Mr. DOLE. And that the time be equally divided?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Does the Senator so move?

Mr. DOLE. Yes, Mr. President.

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

Mr. DOLE. Mr. President.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. It is my understanding that the Senator from Oklahoma (Mr. BELLMON) will not offer his motion and that we have now divided whatever time might have been consumed by that effort and the rollcall thereon to discuss the motion that will be offered. That is to send this conference report back to the committee, and that this motion be offered by myself and the distinguished junior Senator from Oklahoma (Mr. BOREN), to refer this back to the Committee on Finance with instructions that it hold hearings on the impact of this tax on royalty owners, independent producers, and on future domestic oil production and report back to the Senate within 15 days of actual session. So we put a limit on it and we are not trying to delay action on the conference report.

But we do believe, and it has been brought to our attention, I might say, rather sharply by hundreds and hundreds, literally thousands of royalty owners in this country, who have been learning in the past couple of weeks that they are going to be honored and privileged to pay this tax. They are starting to hear now from the oil companies with a little letter saying that, starting on a certain date, you will be paying a tax at the rate of 60 percent above the base price of $15.50 and the market price. That is going to be a very, very heavy tax.

I suggest that this motion should be adopted. I know the argument will be made, why send it back to the Finance Committee, who had it for a year, a half-year, or however long?

We had it long enough. But the point is that would demonstrate our good faith to the royalty owners and the small independent producers that we are concerned about their plight.

We were not able to do anything in conference, and I do not fault anybody there, certainly not the distinguished chairman who made every effort to try to ease the burden of the tax. But it would demonstrate that we mean business. If we cannot change the conference report, we will change something else. We will pass some exemption, maybe a 5-barrel royalty owner exemption, or a 10-barrel, or a 25-barrel, and somehow ease the burden of that tax which has not been felt yet, but will be very soon.

Mr. President, we have had a lot of discussion. I intend to have printed in the RECORD the total amount of days we have spent on this legislation. It is mind-boggling, but so is the amount of tax we will raise that the American people will pay—at least, we think they will pay, rather than it may be paid by the oil industry.

But we have had 23 to 28 days, I believe, of debate now on the floor, counting debate on the Senate bill, on the conference report. Probably, they may prevail, saying that we have had enough, no reason to send it back to the committee, we will have no impact on the conference report.

I suggest there are compelling reasons it ought to be sent back to the committee. That is why I will join the distinguished Senator from Oklahoma (Mr. BOREN) at the appropriate time and offer a motion to do that.

The Senator from Kansas does not want to delay the bill. I think my record has been one of cooperation on the bill. We have had our differences on the legislation. But, by and large, even though we may now have a difference of opinion on this aspect, the Senator from Kansas voted for the Senate bill, signed the conference report, and attended nearly every hearing on the bill itself, and every hearing on the markup and the conference, and almost every day on the Senate floor during the debate.

So it is not any effort, a last minute effort, to delay the impact of this bill.

I think President Carter should be looking to the number of royalty owners after the defeat in Connecticut and New York, when we survey the wreckage of this administration in those States. He is now going out to Kansas next week where we have a lot of royalty owners. He is going into Oklahoma and Texas with all these royalty owners who are just finding out about the Carter tax.

But the Carter 60-percent tax is going to have a big political impact on the royalty owners. It seems to me that the President would want to delay final passage and have some hearings, at least let people know there is compassion on the part of the administration about continuing to tax and tax the American people, particularly the royalty owners and numbers of independent producers.

That is the thrust of the statements on this floor yesterday, and will be on those made later on.

It may be that those who are going to be allowed to pay this tax will be very grateful to President Carter. They will get a rollback in their checks. They will pay about 36 percent of that check to the Federal Government, and they have not even realized up until about now, in the last couple of weeks, that they would have to pay the tax, because all they read in the press is an attack on big oil.

The man with the check of $17.52 in Keota, Okla., is not big oil. There are hundreds and hundreds, and thousands, of men and women and families receiving small royalty checks who are just beginning to feel the impact.

I say that it is going to be significant. It is going to mean taking millions and billions of dollars away from low-income Americans. It will be done by a tax proposed by this administration. Fortunately, we were able to help some in the process of the hearings on the Senate bill and the Senate amendments offered by Senators on this floor, and some who are not now on the floor.

Mr. President, the conference bill subjects royalty owners to the full rates of tax: 70 percent on upper and lower tier oil, and 60 percent on stripper oil. Royalty owners will not benefit from the special rates provided independent producers. This tax will dramatically reduce the amount of royalties received by royalty owners. On stripper oil, for example, the royalty payment per barrel would be slashed by about 36 percent, as I said before.

Mr. President, if I were a landowner and had a piece of property, just finding out I will have to pay, if it is newly discovered oil, a 30-percent tax rate, I am not certain I would want to leave it at this point. Why not wait until this tax expires, or we find what impact it has, and then decide, because nothing will happen to the oil, it will stay in the ground; why give 30 percent of it to the Government in another tax?

Mr. President, I yield to the distinguished Senator from Oklahoma (Mr. BOREN) and will then come back to this after he has spoken.

Mr. BOREN. I thank the Senator from Kansas.

Mr. President, I am very proud to join my colleague from Kansas in offering this motion to return the bill to the Finance Committee for further study.

In doing so, I want to point out again, as I did on the floor last week, that, certainly, this action was taken with no lack of respect for the distinguished chairman of the Finance Committee, the Senator from Louisiana (Mr. LONG), who for 30 years, as a Member of this body, has done as much as any other individual who has ever served in the Senate of the United States to promote the production of energy for the American people and to serve the national interest.

I realize that his responsibilities as chairman of the committee and chairman of the conference have made it difficult for him in this position, and he must exercise his broader responsibilities.

This bill would have been a far worse bill had he not had a position of leadership on it in the committee, as he has had.

But I am sure, in all conscience, that the Senate can prove itself the greatest deliberative body in the world and have further study on this tax before it is enacted.

My colleague from Oklahoma (Mr. BELLMON) has already read into the RECORD the editorial in the Wall Street Journal this morning, which is a very compelling editorial. It cries out to us to look again at what we are getting ready to do.

It says that even if we consider all the mistakes, the monumental mistakes, that have been made in the past few years, nothing can surpass what we are getting ready to do as far as the American people are concerned.

It says:

> But even with that record, we would have thought it beyond belief that Congress would set out to destroy *this* industry in *this* decade, hamstringing the domestic oil industry just when energy is a paramount concern not only economically but politically and militarily.

And the editorial goes on to recall:

> We could only reply, tongue-tied, that simple logic sometimes falls victim to complex political forces.

It goes on to say:

> Soon the attack on oil lost whatever rationality it ever had and became a religious movement bent on punishing the oil industry and diverting its cash flow into the public treasury. As it happened, this was just the ticket for a government that had through most of the 1970s enormously overspent its budget and generated progressively worse inflation.

Mr. President, even at this late hour, it is still possible for us to listen to logic for just a moment. Even those for whom the attack on "big oil" has become a religion, even those in this body who have become proponents of this religion, should stop and look at this bill for a moment.

First of all, this bill does not represent an attack on the profits of what has been called big oil. Last week, I challenged any Member of this body to come forward and show me where it is written in this bill that even one penny of tax is levied on the profits of the big oil companies. There is not one penny's worth of tax levied on profits. There is not penny's worth of tax figured on profit levels.

This bill is not an attack on the profits of anyone. It is an excise tax, an excise tax on barrels of oil. Is it a tax on barrels of oil produced overseas by the international oil companies—the oil we are buying overseas and bringing into this country, the oil which is imported into this country and which constitutes a continuing economic hemorrhage for this country of a magnitude that threatens to bring down our entire economy? No. It does not put one penny's worth of tax on oil brought into this country from overseas. It only taxes the oil produced in the United States.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. BOREN. Mr. President, will the Senator from Kansas yield me an additional 2 or 3 minutes?

Mr. DOLE. I have about 8 minutes. I yield 2 minutes to the Senator.

Mr. BOREN. This is a tax imposed on oil produced in the United States. It punishes the small independent producers who do not engage in worldwide activities but produce oil only in this country. It puts a tax on the small companies that have been reinvesting 105 percent of their cash flow, using as assets the oil they have discovered, to go to the bank and borrow more, and go out and explore for oil and produce more oil.

It puts a tax on the little royalty owner that my colleague from Oklahoma and the Senator from Kansas just described. These are not big oil companies. In many cases, these are widows and small investors who invested their savings by buying royalties. They are like the man from Keota, Okla., who is getting a check of $16 a month.

This bill, I must say, is not what it is represented to be. I think we need additional time to look at this so that we can expose it as the fraud it is. It is called a windfall profit tax. It is not a tax on profits. It is an effort by those who preach this religion to get after the big international oil companies. It taxes only the small domestic producer. It taxes primarily the small royalty owner. Ultimately, it will take money out of the pockets of the American consumers, themselves.

Let us give ourselves more time to expose this bill for what it really is.

Mr. DOLE. Mr. President, the Senator from Kansas yields 3 minutes to the Senator from New Mexico.

Mr. DOMENICI. I thank the Senator.

Mr. President, first, I compliment the senior Senator from Oklahoma (Mr. BELLMON). He started this discussion this morning with an editorial that was styled the "Death of Reason."

I say to him that many Senators could have stood on the floor of the Senate and talked about a death of reason and they would not have been very credible. But in this body, one person stands out in terms of being a reasonable person, one who takes positions based upon commonsense, and that is Senator BELLMON.

On this final day, when it is certain to this Senator that we are going to pass this enormous fraud called a windfall profit tax, it is appropriate that it be opened by Senator BELLMON talking about the death of reason. It is exactly that which is going to occur here later this morning.

We have done it many times in the past, in our free and open society, for various reasons. We have abandoned commonsense and reason and voted inconsistently. Our economy and our people, for the most part, have been strong enough and resilient enough to succeed in the face of unreasonable activities by their National Government. But it is obvious to everyone in America and elsewhere in the world that by doing unreasonable things over and over to this great American economy and our people, we have reached a point at which the margin for error is becoming ever and ever more slim.

We probably never will be able to prove it, but today we are going to pass a bill which, instead of moving America toward energy independence, is going to cause us to remain for a longer period of time ever more dependent upon foreign oil.

This bill started out as the cornerstone of an energy policy, but it is the largest tax on the American people in the history of the Republic. Nothing in this bill is going to produce any energy. In fact, there are not even any tax credits or incentives by way of tax legislation to encourage energy production. All that has been abandoned.

The allocation system which, on the one hand, is commitment but is not binding, prescribes that most of this money will go for things other than energy. Whether it is binding or not, it clearly indicates the philosophy of Congress that this is nothing more than a giant tax. It started out as a tax on big oil. It is now a tax on big oil, but only so far as it produces domestic oil.

It is a tax on independent producers, 13,000 Americans who are trying to help us out of this energy crisis. It is a tax on hundreds of thousands of royalty owners. They already pay a tax. Everybody should understand that. Those of us arguing for them are not arguing that they deserve any privilege. They pay tax, just as any other American does.

Mr. President, I speak today on the windfall profit tax, not for the first time and, I am afraid, not for the last. This piece of legislation will only cloud our energy future in this country and not brighten it. This institution has not seen the last of the windfall profit tax. I am sure we will be forced to repair the damage it will cause very soon after its passage.

With this legislation will come a decrease in oil production. When the Congress saw fit to tax newly discovered oil, tertiary oil, and stripper oil we taxed the consumers of America, not the producers of oil. Let me explain what I mean by this using the example of stripper oil. When the price of stripper oil was decontrolled, it was done so to encourage continued production from these low volume wells which were not profitable to operate otherwise. This policy appeared to be working because in 1978 the fewest number of wells were abandoned since 1947.

Now, this Congress has chosen to tax stripper oil under the windfall profit tax. This legislation was intended to tax "excess" profits, but it is clear now that the price a producer will receive for stripper oil will be less than the price received prior to this tax. The result will be 50,000 capped wells over the next 2 years according to the National Stripper Well Association. That is a reduction of 13 percent in 2 years. So what? What difference do stripper wells make? They only produce an average of 3 barrels per day. I will tell Senators what a difference stripper wells make. They produced over 1 million barrels a day. As much as the Alaskan production. I have said this tax will be a tax on the American public not the big oil companies. Clearly, by reducing our domestic supply, and it is estimated that this tax will result in a decrease of 2 million barrels per day by 1990, this bill will bring on higher prices for consumers. On gasoline alone it is estimated to be a price rise of 16 cents per gallon.

Over the past few days of debate, Mr. President, I have said that this is a tax that was said to be a tax on big oil. During the debate on this legislation in the Senate, it became clear that it was also a tax on independent producers. A tax on 13,000 men and women who are producing more energy for America not just talking about it. Now this body is coming to the realization that this bill will not just tax big oil and little oil but royalty owners, also. Hundreds of thousands of investors who are the unseen and unheralded energy producers in this country.

If these things were not enough there are further inequities incorporated in this bill. For a state like new Mexico, this bill is a further insult. First, by creating disincentives for the way in which New Mexico applies its severance tax it will necessitate a change in that tax. The Federal Government has, in effect, dictated how a State will tax its own natural resources. Furthermore, this bill taxes Federal royalty oil which also in shares by those States where the oil is produced. This action will reduce the States' share of the royalty. In New Mexico, oil taxes do not go to luxurious State buildings or wasteful activities as some in this body have suggested. These moneys go primarily to the education of our young people.

Mr. President, I have said it many times but I feel it cannot be said often enough. Unfortunately this will not even be the last time we will speak on the faults of this tax. This tax is not just a tax on big oil; it is a tax on thousands of small producers and hundreds of thousands of royalty owners. It is a tax on the consumers of this country and it is a tax on the producing States of this Nation.

Mr. President, as a further example of the lack of reason, I ask unanimous consent to have printed in the RECORD actual cost estimates with reference to drilling of wells in my home State—No. 1, Landlady and No. 2, Lucky Larry. Also, I ask unanimous consent to have printed in the RECORD two articles, published in the Albuquerque Journal, which summarizes the oil industry in New Mexico and the feelings of the energy companies regarding the windfall profit tax.

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

AFE COST ESTIMATE—NO. 1 LANDLADY: E/2 SEC. 8–T12S–R32E (MARCH 1979)

Item	Tangible	Intangible	Total
COST TO DRILL 11,000-FT TEST			
Road, location and damages		$12,000	$12,000
Footage drilling (11,000 ft at $16.90/ft)		185,900	185,900
Daywork operations (3 days at $3,800/day)		11,400	11,400
Mud and water		28,000	28,000
Surface casing (350 ft, 13⅜ in at $18/ft)	$6,300		6,300
Cement and service (13⅜ in casing, 375 sx)		3,500	3,500
Intermediate casing (3,700 ft, 8⅝ in at $9/ft)	33,300		33,300
Cement and service (8⅝ in casing, 1300 sx)		10,300	10,300
Drill stem test service (2 DST's)		2,000	2,000
Logging service		17,600	17,600
Rental tools and equipment		4,000	4,000
Wellhead and connections	5,000		5,000
Supervision and expenses		3,000	3,000
Transportation and miscellaneous labor		5,000	5,000
Contingencies		32,700	32,700
Cost to casing point	44,600	315,400	360,000
COMPLETION COST			
Production casing (11,000 ft, 5½ in at $6.50/ft)	71,500		71,500
Cement and service (5½ in casing, 325 sx)		5,800	5,800
Daywork (1 day at $3,700/day)		3,700	3,700
Well service unit		7,000	7,000
Perforating service		4,000	4,000
Tubing (10,800 ft. 2⅜ in at $3/ft)	32,400		32,400
Rental tools and equipment		5,000	5,000
Acid treatment		8,000	8,000
Wellhead and connections	6,500		6,500
Separator-treater unit	20,000		20,000
Supervision and expenses		3,000	3,000
Transportation and miscellaneous labor		5,000	5,000
Contingencies		13,100	13,100
Completion cost	130,400	54,600	185,000
Total AFE cost	175,000	370,000	545,000

AFE COST ESTIMATE—NO. 1 LUCKY LARRY: SEC. 5–T12S–R32E (MARCH 1980)

Item	Tangible	Intangible	Total
COST TO DRILL 11,500-FT TEST			
Road, location and damages		$15,000	$15,000
Footage drilling (11,500 ft at $22.50/ft)		258,750	258,750
Day work operations (4 days at $4,650/day)		18,600	18,600
Mud and water		50,000	50,000
Surface casing (350 ft, 13⅜ in at $18.75/ft)	$6,600		6,600
Cement and service (13⅜ in casing, 375 sx)		3,900	3,900
Intermediate casing (3,700 ft, 8⅝ in at $10.20/ft)	37,750		37,750
Cement and service (8⅝ in casing, 1,600 sx)		15,600	15,600
Drill stem test service (2 DST's)		2,000	2,000
Logging service		26,400	26,000
Rental tools and equipment		5,000	5,400
Wellhead and connections	3,000		3,000
Supervision and expenses		3,000	3,000
Transportation and miscellaneous labor		5,000	5,000
Contingencies		44,400	44,400
Cost to casing point	47,350	457,650	505,000
COMPLETION COST			
Production casing (11,500 ft, 5½ in at $7.50/ft)	86,250		86,250
Cement and service (5½ in casing, 550 sx)		9,100	9,100
Day work (1 day at $4,650/day)		4,650	4,650
Well service unit		9,000	9,000
Perforating service		5,000	5,000

Item	Tangible	Intangible	Total
Tubing (11,200 ft, 2⅜ in at $3.75/ft)	42,000		42,000
Rental tools and equipment		5,000	5,000
Acid treatment		8,000	8,000
Wellhead and connections	8,000		8,000
Separator-heater unit	20,000		20,000
Supervision and expenses		3,000	3,000
Transportation and miscellaneous labor		5,000	5,000
Contingencies		20,000	20,000
Completion cost	156,250	68,750	225,000
Total AFE cost	203,600	526,400	730,000

UNCLE SAM'S LOOMING TAX STIRS SINKING FEELING AMONG OIL MEN

(By Ana Marie Fenimore)

Mention the windfall profits tax and you might see a grown oilman cry.

Gloom settles like the heaviest crude. Morose headshaking follows, often accompanied by dire forecasts for future exploration and drilling, not to mention production.

It is reminiscent of reaching the pot of gold at the end of the rainbow, only to slip on an oil slick and see it vanish.

In this case, the pot of gold was de-control of oil prices—a phased-in program eventually allowing producers to charge the higher uncontrolled world prices for the stuff when it comes out of the well.

The oil slick? Windfall profits tax, a tax that first rose to the surface last spring, a tax ranging from 30 to 70 percent on the price difference.

March 7, it was agreed on by Congress' Joint Committee on Taxation and last Thursday, it was passed by the full House of Representatives. Next week, it will go before the full Senate.

In the next decade, it will hit where it hurts.

The pocketbooks of just about every segment of the oil industry, from the landowner collecting a small royalty on a well to the independent producers to the major oil companies, will be affected.

At the same time, the decade brings with it the less publicized decontrol of interstate prices of natural gas.

Like oil prices, the lifting of the allowed ceiling is phased-in, but over a longer period of time. Final decontrol will be in 1985 for gas, 1981 for oil. And, like with the "windfall" coming to oilmen, the government gives and the government takes away from the industry's point of view.

What is given and what is taken away, indeed, how it is given and taken will have a major effect in New Mexico.

While the state ranks in the top 10 for both oil and gas production, it is a distant ranking compared to the major producers such as Texas and Louisiana.

Nonetheless, as a poor state with few people, the money from industry taxes, bonuses, royalties and leases goes a long way toward supporting state operations.

Today, New Mexico is described by petroleum people as mature or becoming mature, in industry terms.

In everyday words, it means the easy oil and gas have been found.

It means future production depends on finding new pools and fields, drilling deeper, drilling in new areas, keeping stripper wells going, secondary recovery, tertiary recovery.

The bottom line is money.

If what comes out of the ground doesn't pay for what it costs to get it out of the ground, then the independents and the majors are not going to go after it.

Thirty percent of New Mexico's oil production is already from secondary methods, most commonly water injection.

This involves drilling wells around an existing oil well and forcing the oil up.

Its future, according to the state Bureau of Geology, depends on "discoveries, developments and enhanced recovery programs."

Without that, the bureau's annual report states, oil production will continue to decline to the year 2000, possibly at an annual rate of 6 percent.

Casinghead gas, that which comes out of oil wells along with oil, is also declining. It can be arrested or reversed only by the discovery of significant oil pools.

And dry natural gas, that which comes out of gas wells, will continue to decline too, without new discoveries and removal of price controls. Discoveries in deeper areas are possible, along with development of marginal zones previously discovered, the report said.

The problem with well drilling, whether it be deeper or wildcat wells, as well as with enhanced recovery methods is that they are expensive—very expensive.

Take drilling a well, for example. "A million dollars is only a 13,000 foot well," said Robert Moran, owner of Moranco drilling company and state representative from Lea County.

"Every 3,000 feet the cost will double. A 16,000-foot-well could cost you $2 million. A wildcat might cost $500,000 and probably be dry."

Enhanced recovery programs bring into play what is called tertiary production, processes that are little more than a high-priced gleam in the industry's eye at this point.

The method can involve using expensive substances injected in a well to get at the oil water didn't push up. It also could use steam or carbon dioxide.

While most major companies are experimenting, California is one of the few places it has been tried and that was on a small scale. Using steam on thick, heavy oil, it was calculated that for every three barrels of oil produced, one had to go back to produce the steam.

Under existing technology, primary recovery is the stuff that is easy to get to, maybe 15 percent of the oil. Another 15 percent comes out with secondary methods.

"And I don't think anybody really knows what will happen the third time around," Moran said. "We hope it will be another 30 to 40 percent, but it will be very expensive."

New Mexico's northwest holds a potential key for tertiary recovery—carbon dioxide.

That corner of the state, said Ray Graham, director of the oil and gas division under the State Land Office, has picked up in terms of land leases.

Deposits of natural carbon dioxide have been found there and it is believed they may be extensive enough to warrant piping to oil fields in the area.

Leasing activity in the northwest, however, is still not quite as brisk as in the southeast part of New Mexico.

"They haven't started drilling yet," Graham said, "but they're acquiring every lease we offer."

The lure is the overthrust belt.

Two geological formations overlap on a line from Wyoming to Mexico. Oil has been found at both ends, Graham said, and it is thought part of the belt cuts across the southwest corner of the state.

He is optimistic about the state's petroleum future. "New Mexico still has great potential for oil and gas, we think," he said.

"We're selling every lease we put up for bid. Years ago, we put up parcels and no one would bid on them. Now, even stuff 200 miles away from production we can sell."

Alvin Baca is not quite as optimistic, but for other reasons.

As executive director of the Independent Petroleum Association of New Mexico representing independents primarily, he is worried about the possible negative effects of the windfall profits tax.

"It will just take money out of exploration and send it to Washington," he said.

And one of the hardest hit will be independent producers. "They only have one place where they make a profit and that's at the wellhead," Baca said.

Independents drill about half of all wells in the country and about 80 to 90 percent of wildcat wells. They account for a similar portion of the state's industry, he said.

Approximately 200 to 250 independents are New Mexico companies, says Baca. They get their drilling money through various combinations including their own money, bank loans, major companies and private investors. If a well turns out to be productive, they share in the profits. If not, they lose.

The money an independent gets out of it goes back into more drilling, Baca explained.

"Over the last five years, the Independent Petroleum Association conducted a survey and found independents tend to put back 105 percent of their revenue into the ground. They're borrowing against the future, betting in essence," he said.

One reason for this, says C. E. Usinger, partner and tax expert for Peat, Marwick, Mitchell & Co., is to offset income taxes.

Intangible development costs, that is, drilling costs other than equipment, fall into this category. "So the incentive to drill has been there all along," he said.

"I think the windfall profits tax will have the effect of taking this away, depending on what kind of oil. By taking away from 30 to 70 percent of the price increase due to decontrol," Usinger said, "the money won't be available to even make a decision to use it to drill or not."

On top of that, he added, New Mexico even more than other oil-producing states stands to lose from the tax.

"All those funds that come off the tax go to Congress and theoretically are going to be spread throughout the whole country so really it would make you think (oil producing states) would lose more than they gain.

"With our small population, I would think there would be a lot more funds taken out than returned in other benefits. We wouldn't get that much because we don't have many people. Our share is not going to be very great."

Baca's predictions are even more glum and often echoed by the industry.

"It means higher prices to consumers and it's going to mean a slowdown in production. People don't realize oil and gas are competing for the same dollar other industries are competing for.

"I do not suggest companies are going to go out of business, but supply certainly will be affected and oil will not come out of the ground as fast as it should, especially at the same time a higher price is being paid."

Uncertainty about the effects of the windfall profits tax could indeed slow down the industry, in the eyes of a 30-year oil and gas producer.

And, said Al Greer, president and owner of Benson-Montin-Greer Drilling Corp. in Farmington, that is bad.

"Industry has a tremendous job to do just to keep the production rate the same this year as last year and next year as this year."

That is something not generally understood, he contends.

"Almost everyone who doesn't know anything about the oil business views the oil patch in the same light as they do a corn patch.

"If you've got a field of corn that produced 100 bushels this year, it will do so next year and the year after as long as you take care of the land."

Oil doesn't work that way. "Sooner or later in any kind of natural resource that's limited, you're going to reach peaks and, as production falls off and you can't find new reserves as fast as it depletes, then you will have a decline.

"It takes a couple of things to stop that—one is incentive to look and the other is funds to do it."

Unfortunately, Greer said, the windfall profits tax puts obstacles in the way of secondary and tertiary recovery projects.

One of what Greer called the "devastating aspects" of the tax, is the higher rate on so-called older oil, generally oil discovered before 1979.

"The net result is going to be, especially as far as secondary recovery is concerned, the country is going to lose a large volume that the industry would recover if it weren't for this stupid tax.

"It doesn't make economic sense to expand secondary recovery."

To Greer, the tax provides a "double whammy" for New Mexico.

By cutting back production, the state's tax collections drop.

"If you pay 25 cents more for gas for your car, that much or more goes into the state funds," he said. "It's hard to go to the gas pump and say "The price is up' and smile, but in a sense that's New Mexico's position."

Payton Yates, president of Yates Drilling Co. and an oilman who traces his roots to his grandfather's Yates Petroleum Co., sees the problem in a slightly different light.

"I think one fault that all we Americans have is a function of instant communications, like television, so we expect instant results.

"The industry has not had the opportunity to gear up to maximum exploration efforts in the last six or seven years because of massive government intervention in pricing systems, leasing systems, environmental laws."

In New Mexico, he believes there are areas that have not been adequately explored and considerable deeper horizons in existing fields.

However, natural gas looks more promising than oil to Yates, unless "we can find the technology and money necessary to effect some good, efficient tertiary programs in existing oil fields."

His optimism about natural gas future is tempered by price controls still in effect from the Natural Gas Policy Act of 1978.

"At the time, those may have looked like they were setting the prices of natural gas near the market clearing value, that is, the price of competing fuels.

"My big concern now is that we have controls on prices that are rapidly becoming more and more unrealistic."

He forecasts more wells will be drilled below 15,000 feet, because the price of gas discovered at that depth is higher.

The controlled prices could also cause decreased exploration, he said. "We're at a very critical juncture in the search for natural gas, the relationship of the cost for the search and the regulated price."

Robert Moran, like Yates, attributes declining drilling activity in the past decade to price controls.

He is cautiously optimistic about the state's future in oil and gas production, despite the windfall profits tax.

"If it proves to be excessive, it will have a negative impact," he said. "But the oil industry has been very prone to adjust to adverse circumstances and it could be in this case as well."

Price decontrols are helping. "Eddy County, for instance, where there's been a lot of activity, has gas we passed up 20 years ago because it wasn't economical. Now it is and we are developing it because now we're getting a reasonable price even though we're still under some controls."

Whatever the final outcome of the windfall profits tax and the slow rising of natural gas prices, decontrol is having its effects.

Shell, for example, is drilling a deep well on the Isleta Indian reservation.

"It's a rank wildcat," said Wade Dover, division production manager for the mid-continent production division. "We'll take what we can get, but it will probably be gas because it's so deep."

The drilling permit is for 18,000 feet. Wells drilled in New Mexico in 1978, according to the Independent Petroleum Association of America, averaged 5,500 feet.

The company's major project in New Mexico is the North Hobbs unit near Hobbs. Shell will operate 75 injection and 180 producing wells for the 80 working interest and 90 royalty owners. It is expected production will climb from 6,900 barrels of oil a day to more than 10,000.

Although the project was first planned in 1972, Dover said it is going to end up costing much more than originally planned, $35 million instead of maybe $5 or $10 million.

"If we didn't have decontrol, I doubt we'd be doing it," he said.

Gulf, another major producer in New Mexico, will participate with other groups in 16 wildcat wells, said spokesman Sam Adelo.

"Gulf spent $2 million on leases in bidding at the State Land Office last year," he said.

Texaco, with most of its operations in southeastern New Mexico's Lea and Eddy counties, is still weighing the effects of the windfall profits tax.

Lloyd Hamann, general superintendent for the midland producing division of the producing department-western U.S., said the company drilled about 45 wells in 1978 and 35 last year.

"We presently don't plan to drill quite that many this year, but plans could change if the incentives are there to do so," he said.

El Paso Natural Gas Co., the state's largest natural gas producer, will be concentrating on infill drilling, reported spokesman Joseph Arnett. That involves drilling more gas wells in a producing area.

The company has raised its 1980 exploration and development budget to $203 million from last year's $163 million, he said.

Atlantic Richfield, the state's largest oil producer, will be drilling about the same number of wells as last year.

George Ricks, production drilling superintendent in New Mexico, said he expects to see deeper drilling.

The company is doing infill drilling and exploratory work in the Morrow gas zone in Eddy County. Last year, he said, they drilled wells northwest of Eunice that were 16,500 feet and involved a new gas discovery.

"But the windfall profits tax is our biggest problem right now," he said. That and government regulations that tie up drilling. "The best we've been able to manage for a permit to drill on federal lands is 60 days," he said, "and that's the best."

GIANT N.M. OIL INDUSTRY LITTLE KNOWN

(By Ana Marie Fenimore)

New Mexico's oil and gas industry, in the eyes of one insider, means about as much to the average person here as it does to someone in downtown Philadelphia—the gasoline pump.

Few see the 35,000 oil, gas and injection wells clustered in two corners of the State.

The don't encounter the countless storage tanks dotting eight counties.

They don't come across the eight oil refineries or approximately 40 natural gas processing plants, the estimated 20,000 employees, 25,000 miles of pipelines.

Yet 528 operators were producing natural gas and 589 oil in 1978. Another 256 were drilling wells and 21 were selling most of the gasoline brands. About 1,400 service stations were pumping those brands into your car.

At least five state and federal divisions or departments were involved in some phase of regulation or finance.

The industry is considered a financial back bone in New Mexico's budget. It is the single largest source of income to the state, the second largest contributor to the general fund, exceeded only by sales taxes.

Nationally, the state's oil production ranks seventh and natural gas fourth.

Historically, the northwest's San Juan Basin has been the larger gas producing area and the southeast's Permian Basin the main oil producing area.

"But in recent years," said Richard Stamets, technical support chief with the state Oil Conservation Division, "the gas production from the two areas has been pretty close, maybe within 2 or 3 percent."

In 1978, according to the state Bureau of Geology in the Mining and Minerals Division, Lea and Eddy counties accounted for 89 percent of New Mexico's oil production.

But, while San Juan County produced 32.33 percent of the total gas production, it was closely followed by Lea, Eddy and Rio Arriba were next.

Oil and gas also surface in Chaves, Roosevelt, McKinley and Sandoval counties.

The companies involved in what has now become a very specialized industry range from the large major or integrated companies with operations in several phases of production, to independent companies handling only, say, servicing or perhaps drilling.

Fifty of the 528 operators, the New Mexico Oil and Gas Association reported, accounted for 88 percent of the 1.137 trillion cubic feet of gas produced in 1978.

Twenty-one of these, said association director Pete Hanegan, were larger or major companies. They produced 68.2 percent to the total gas.

El Paso Natural Gas Co. was the leader by far, with 233.5 billion cubic feet produced. Amoco Production Co. was second with 98.7 billion cubic feet. Other producers ranged from Gulf Oil Corp., Continental Oil Co. and Tenneco Oil Co. to Yates Petroleum Corp., Blackwood & Nichols, Delta Drilling Co. and Rial Oil Co.

Like natural gas production, oil is also dominated by relatively few companies.

The top 50 produced 87.2 percent of the 83.6 million barrels. Twenty of these, said the association, were major companies which accounted for 72 percent of total production.

Also like gas production, one company leads.

Atlantic Richfield Co. produced 16,413,352 barrels in 1978, Hanagan said. Texaco Inc. followed with 6,640,692.

Producers included Continental Gulf, Getty Oil Co., Mobile Oil Corp. and Amoco for the majors, and Reserve Oil Inc., Yates, Rial and Benson-Montin-Greer Drilling Corp.

Unlike the production phase, where a major company might have custody of wells drilled by others, the drilling phase brings in the independents in a major role. That is especially true for wildcat wells and subsequent discovery of new fields.

Approximately 200 to 250 of those drilling and producing oil are New Mexico companies, notes Alvin Baca, executive director of the Independent Petroleum Association of New Mexico.

Nationwide, such independents drill approximately 54 percent of all wells and 90 percent of wildcat wells. They discover about 75 percent of the new fields, Baca said.

New Mexico, he added, follows the national trends.

In 1978, 1,791 gas and oil wells were completed, reported the oil and gas association.

Of these 791 were drilled by 22 larger companies. Another 1,000 were done by 234 independents. The large companies drilled only 36 of the wildcats that year.

The oil and gas coming out of wells goes to refineries and gas processing plants, sometimes here in New Mexico, sometimes farther away.

The state's gasoline processing plants are owned by companies ranging from Amoco, to Cities Service Co., Continental, El Paso Natural Gas, Gas Co. of New Mexico, Northern Natural Gas, Perry Gas Processors Inc., Tipperary Resources Corp., Tuco; Inc., Warren Petroleum Corp. and Yates.

The oil refineries include those of Plateau Inc., Giant Refining, Navajo Refining, Shell, Southern Union, Caribou-Four Corner Corners Inc. and Thriftway.

Once refined, it goes to the service stations.

According to a state oil and gas association survey, 20 of the 21 companies are the main sellers of gasoline brands, sell to 1,914 stations. Only 67 of these are owned and operated by a producer or refiner.

Those companies, say Maurice Trimmer of the oil and gas association, include mostly the majors like Gulf and Phillips, with some independents like Plateau and Bell.

One aspect of New Mexico's oil and gas production unlike states such as Texas and Louisiana, is that so much of it is on government land, Hanagan said.

As a result, the state not only benefits from taxes on the oil and gas produced, but also gets income from leases, royalties and bonuses.

Out of 77.7 million acres, 2.8 million have been yet to show they have oil and gas, says the trade group. It considers this an indication that there are still reserves to be found.

Of the oil produced in New Mexico in 1978, Baca's records indicate 34 percent came from federal lands. 46 from state, 2 from Indian and 18 from private lands. Those figures are based on a sales analysis by the state Oil and Gas Division.

Gas produced was also mostly from government lands, although more came from federal than state land: 58 percent compared to 21 percent. Another 4 percent was from Indian land and 17 percent from private land.

New Mexico's income from the oil and gas industry breaks down into direct taxes on the products and equipment, and money from leases, bonuses and royalties.

Four of the six direct taxes can be passed on as price increases, Antonio Martinez, of the State Oil and Gas Accounting Division reported.

Emergency school tax—goes into the state general fund. $45.9 million in 1978. This is a value tax based on the wellhead price. The name is misleading, as it can be used for whatever the Legislature decides, Martinez said.

Severance tax—goes into the state severance tax bonding fund with any excess after meeting fund obligations going into the severance tax permanent fund. $77.8 million in 1978. For natural gas, it is a unit tax based on the volume produced; for oil, it is now a value tax based on the wellhead price. Severance taxes, Martinez explained, are placed on natural resources produced in the state. The idea is to get money from the resources while the state has them.

Ad valorem production tax—distributed to the local governments and districts where the production exists. $21.9 million in 1978. This is a value tax based on the wellhead price and is similar to property taxes.

Conservation tax—goes toward the operation of the state Energy and Minerals Department. $3.4 million in 1978. This is a value tax based on the wellhead price.

Two other taxes, Martinez said, are not considered severance taxes. The ad valorem equipment tax is a tax on the equipment necessary for production and is distributed where the equipment is located. It brought in $3.8 million in 1978.

The natural gas processors tax is a tax on the finished products of gas processing plants and goes to the state general fund. It brought in $3.3 million in 1978.

Rentals, bonuses and royalties contribute another big chunk.

Rental money is that paid each year to keep a lease alive, according to Ray Graham, director of the Oil and Gas Division of the State Land Office.

Bonuses are one-time payments offered to get a lease on certain parcels of land being auctioned, he said.

"Some might bring $5 or $10 an acre, or $3,300 an acre," he said, depending on the chances for finding oil or gas.

After a person or organization has been granted a lease—and this does not always involve a bonus—the annual rental can vary from 10 cents to $1 an acre, said Graham.

Leases run for five or 10 years. Payments must be made each year and the well must be drilled before the lease expires or it reverts to the state. If gas or oil is found, the lessee keeps the lease as long as the wells produce.

And production is where the royalties come in.

A five-year lease, Graham said, involves a ⅙ royalty; a 10-year lease a ⅛ royalty. That is the portion of the value produced that goes to the state.

State rentals and bonuses brought New Mexico $24.1 million in 1978; royalties, $76.1 million.

Like state land, federal land involves bonuses, leases, and royalties, stated Raul E. Martinez, chief of oil, gas and geothermal for the federal Bureau of Land Management.

Half of what the bureau collects for these is turned over to the state—an estimated $53.7 million was New Mexico's share in 1978.

Both the State Land Office and the BLM conduct monthly lotteries for oil and gas leases. However, the BLM's lottery activities in all 11 Western States is currently indefinitely suspended because of possible criminal violations in Wyoming.

Regulation of drilling and plugging wells, as well as production rates, fall to both federal and state agencies.

Drilling and plugging on state and private lands is regulated by the Oil Conservation Division, said Director Joe Ramey.

The same activity on federal lands is under the U.S. Geological Survey.

However, production on all land in the state is regulated by Ramey's division, which issues drilling permits.

For example, spacing requirements include only one oil well for each 40 acres, Ramey said, one shallow gas well for each 160 acres and one deep gas well for each 320 acres.

Special in-fill permits are granted for adding wells closer than that.

The idea is to prevent underground waste. "If you take it out too fast," Ramey said, "then you can produce coning of water and trap the oil."

The division gets monthly production reports on every well in the state, he explained, and maximum monthly production for gas and daily production for oil are monitored.

In addition to protecting the oil and gas supply, state regulations are geared toward protecting ground water from oil and gas spills, Ramey said.

Wells must be adequately cased and cemented so no fluids seep out. A plugging bond is required before a well is drilled to make sure money will be there to close the hole if it turns out to be dry. While it generally costs under $10,000 to plug a hole, said Ramey, it can cost to half a million.

Historical sites cannot be ruined and community requirements are honored.

The state Oil Conservation Commission—consisting of Ramey, the state geologist, and the land commissioner—hear appeals on division rulings, Ramey said.

Leasing, bonuses and royalties for state land are handled by the State Land Office and for federal land by the BLM.

The state Oil and Gas Accounting Division keeps track of the money coming in from the oil and gas industry.

On the unofficial level, lobbying and record-keeping activities are handled by the New Mexico Oil and Gas Association and the Independent Petroleum Association of New Mexico.

Each has about 350 members, but the oil and gas association represents all sizes of companies. The petroleum association represents primarily independents.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. I yield myself such time as I require.

Mr. President, the Senator from Louisiana wishes very much that he could have brought back from conference precisely the bill that the Senate sent to conference. But the whole purpose of a conference is to settle the differences that exist between the two Houses.

In this case, in terms of dollars, with both Houses feeling very strongly and both sides having a lot of troops supporting them, there is no way one could have done anything but split the difference so far as the dollar figures are concerned, and that is what we did.

Aside from that, from the Senate's point of view, this is a very favorable conference report. The Senate had all sorts of provisions to help low-income people, to help encourage alternative uses of energy, to encourage people to insulate their homes, and other measures of that kind, and the House was very considerate of the Senate. The House went along with most of the meritorious provisions of the Senate.

So those of us on the Senate side cannot complain about the failure of the House to consider the Senate amendments. They were very considerate. Although we would like to have it all. I do not think we could expect to do a lot better than we did.

The case has been made here today about the royalty owners. Mr. President, 85 percent of royalty owners are receiving their royalty from wells that are owned by the major oil companies. Nothing that the Senate added to this bill would make it possible for us to insist on a lower tax on that segment of 85 percent of the royalty owners. The only ones to benefit under the Senate amendment would be the 15 percent who had their royalty on the wells owned by independent producers. In that case, it would be rank discrimination to treat 15 percent of the royalty owners far, far better than we would treat the 85 percent.

Picture the situation of the overwhelming majority, the 85 percent, who find that they are being taxed 60 or 70 percent, as the case may be, depending upon whether it is a stripper well or just a better well while their neighbor is paying no tax at all.

Let us just picture a march of royalty owners on Washington, not that we had that, but let us assume we did. Suppose we had 50,000 royalty owners marching on Washington and we went out there and said, "I am happy to tell you people that of your 50,000 we took wonderful care of 7,500 of you; the only people who got treated badly were the other 42,500."

We would probably be lynched by the six out of seven who have their royalty on wells owned by the major companies, not the independents.

Mr. President, there was not one Senator, including me, I regret to say, who thought enough about this matter to offer an amendment out here in the Chamber when that bill was pending to exempt all those royalty owners, the 85 percent of them who have their royalty on major company wells.

Mr. President, they are not going to be doing all that badly. I figured it out with a pencil myself, and it works out this way. Assuming a person is in the highest bracket, he is going to pay the 70-percent tax, and let us assume he is also in a 70-percent tax bracket. His income will be increased by 70 percent.

What additional expense does he have to sustain to offset that? Nothing, not even the cost of a postage stamp, because he will still have to mail the royalty check, whether it is for the larger amount or the smaller amount.

I would think that when we talk about windfall those who have no expense whatever, who simply get an increase in their income, really have less to complain about than those who take the risk, those who put the money up, take the chance of losing every nickel they put into it. They are paying, by the way, the same 70 percent. So in terms of discrimination how can we justify saying that the man who takes all the risk, puts up his money, and risks every last nickel of it against 9 to 1 odds, should pay a 70-percent tax and the fellow who takes no risk at all should pay nothing?

Mr. President, I am for those people who take no risk. I am one of them, and I should know.

But I would be the first to say that, in terms of saying where the discrimination lies, we really cannot say that royalty owners have been treated unfairly when they are receiving a 70-percent increase in their income and this tax is the first tax that adjusts itself for inflation.

So, if the price continues to go up, they just get more money to offset that. If it is new oil, or if it is heavy or tertiary oil, they even get a 2-percent kicker. So it is just to their advantage to hope they do get inflation. They not only get the inflation increase but a kicker on top of that.

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

Mr. LONG. I yield.

Mr. BELLMON. I think that may be true, but as far as stripper producers are concerned, and royalty owners, they are going to get a rollback. They are not going to get 70 percent. They will get a 36-percent rollback.

Mr. LONG. Yes. I understand that argument. But why is that? That is because we voted a couple of years ago to exempt these stripper wells from any price controls. We exempted them back at the time when the price was about $13 a barrel. Now the price has gone up to $40 a barrel. I have an example which assumes a price of $35 a barrel, which I ask unanimous consent to print in the RECORD.

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

	Stripper oil	Lower tier oil	Upper tier oil
Current price of oil (assumed)	$35.00	$35.00	$35.00
Base price [1]	15.00	13.00	13.00
Taxable windfall profit [3]	20.00	22.00	22.00
Tax rate (percent)	(60)	(70)	(70)
Windfall profit tax	12.00	15.40	15.40
Royalty after windfall profit tax	23.00	19.60	19.60
May 1979 price	12.00	[3] 6.00	[3] 13.00
Increased income from May 1979 to March 1980	11.00	13.60	6.60
Increase as percent of income	(48)	(70)	(34)

[1] Rounded for simplicity.
[2] State severance taxes disregarded for simplicity.
[3] Price determined by controls.

Mr. LONG. Mr. President, it will show the difference.

Let us assume that at the time that we deregulated strippers they were getting $12 a barrel, which is about what it was back at that time. That has been adjusted up to $14, but their net proceeds are going to be $23, assuming the price of oil is $35, so they get a net of $23 where they were only getting $12.

Admittedly they are paying no tax at this moment and they will have to pay a tax in the future. But when we take a look at the benefit that the people have had of the increased income, can we very well take the view that a stripper-well producer should be treated more favorably than someone engaged in tertiary production? In the latter case, the fellow is having to put chemicals and soapsuds down there. He will have to put eight barrels of soap for every barrel of oil he is getting out.

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

Mr. LONG. I yield.

Mr. BELLMON. I am sure the Senator realizes that stripper wells are operated with antique equipment, with old, obsolete equipment that breaks down and has to be repaired. That increases the costs of stripper oil, where they have a lot of water to pump in, more than the cost of producing other oil.

Mr. LONG. What has that to do with the royalty owner? He does not have any of those costs to bear.

Mr. BELLMON. In many cases he has an investment he has made. He owns the land. He sits there waiting, and now gets a $17 check. I cannot see any justification in taking away from him the small return on his investment.

Mr. LONG. Mr. President, I know a little about this business, and I am sympathetic to the producers.

Mr. BELLMON. I agree.

Mr. LONG. I have been involved on both ends of oil production. I am a royalty owner, and also have been a stripper producer.

Let me say I would be delighted to exempt the stripper owner, and I so voted. But that could not be held in conference, and thus all these independents are getting a 30-percent tax while everyone else pays 60 percent on the same type well.

Mr. President, the Senator from Oklahoma (Mr. BELLMON) went down to Shreveport, La., and met with a group of people who are in the oil business, and explained to them his view that I had "dropped the ball," that I had not taken care of them. I then went down to Shreveport 2 weeks later and explained my viewpoint. After I got through speaking, a man rose and said, "Senator, everything I have is stripper oil. I think you have done everything you can do to look after our interest. And I want to tell you that, as far as I am concerned, I appreciate what you have done to look after our interest." And they all gave that statement a big hand.

Sure, I would like to see those people exempted. I represent them. Louisiana exports three barrels for every barrel it keeps inside the State.

But, on the other hand, Mr. President, if we do not pass this bill, the President is going to call off the whole decontrol program and producers generally would be worse off.

Admittedly, the stripper producers would be better off. What percent of the oil is that? It is only about 15 percent of the oil, and only about half of that is the independents. And that is the only part; 7½ percent of oil is the only part of it where we had any leverage to try to do anything for those people.

To do more would have been a discrimination against others. That is something, Mr. President, that people can understand.

I am happy to say, everyone I have had a chance to discuss it with has understood it. I have yet to have a single royalty owner or producer, be he a stripper owner or a major producer, come to me and say, "This does not represent the best you could have done under the circumstances."

So, Mr. President, while it is true that our friends on the House side from the Louisiana delegation voted against the bill—they have that privilege and I respect it; they can be in favor of every amendment to reduce the tax, and then vote against the whole thing, and hope that they will get the decontrol of prices in spite of all that—I do not have that privilege. I was chairman of the Senate conferees. I put my name on that conference report. I did everything I could to get the House of Representatives to go along with the Senate, and I feel it is my duty to support the conference report.

Overall, it is a better deal for Louisiana, than continued price controls would be.

So, I would think, Mr. President, we better just go ahead and pass the bill. The last thing I would want is to have the bill referred back to the Finance Committee. The majority of us on the committee are going to vote against referring the bill to our committee. We do not want the bill back in the committee. We had a chance to study it and hold hearings. We have lived with that bill for a solid year, practically, as far as we are concerned. We would like to vote on it now, even though some of us would have liked to exempt royalty owners and independents.

I hope very much the Senate will not vote to refer the bill to the committee, but go ahead and do its duty, vote the bill up or vote the bill down. Give us a judgment.

The VICE PRESIDENT. Who yields time?

Mr. DOLE. Mr. President, how much time remains for the Senator from Kansas?

The VICE PRESIDENT. Three minutes.

Mr. DOLE. And the Senator from Louisiana?

The VICE PRESIDENT. Seven.

Mr. DOLE. Mr. President, I yield myself 1 minute.

I certainly do not want to get into a quarrel with my distinguished chairman because I think, as he has indicated, we made every effort we could to improve the bill. But I think we recognize a mistake we made, and there is still time to correct it, or at least emphasize, send a signal to the royalty owners, that we did make a mistake.

That is all we are asking. We know we cannot change the conference report. What are 15 more days? Once this Carter tax starts hitting across the country, there is going to be a big, big uproar, and I suggest that in the State of Kansas, the State of Oklahoma, the State of Louisiana, the State of Alabama, everyplace you have oil production, that the royalty owners are just now finding out.

I do not share the view that they ought to be happy about paying this tax.

Nobody wants another tax, whether it is a Carter tax or any other tax. They do not want another tax. Senator KENNEDY is for the tax, too, so we cannot be partisan about this.

But I just suggest that the royalty owners have yet to be heard from, and when they are heard from we will probably make a change. But why not start doing it now?

I just hope those who have royalty owners in their States—I am not so worried about the independent producers. They are going to do all right. They did come out fairly well, but the royalty owners did not, and that is why we are making this effort to send it back to committee.

I reserve the remainder of my time.

The VICE PRESIDENT. Who yields time?

Mr. LONG. I yield 4 minutes to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the uncertain energy picture has triggered an abrupt change in our perceptions of the future. The impact of soaring energy prices and insecure oil supplies has reverberated throughout our economy. The finite nature of world petroleum resources, the capricious decisions that seem to determine price and production policies in some OPEC countries, and unstable political conditions that threaten some sources of supply, have led economists and political analysts to predict the bleakest energy prospects. However, the most significant element of the current energy dilemma may well not be the crisis itself, but our response to that crisis.

The windfall profit tax is the cornerstone of our efforts to achieve energy security. The starting point for this initiative was the President's decision to decontrol the price of domestic crude oil, with the dual objective of increasing production while encouraging conservation. This action was begun, on a phased basis, on the condition that the Congress enact a fair and meaningful windfall profit tax. The extraordinary revenues generated by decontrol were to be directed, in the private sector, toward exploration and production of new petroluem resources. In the public sector, windfall profit tax receipts are to fund critically needed programs, including the development of alternate fuels, mass transit construction, and assistance to those who are hardest hit by skyrocketing energy prices. Fairness and equity demand that some of the extraordinary profits to be reaped by the oil companies as a result of decontrol be recycled to benefit the Nation as a whole.

As we stand on the threshold of enactment of the largest tax ever imposed on a single sector of the economy, we must place in perspective the impact of this legislation. We have heard eloquent arguments in favor of the oil producers. It has been said that the windfall profit tax would stifle production; that the oil companies really suffer from poor economic performance; that a tax would destroy the capital base from which exploration and development would be financed. But the facts tell a different story.

U.S. oil company profits in 1979 were not only the highest in history, but they represented the largest 1-year increase on record. No matter how the industry's profits are measured—return on equity, actual dollar increase or percentage increase—the record is staggering. Overall, in 1979, the 20 largest oil companies reaped profits in excess of $22 billion, an increase over the previous year of 64 percent. The significance of 1979's recordbreaking oil profits is underscored by the fact that decontrol of domestic oil prices has barely begun. The oil companies are expected to reap over $1 trillion over the next few years as the decontrol program is fully implemented.

The compromise windfall profit tax bill achieved by the conferees is fair to the oil companies. It is at once good energy policy as well as wise public policy. Under the conference compromise, the tax is expected to raise $227.7 billion over the next 11 years. This represents an even split between the Senate bill of $178 billion and the House bill which raised revenues of $277 billion.

A number of substantive changes were made by the conferees from both the Senate and House versions of the bill which will improve the administration of the tax. Decisions were made to eliminate or cut back some energy tax credits in an effort to derive an energy policy which will be the most conducive to alternate energy production and renewed conservation efforts.

Although the conference report does not satisfy everyone, it was achieved on a bipartisan basis in the best spirit of legislative compromise. It is time for this bill to become law.

There has been extended discussion of these difficult and complex issues over the many months of committee and floor debate. The Senate Finance Committee spent 16 weeks shaping the Senate version of the bill. It was considered for 21 days on the Senate floor and consumed 11 weeks of discussion in conference. We have had enough debate. It is time for decision.

The motion to refer the conference report to the Finance Committee is ill advised and should be defeated. Referral of the report could seriously jeopardize final passage of the windfall tax this session.

Mr. President, the distinguished Senator from Kansas says it will only mean 15 days. Well, what it means, Mr. President, is 1 month, at least 1 month and 1 day, because the Senator is talking about 15 days of actual session and, of course, the Senate is going to be out on a legislative holiday during the Easter period, and it is not in on Saturdays, it is not in on Sundays. So what we are actually talking about here, Mr. President, this conference report, if the motion by Mr. DOLE should carry, would be reported back to the Senate on April 28, and that would be 1 month and 1 day. That would give the lobbyists the opportunity to work everybody over, just another month—not 15 days, but a month and a day.

So, let us not be misled, Mr. President, by this argument that it would just be for 15 days.

It is time to act in the best interests of the American people, not to protect special advantages for a few. Those who have studied the conference report are aware of the special tax concessions afforded independent producers in an effort to induce increased exploration and development of domestic oil resources.

The motion which Mr. DOLE would make would only delay action on this measure. Mr. President, this Nation can no longer afford to wait.

I urge my colleagues to vote against the motion and to vote for final adoption of the windfall profit tax conference report. Today, our foreign policy, economic health, and energy future are inexorably intertwined. For some years to come, we shall probably experience continued vulnerability and instability as a result of the foreign origin of many of our energy resources. But this legislation is an important first step toward energy independence. We must begin this effort, to let the world and the American people know that this Nation will meet the challenge.

I want to compliment the distinguished Senator from Louisiana (Mr. LONG) for the courage and the statesmanship he has demonstrated as a Senator from Louisiana, a great oil-producing State, in bringing this bill back to the Senate, the conference report back to the Senate, and for defending it.

Of course, it is not what he would like to have. He would like to have brought back a conference report that represented the bill that the Senate sent to conference. But he recognizes, as the man who has dealt in the legislative process for many years, that this has to be a compromise. He also recognizes that the Nation has to have a bill and, Mr. President, to me that is the epitome of statesmanship.

It does not take much courage for me to vote for this conference report, Mr. President. My State produces a little oil, a little gas, and a lot of coal. It does not take courage for me. But it takes a lot of courage for the Senator from Louisiana and his colleague to vote for this conference report, and I salute him, and I think the Senate is in his debt and the American people are in his debt.

Mr. President, I urge that the motion by the distinguished Senator from Kansas be roundly defeated and that the conference report be roundly voted up. I thank everyone.

The VICE PRESIDENT. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, let me say a word of praise for the distinguished Senator from Kansas.

Mr. LONG. He will permit that. [Laughter.]

Mr. ROBERT C. BYRD. He goes down fighting. I hope he goes down. But if he does, he goes down fighting. He stands for what he believes. He lays it right on top of the board, calls the shots as he sees them, although he is doing a little misrepresenting here, not intentionally, when he says he is referring this conference report to the committee for 15 days. It is actually a month and 1 day.

Mr. DOLE. Yes, because we have a recess.

Mr. ROBERT C. BYRD. Yes, because we have a recess. But I admire him, I respect him, and it is easy for a man to win, myself, because I am not from an oil-producing State. We do have a little oil and we hope to produce more down there, but it is difficult to lose, and the Senator loses with a smile. I can see the smile now. [Laughter.]

Mr. DOLE. That is because I am used to losing. [Laughter.]

But I would just say that I appreciate that very much.

I also want to commend my chairman. I do not want anything to happen to that relationship we have in the Senate Finance Committee, because this was a great bipartisan effort to get this bill where it is.

I do not think the chairman wants all the credit for passing the windfall profit tax. I think we would like to share that because it is going to be rather unpopular. But I would just hope that we would send it back for 15 days—maybe it will be a month—I would be happy to make it 7 actual days. But the point is we want to send a signal to the royalty owners that we did not recognize their problem. That is the only point for offering this motion.

We are prepared to vote and prepared to win, whenever the time is ripe.

I yield to the Senator from Oklahoma.

Mr. BOREN. Mr. President, is it not true that we have been trying to determine how many royalty owners there are, and we found out in the process that they do not even have a national organization and they do not even have a lobbyist? So the point is that we are trying to talk for hundreds of thousands of people who are really not represented in an organized group in the Nation's Capital; is that not true?

Mr. DOLE. Mr. President, Senator PERCY's office had 200 calls yesterday. So somebody is getting the word.

Mr. BENTSEN. Mr. President, the conferees on the windfall profit tax have agreed to a provision which I sponsored on the Senate floor and which has strong support in both the Senate and the House. That provision is the interest and dividend exclusion which increases the amount of the existing exclusion for dividends from $100 to $200 and broadens the exclusion to apply to certain types of interest received by individuals from domestic sources, including interest from banks and thrift institutions, interest on certain types of corporate debt, and interest paid by the United States or a State or local government which is not already excluded from gross income. Mr. President, those of us that sponsored this provision—and there were 78 cosponsors in the Senate—believe that it will provide strong incentives for savings and investment in this country. With this in mind, I would like to ask the chairman a question to clarify and reconfirm my understanding of this provision.

First, Mr. President, it is my understanding that the interest and dividend exclusion provisions contained in the conference report list several specific types of interest that would be excluded from gross income. In addition, a provision is included that provides that to the extent prescribed in Department of Treasury regulations the exclusion includes interest on other evidences of indebtedness issued by a domestic corporation of a type offered by corporations to the public. Am I correct, Mr. President, that this provision concerning the inclusion of other types of interest was done in order that other types of interest on corporate obligations that were not specifically named in the bill will be eligible for the interest exclusion?

Mr. LONG. That is correct.

Mr. BENTSEN. Is it your understanding. Mr. President, that one type of interest that could be included in the Treasury regulations under this provision is the interest on amounts held by an insurance company under an agreement to pay interest on the amounts held?

Mr. LONG. Yes, that is my understanding. Of course, that type of interest is not the only type of interest which the Secretary could include, but it is a clear example of the type that could be included by regulation.

Mr. BENTSEN. I thank the chairman for the clarification.

Mr. MOYNIHAN. Mr. President, a sentence in the conference report causes me concern. I think I am reading it correctly, but let me ask you. It is at section 4994(c)(4)(C)—the definition of a "qualified property" for purposes of the tax exemption for front-end tertiary oil.

It says:

> The term "qualified property" means any property if, on January 1, 1980, 50 percent or more of the operating mineral interest in such property is held by persons who were independent producers.

I hope the Internal Revenue Service will understand that sentence to permit an independent producer to expand an existing tertiary project where the following circumstances are present: the potential expansion was recognized and permitted in a contract in existence on January 1, 1980, and the independent producer continues to own 50 percent or more of the expanded project and property on which it was located.

That was certainly my understanding of it as a conferee. Does the Senator also hope that a tax exemption would apply to front-end oil sold to finance an expansion like the one I have just described?

Mr. LONG. I hope that the Treasury will apply the front-end financing part of the act in a way that encourages the development of tertiary projects by independent producers.

Mr. MOYNIHAN. Let me ask the Senator two more questions, if I may. The conferees decided to exempt front-end tertiary oil, but with certain restrictions. Section 4994(c)(3) describes one such restriction. It denies the exemption to front-end tertiary oil released under the DOE program, but used to finance certain "prepaid expenses." Do I assume correctly that that section is intended to prevent oil producers from abusing the DOE program by using what would otherwise be exempt front-end oil to pay expenses that are not incurred in the ordinary course of business before October 1, 1981, or the costs of items that are not used or placed in service before October 1, 1981?

Mr. LONG. That generally is correct.

Mr. MOYNIHAN. Mr. President, it is also my understanding that where an item is depreciable, the full capital cost of that item may be financed with exempt front-end oil, particularly where the item is used in an unusual or unproven process.

More to the point, I understand the conferees to have wanted front-end oil to be exempt when it is used to pay the full capital cost of an item and, first, the Department of Energy specifically approves—by decision and order, for example—the use of front-end oil to pay for the item; second, the disbursement for the item is made in the ordinary course of business before October 1, 1981; and, third, the item is completed or placed in service before October 1, 1981. Am I correct in that understanding?

Mr. LONG. Well, I certainly hope that the front-end financing provisions are interpreted liberally by the Treasury to encourage tertiary projects.

Mr. CRANSTON. Mr. President, the conferees on H.R. 3919 agreed that the base price for stripper oil (tier 2) and for newly discovered, incremental tertiary and heavy oil (tier 3), should vary from the agreed-on base of $15.20 for tier 2 and $16.55 for tier 3 to take into account differences in quality and location.

In the conference agreement, as I understand it, the base price for tier 3 oil is set by reference to the posted price for uncontrolled (stripper) oil in a given location in December 1979.

Because California refinery postings in December were lagging at least 2 months behind prices in most other regions, the effect of the selection of this date is to discriminate against California production by establishing a lower base price—the price above which the tax applies—and hence a higher tax on California production, than on production from other regions.

Although, under an uncontrolled pricing situation, the price realized for California crude should ultimately catch up with crudes of similar quality from other areas, the selection of the December date for the ratio by which base prices are adjusted for quality and location insures that the discrimination against California producers, if not corrected, would last for the duration of the tax.

I know that the conferees and the conference staff have worked hard to find a solution for this problem. Initially, an October 1979, base date was chosen. This date would have created an even worse problem for California producers, because an even greater price disparity existed in October 1979, when California prices were especially depressed. Changing the date to December represented some improvement.

I know the conferees were well aware of the continuing inequity, which was discussed in the conference report and was again acknowledged by Congressman ULLMAN during the debate leading to acceptance of the conference report by the House of Representatives.

As I understand the last minute changes in the conference report, designed to alleviate the problem, for the initial few months of the tax, base prices will be determined under an interim rule in the bill which sets a minimum base price for tier 2 at $1 more than the upper tier price for May 1979, and for tier 3 at $2 more than the upper tier price for May 1979. This should relieve temporarily about 50 to 60 percent of the California problem.

After the interim period has expired, the conference agreement requires the Secretary of the Treasury to issue regulations for calculating permanent base prices, which remedy the continuing inequity that arises from using December 1979 as the base month, and fully take into account the problems of California oil and oil from any other areas where December 1979 prices were extraordinarily low. This task was left to Treasury because it will have better data available when final base prices are set, than is currently available.

Will the distinguished Senator from Louisiana tell me whether I have correctly understood the intention of the conferees?

Mr. LONG. The Senator from California has correctly understood the intention of the conferees. As the Senator pointed out, the conference report does deal with the probelm in the case of oil from California and some other areas.

First, for the initial few months of the tax, these base prices are determined under a temporary rule in the bill. This rule contains a provision which sets minimum tier 2 and tier 3 base prices, and is intended to relieve most of the problem experienced in California. Second, the bill requires the Treasury to issue regulations for calculating permanent tier 2 and tier 3 base prices not later than October 1980. The conference bill gives the Treasury adequate authority to remedy inequities that arise by using December 1979 as the month for establishing grade, quality, and location differentials. The conferees expect the Treasury to use this authority to take into account the special problems of California oil and oil from any other areas where December 1979 prices were extraordinarily low relative to the national average. The primary reason for leaving this task to the Treasury is that it will have much better data available later in the year when final base prices are set than was available to the conferees at this time.

Mr. CRANSTON. Mr. President, I thank the Senator. I very much appreciate his efforts to correct this inequity, and on other aspects of this very significant legislation that are very important to the people of my State.

Mr. President, I would like to comment on section 201 of the conference report, which extends the authority of the Treasury Department to designate items that will qualify for residential or commercial energy credit. I would appreciate the comment of the distinguished Senator from Louisiana, as well.

I introduced an amendment to the Senate bill to retain the Treasury Department's authority so that new devices which conserve energy could be considered for a residential or commercial energy credit. I do not believe that this important incentive for energy conservation should be discontinued so soon after it had been created or that the tax credits should be limited to those devices already approved. Nor do I believe that the judgment as to which devices deserve the credit should be legislative. I am, therefore, pleased that the conference committee retained my amendment and that the conference provided standards to guide the Treasury Department in using this authority. These standards emphasize that the amount of energy saved, not the manner in which energy is saved, is the key to qualifying for the credit.

My concern, however, remains that the Treasury Department will not exercise this authority broadly enough.

Mr. LONG. I agree with the Senator's analysis, and point out that the Treasury Department will be required to report to the Congress monthly as to its actions.

Mr. CRANSTON. I believe that is a valuable and important addition.

Mr. BENTSEN. This act provides so-called double-dipping rules for energy property which is financed by tax exempt industrial revenue bonds. Under existing law, the energy credit is cut from 10 to 5 percent for any item of energy property that is financed to any extent with tax exempt industrial development bonds. As I understand it, the double-dipping rules contained in this act would operate in a similar manner as existing law except that the energy credit would be cut from 10 percent to zero to the extent that tax exempt industrial development bond financing is used. Is this correct?

Mr. LONG. Yes; the new double-dipping rules would cut the energy credit not to 5 percent, but to zero to the extent that energy property is financed with tax exempt industrial development bonds. In identifying an item of energy property to be affected by the reduction in the credit, the new provision and the old provision are intended to operate in identical fashion.

To illustrate, under existing law, if a pollution control device costing $150,000 is financed with industrial development bonds and installed in a plant as part of a boiler installation costing $250,000, the pollution control device would be eligible for a 5-percent energy credit and that part of the remaining $100,000 of the installation which qualifies as energy property would be eligible for the full 10-percent energy credit. Under the new rules, the pollution control device would receive no energy credit. That part of the remaining $100,000 of the installation which qualifies as energy property would continue to be eligible for the full 10-percent energy credit.

Mr. JOHNSTON. Mr. President, after hearings in the Senate Energy and Natural Resources Committee before my Subcommittee on Energy Regulation, I concluded that fees or quotas on imported oil or products was such an important issue affecting our economy that any decision by the President to take such action should first be reviewed and approved by the Congress. Questions on what an import adjustment would do in relation to inflation, availability of fuel, and the future of our domestic refining policy should not only be asked but answered before imposition of such an action.

Therefore, I offered and the Senate accepted my amendment to H.R. 3919, the windfall profit tax bill, which would require that before imposition of any rule, regulation, or order establishing limits on the total amount of crude oil, residual fuel oil, or any refined product imported into the United States, or the placing of any fee, duty or tariff on the same the President would first have to seek the approval of Congress. The mechanism for approval of this action was that both Houses refrain from disapproving the plan sent to the Congress. The action would be expedited identical to the procedure for approval of a rationing plan set out in the Emergency Energy Conservation Act of 1979.

The conference committee modified my amendment in three major ways: The President would not have to seek prior approval before implementation of his plan; the plan would go to the Ways and Means and Finance Committees; and the expedited procedure was not retained.

However, it seems clear to me that the scope of Presidential actions covered by my original amendment—quotas, fees, duties and tariffs—is identical to the scope of actions encompassed by the conference agreement. I note that section 402 of the report provides a mechanism to review actions of the President "to adjust" imports of petroleum under section 232(b) of the Trade Expansion Act. The language "adjust" set forth in section 402 is identical to the language "adjust" in section 232(b) of the Trade Act.

This language was specifically interpreted by the U.S. Supreme Court in 1976 in the case of FEA against Algonquin SNG, Inc. In this case, the Court held that authorization "to adjust imports" encompassed not only the use of quantitative controls such as quotas but also the use of monetary exactions such as import fees. My amendment was intended to incorporate the finding in this case, and in fact made it explicit in the wording.

The statutory language of section 402, I believe, agrees with my position just discussed. However the statement of managers report at page 162 contains the statement that:

> The conference agreement amends the Trade Expansion Act of 1962 to eliminate the President's authority under that Act to impose oil import quotas.

My question to the distinguished chairman of the Finance Committee is, does the language of section 402 of the conference report intend that the procedure provided include the Presidential imposition of fees, duties, tariffs, and quotas as the original Senate-passed amendment?

Mr. LONG. The Senator's understanding is correct.

Mr. MATHIAS. Mr. President, the conference report on the Crude Oil Windfall Profit Tax Act has retained the Secretary of Treasury's discretionary authority to add products to the list of items qualifying for the residential energy tax credit and the business energy investment tax credit. The reinstatement of the Secretary's discretionary authority represents a significant breakthrough for companies that are striving to develop new products that encourage energy conservation.

It is my understanding that the conference report has established standards for the exercise of the Secretary's authority in order to ease the burden of administering the tax credit program while broadening its scope. In addition, it is my understanding that, under the residential energy tax credit provisions included in the conference report, the items which may be added to the list of qualifying property include products which are purchased by a taxpayer to supplement, or even replace, inefficient conventional heating and cooling systems provided that such products meet the standards enumerated in the conference report.

Is that the understanding of the manager of the bill?

Mr. LONG. That is my understanding.

Mr. MATHIAS. Further, Mr. President, the conference report indicates that the six items of equipment—that is, heat pumps, airtight woodburning stoves, replacement oil or gas furnaces, replacement coal furnaces and boilers, replacement woodburning furnaces or boilers, and low density infrared radiant heating panels—that would have been added to the list of qualifying residential items under the Senate's amendment to the act are to be evaluated by the Secretary using standards enumerated under section 201(b) of the bill after information required for this evaluation has been filed. While there is no corresponding statement regarding qualifying business items, it is my understanding that the two items—that is, industrial heat pumps and low density infrared heating panels—which would have been added to the list of qualifying business property—as "specially defined energy property"—are also to be evaluated by the Secretary using the standards enumerated under act section 201(b) after information required for this evaluation has been filed.

Is that the understanding of the manager of the bill?

Mr. LONG. That is my understanding.

Mr. MATHIAS. I thank the manager of the bill for his comments.

Mr. BENTSEN. Mr. President, I would like to clarify a point concerning the treatment of overriding royalty which is covered in section 4992(d)(2)(B). You will recall that the conference committee devoted extra time and attention to this issue which is of particular importance to independent producers.

It is customary practice for some independents to operate on their own without a staff or large capital structure to put together a wildcat prospect where they invest their time, talent, and expertise, plus perhaps providing the initial cash investment to acquire the oil and gas lease.

Then, lacking the significant amount of capital required to drill the first well on the property, they will assign a large part of their interest in the prospect to one or more other independents to drill the wildcat well, retaining an overriding royalty interest which they have the option to convert to a working interest at some future time.

Now, this person, so long as he retains his interest as an overriding royalty, will be taxed as a royalty owner subject to the maximum rates of 60 percent on tier 2 stripper well production and 70 percent on tier 1 production.

However, if they should at any time in the future exercise their option to convert the overriding royalty to a working interest, this working interest would then be eligible for independent producer treatment if the holder of it is otherwise qualified as an independent.

The fact that their overriding royalty contract provided them the option to convert to a working interest, rather than being automatically converted without any decision or action on their part, does not in any way affect the eligibility of the working interest once converted from an overriding royalty for treatment under the independent producer provision if the holder thereof is otherwise qualified.

Mr. LONG. The Senator is absolutely correct. The conference committee, as I understand their action, intended that any royalty interest, so long as it remains a royalty and does not pay its proportionate share of the cost of operating the property, will be taxed as royalty at the same rates which apply to integrated oil companies.

However, when an overriding royalty in existence on January 1, 1980, is converted to a working interest pursuant to a binding contract in existence on February 20, 1980, and therefore becomes liable for the appropriate share of the expense of operating and producing the property, then such converted overriding royalty will be eligible for independent producer treatment if the owner of the interest is otherwise qualified as an independent.

It does not make any difference whether the overriding royalty was convertible upon the option of the holder of the overriding royalty, or whether it was automatically converted upon the happening of some occurrence. The important fact is that an interest which did not previously pay part of the cost of operating or producing the property has become subject to payment of operating cost because it became a working interest and is no longer an overriding royalty.

Mr. BENTSEN. In other words, it is not the manner in which the overriding royalty becomes a working interest, but rather the fact that it has become a working interest that determines its eligibility for independent producer treatment. The important point is that the holder of the interest is now liable for his share of the cost of producing the oil. Is that your understanding?

Mr. LONG. The Senator has stated it correctly. We are not concerned with the technicality of how the overriding royalty was converted or could be converted to a working interest, as long as the conversion occurred pursuant to a contract in existence on February 20, 1980. We are concerned with the reality that it has been or is converted to a working interest.

Otherwise, many independents, who have taken their chances on wildcat wells and made possible the development of oil and gas resources that otherwise would remain undeveloped, would be denied a significant part of the value of their contracts and agreements they made in exchange for their services.

Mr. BENTSEN. Mr. President, I thank the chairman. I just wanted to be certain that no one misunderstands the language of section 4992(d)(2)(B). The use of the words "was to be converted" is intended to reflect the anticipated happening of a future occurrence, that is, the conversion of an overriding royalty to a working interest for whatever reason, and includes an optional as well as a mandatory conversion.

Mr. LONG. That is correct. My understanding is exactly the same as the Senator's.

Mr. BENTSEN. I thank the chairman for expressing so clearly the intent of the managers of the conference committee.

Mr. LEVIN. Mr. President, the conference report on the windfall profit tax may be the final stop of a very long itinerary through Congress. The breadth and size of this tax has made its journey long and difficult. Before us is a document which reflects the hard work and devotion of the principals involved. Their efforts have made this compromise possible.

Within the report, there are sections, if considered separately, I would not support. However, there is a need to judge the overall report. The essence of this windfall profit tax is an excise tax on oil company income resulting from decontrol. In the original text, revenues were to be employed in the development of new energy projects. They were intended to expand conservation incentives and stimulate alternative energy development in order to lessen our perilous dependence on foreign oil. Perhaps the most onerous section of the compromise is the conference language instructing how the revenues would be spent. But for authorization for low-income energy assistance for 1981, there is only a tenuous connection between energy goals and the disposition of windfall revenues. For this reason, I can support the compromise but only reluctantly.

The advisory language of section 102 is largely symbolic. It does not authorize spending. Future Congresses are not bound by the language of the report.

However, the language permits Congress, if my understanding is correct, to fund general revenue programs. If legislation committing annual windfall revenues to tax reductions to low-income energy assistance, to mass transit or to energy production is not forthcoming, those revenues become part of general revenues.

In our efforts to balance the budget, we are likely to postpone efforts to become energy independent and use too much of the windfall profit revenue for non-energy-related purposes. I believe that would be a tragedy of almost incalculable proportions and would visit on the heads of our children and grandchildren the same dependence on foreign oil, and resultant economic helplessness, that we face.

It would be far better to preserve the money in a general trust fund for a time when we can better determine our needs and the ways it can be spent constructively for energy independence. Forming a general trust fund would not have protected the money from any other use.

However, it would have required an affirmative act by Congress authorizing the funds for a specific purpose provided Congress felt such a purpose a priority.

The windfall profit tax as passed by the Senate included a number of new tax credits and other incentives to encourage the production of alternative fuels and the conservation of our remaining oil reserves. The importance of conservation and alternative energy development must not be lost. Despite the increase in money spent on new wells, in the number of wells drilled and total footage drilled, the amount of new oil found each year has steadily declined. We will reach the point, at least domestically, where our supply of nonrenewable crude oil will be exhausted.

The Senate bill included numerous additions to the conservation credits already in the law for both residences and businesses. It included a 50-percent tax credit for residential solar and wind expenditures including structural components, extension of the exemption from highway taxes for gasohol, new financing for small-scale hydroelectric investments, a 40-cent-per-gallon tax credit for the production of alcohol fuels, and new incentives for congeneration and district heat investments. In all, the Senate bill included $26 billion of energy credits for businesses, individuals, and landlords.

The Senate bill represented a more aggressive energy development program that used these tax credits and financial instruments to prepare our capital structure for efficient energy use and the maximum utilization for renewable resources. The conference report removed many of the energy credits and energy tax incentives. Only $9 billion remains in the compromise for energy credits. The $26 billion balance is a necessary part of the transition to energy independence. However, the bill does not guarantee that those revenues will even be used for the energy purposes set forth in section 102.

The conference bill does not authorize spending except in a few cases. For this reason alone, the language is not a totally grievous matter.

However, section 102 of H.R. 3919 does make it difficult to reserve funds for future energy use. The message it sends to the American people is that our commitment to energy independence is not what it should be and must be for our future economic health and political independence from threats of oil cutoffs.

The intent of section 102 dealing with the disposition of windfall revenues has been the subject of several discussions during the last 2 days here on the floor. I do not want to take the time of the Chairman on the same issue. I do, however, wish to set for the record my understanding of the instructions.

If he so chooses, the President does not have to recommend ways in which to dispose of windfall revenues for each year. On the other hand, he may recommend ways which are not specified in section 102. These recommendations of course are not binding.

Windfall revenues, whether Congress acts on specific recommendations or not, are placed in the consolidated budget. Provided the Federal Government spends as much as it takes in that year, including windfall revenues, Congress would, in effect, commit windfall revenues to general revenue programs, including defense programs and public works projects. In other words, windfall revenues could not be reserved for future use unless Congress specifically requests a trust fund in accordance with some specific program.

I have two short questions I hope the distinguished chairman could address.

If Congress decides to use the windfall revenues to balance the budget next year, a decision we will make in a matter of weeks, will we not violate the instructions of section 102?

Mr. LONG. No, we will not violate section 102.

Mr. LEVIN. In voting for this conference report, am I committed in any way in this Congress or later Congresses to spend the funds according to the instructions set forth in section 102?

Mr. LONG. No. Section 102 has no binding effect on this or future Congresses.

Mr. BENTSEN. Mr. President, I would like to clarify a point concerning the scope of the exemption from the windfall profit tax for educational and medical charities. It is my understanding that some qualified charities that received interests in oil production before January 22, 1980, turned those interests over to trustees or others to manage the production and to distribute all of the production income to the charity. Am I correct that such a charity could qualify for the exemption?

Mr. LONG. Under the conference agreement, which follows the Senate amendment, a qualified medical or educational charity is exempt from the windfall profit tax with respect to production from an economic interest held by that charity on January 21, 1980. Whether a charity owns the economic interest in any particular oil property must be determined under the applicable income tax provisions and will depend on the facts and circumstances of the particular arrangements under which the charity acquired its interest and then turned them over to a manager or a trustee.

Mr. TALMADGE. Mr. President, I would like to clarify the responsibility of purchasers to collect and deposit the tax. As I understand the conference report, a purchaser of crude oil is required to withhold and deposit the tax based on information certified by the operator of the property from which the oil is produced.

Mr. LONG. That is correct.

Mr. TALMADGE. I further understand that a purchaser may rely in good faith on the information certified by an operator and is not responsible for errors in withholding which result from improper certification if the purchaser has no reason to believe the certification is improper.

Mr. LONG. The Senator is correct.

Mr. TALMADGE. I would also like to point out that the conference committee accepted the option contained in the Senate version of the bill which would allow a purchaser and operator to assign responsibility for withholding and depositing the tax to the operator by joint election.

Mr. LONG. The Senator is correct. That option would be available.

Mr. TALMADGE. In a situation where the operator assumes responsibility for withholding and depositing the tax pursuant to such a joint election, is it also the intent that the purchaser would not have responsibility for withholding errors so long as the purchaser acts in good faith and has no reason to believe the amount withheld is erroneous?

Mr. LONG. Yes, that is the intent.

Mr. TALMADGE. I thank the Senator.

Mr. LONG. Mr. President, how much time remains?

The VICE PRESIDENT. All time has expired.

The Senator from Kansas will send his motion to the desk.

Mr. DOLE. Mr. President, on behalf of myself and the junior Senator from Oklahoma, I move that the conference report on H.R. 3919 be referred to the Committee on Finance with instructions that it hold hearings on the impact of this tax on royalty owners, independent producers, and on future domestic oil production and report back to the Senate within 15 days of actual session.

I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RANDOLPH. Mr. President, may we have order in the Chamber?

The VICE PRESIDENT. The clerk will suspend. May we have order in the Chamber? The Senator is correct.

The legislative clerk resumed the call of the roll.

Mr. RANDOLPH. Mr. President, may we have order?

The VICE PRESIDENT. The Senator is correct. The Senate will be in order.

Mr. RANDOLPH. I am only asking that we have the opportunity to proceed in an orderly fashion. The Presiding Officer at this time has tremendous authority and I hope he will exercise it.

The VICE PRESIDENT. I am now exercising it. The Senate will be in order.

The legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Pennsylvania (Mr. SCHWEIKER) is necessarily absent.

The VICE PRESIDENT. Does any Senator desire to vote?

The result was announced—yeas 35, nays 61, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—35

Armstrong	Bumpers	Hatch
Baker	Cochran	Hayakawa
Bayh	Dole	Helms
Bellmon	Domenici	Humphrey
Bentsen	Garn	Jepsen
Boren	Goldwater	Kassebaum
Boschwitz	Hart	Laxalt
Lugar	Schmitt	Wallop
McClure	Simpson	Warner
Percy	Stevens	Young
Pressler	Thurmond	Zorinsky
Pryor	Tower	

NAYS—61

Baucus	Glenn	Muskie
Biden	Hatfield	Nelson
Bradley	Heflin	Nunn
Burdick	Heinz	Packwood
Byrd,	Hollings	Pell
Harry F., Jr.	Huddleston	Proxmire
Byrd, Robert C.	Inouye	Randolph
Cannon	Jackson	Ribicoff
Chafee	Javits	Riegle
Chiles	Johnston	Roth
Church	Leahy	Sarbanes
Cohen	Levin	Sasser
Cranston	Long	Stafford
Culver	Magnuson	Stennis
Danforth	Mathias	Stewart
DeConcini	Matsunaga	Stone
Durenberger	McGovern	Talmadge
Durkin	Melcher	Tsongas
Eagleton	Metzenbaum	Weicker
Exon	Morgan	Williams
Ford	Moynihan	

NOT VOTING—4

Gravel	Schweiker	Stevenson
Kennedy		

So the motion was rejected.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The VICE PRESIDENT. Under the previous order, the Senate will now proceed, without intervening motion or debate, to vote on the conference report.

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

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, because there has been a request for some time, I ask unanimous consent that there be 5 minutes equally divided.

The VICE PRESIDENT. Without objection, it is so ordered. Who yields time?

Mr. DOLE. Mr. President, I yield 1 minute to the distinguished Senator from Oklahoma.

Mr. DOMENICI. Mr. President, could we have order?

The VICE PRESIDENT. Will the Senate please be in order.

The Senator from Oklahoma.

Mr. BELLMON. Mr. President, just so there will be no misunderstanding among the Members of the Senate when they vote on this matter, I want them to remember this is not an energy bill; it is a revenue bill.

Mr. President, as we complete the debate on the conference report of H.R. 3919, the so-called Windfall Profit Tax Act of 1980, there are several points I would like to address concerning the deficiencies of this act.

To begin Mr. President, this act will clearly increase our Nation's dependence upon foreign imports of crude oil as it will surely reduce domestic oil production. By siphoning away capital from energy producers especially small independents who cannot pass it on. It would take away capital which could otherwise be used to explore and find new oil supplies. We are cutting off our nose to spite our face.

Second, this act will effectively deny the petroleum industry capital needed to shift to alternate fuels. If we think it is expensive to drill an oil well—and it is, very expensive—it will cost even greater amounts to develop synthetic fuels in this country. Unfortunately, Congress has decided to tax away that capital and in so doing, we will delay even further the prospects of developing alternate fuels.

Third, Mr. President, the U.S. Government does not need this tax increase. We will experience a $77 billion revenue gain in fiscal year 1981 without the windfall profit tax. Last year we adopted a 3-year budget path what had a balanced budget in 1981.

Fourth, this tax will create a burdensome and costly regulatory body of law and guidelines which will frustrate both private industry and Government.

Fifth, and perhaps most astounding is the fact that this tax penalizes domestic producers while largely missing the international oil companies.

Sixth, and equally astounding is the heavy-handiness of this tax upon stripper production. H.R. 3919 will effectively shut down much stripper oil production in this country. This may be the most untenable aspect of this act.

Seventh, H.R. 3919 provides for a rollback of new oil.

Eighth, earmarking of funds.

Ninth, cuts general revenue.

Tenth, imposes a heavy tax upon royalty owners, many of whom are elderly, retired small farmers and small businessmen.

Eleventh, H.R. 3919 has as its purpose a leveling of the resource base between States. This sets a dangerous precedent which could lead to regional welfare.

Lastly, Mr. President, there are some serious constitutional issues surrounding this tax. On Monday of this week, I read from and inserted into the RECORD an analysis of the constitutional issues raised by the windfall profit tax written by Frank Burke, Jr. The constitutional questions raised in Mr. Burke's analysis can best be summarized as follows:

Is the WPT an excise tax on a privilege and geographically uniform as is constitutionally required; or,

Is it a direct tax which must be apportioned based upon population;

Or does it qualify as an income tax under the 16th amendment?

With respect to the excise tax issue, Mr. Burke points out that the WPT is imposed upon removal of crude oil, not upon the privilege of selling or using such crude oil. The constructive selling price is merely a measure of the tax imposed. Further, since crude oil may be subject to the WPT or not subject based upon geographic location—that is, Alaska—the tax appears not to be geographically uniform. Consequently, Mr. Burke concludes that a court may find it difficult to find the WPT a valid excise tax under the Constitution.

Similarly, according to Mr. Burke, since the WPT is not apportioned based upon population, it not appear to be a direct tax unless it is to qualify under the 16th amendment. Since the WPT is measured by gross receipts, and not by taxable or net income as presumably required by the 16th amendment, the WPT does not appear to qualify under the 16th amendment as an income tax.

Mr. Burke also raises some fifth amendment issues concerning the taking of private property without just compensation:

The court has indicated that what appears to be an exercise of the taxing power may, in reality, constitute confiscation of property without due process of law under the fifth amendment.

All these issues will no doubt be afforded legal analysis at some point in the future. This is only to say that we may embark on some constitutional ground in enacting this conference report.

In closing Mr. President, I would like to restate that I would now be prepared to vote for this conference report if it more nearly reflected the original Senate bill. The Finance Committee bill as amended and passed by the Senate was a reasonable approach to our energy and taxation needs.

Even the distinguished majority leader remarked at the close of Senate debate on December 17, 1979, that H.R. 3919 was "above all, a fair and equitable bill" that "it was a bill which will produce energy." The majority leader pointed out that "to encourage greater oil production, some stripper and the first 1,000 barrels per day of independent production has been exempted."

Those remarks of the majority leader on December 17, 1979, are not applicable today to this conference report. This act will not produce energy. It does not encourage greater oil production as stripper and every barrel of oil produced by independents are now subject to taxation by this act. It is for this reason and others enumerated over the last several days that I urge my colleagues to defeat this conference report.

Mr. President, this bill is going to have the effect of shutting down many, many hundreds of stripper wells in the country. It hits the low royalty owner with a 60-percent tax. It misses the big oil companies, who produce most of their oil overseas. It hits consumers, who are going to pay more for the gas and the fuel they use. They are going to get less production as a result. There is a real question in the minds of a good many legal authorities about the constitutionality of this bill. I strongly feel the Senate is making the worst mistake that it has made since I have been a Member of this body. Again, I urge Members to vote against the conference report.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, as the chairman knows, the windfall profit tax conference committee took several significant actions in order to promote alcohol fuel production and gasohol use in the United States.

For example, the conferees adopted an extension of the 10-percent energy investment tax credit through December 31, 1985 so that the incentive to constructing alcohol fuel facilities would complement the incentives for increasing market availability of alcohol fuel. The energy tax credit provision establishes a new category of energy property called "biomass property," which is defined to encompass several designated types of property already eligible for the energy credit under the "alternative energy property" category. Both of these categories have the effect of providing a 10-percent energy investment tax credit for equipment which converts biomass into alcohol for fuel purposes. The primary distinction between alternative energy property and biomass property is that the latter is available through 1985 but is limited to qualifying equipment in facilities which do not utilize oil, natural gas, or any product thereof as the primary energy source.

The bill is somewhat ambiguous regarding the interaction of these two categories of energy property. It is my understanding that the conferees' limitations upon biomass property are not applicable to alcohol fuel production equipment which is eligible under the alternative energy property category. That is, I ask the chairman, is it not true that the conferees intend that the general rule set forth in section 221 of this bill, which retains the energy investment tax credit for alternative energy property through 1982, will continue to apply to facilities which currently qualify under that category?

Mr. LONG. Yes, the Senator is correct. The conferees intend to limit the energy investment tax credit only insofar as its partial extension through 1985 is available only for qualifying equipment at facilities not primarily fueled by oil, natural gas, or any product thereof. Investments in alcohol fuel equipment in plants which use oil, natural gas or any product thereof as a primary fuel will qualify for the energy investment tax credit through December 31, 1982 as alternative energy property.

Mr. DOLE. I thank the Senator.

Mr. LONG. Mr. President, I yield myself 1 minute.

This is the price we have to pay in order to have decontrol. I believe as far as all the other merits of the bill are concerned, we have discussed it ad infinitum. I yield back whatever time I have left, unless there is a question.

Mr. DOLE. I yield 30 seconds to the Senator from Tennessee.

Mr. BAKER. Mr. President, efforts having failed to improve this windfall profit tax legislation by returning it to committee for further consideration, I am prepared now to vote for its passage, though with significant reservations.

The Senate sent a better windfall profit tax bill to the House-Senate conference than we got back. This legislation has the perverse effect of favoring the major oil companies over the independents, which is far from the intended result.

The majors, vertically integrated, clearly have the ability to tailor their profits to meet their needs. The independents do not.

The bill, as sent to conference, provided a 1,000 barrel per day exemption for the 12,000 independent producers who do almost 90 percent of domestic drilling and exploration. It came back from conference with no exemption at all.

The bill, as sent to conference, provided a similar exemption for royalty holders who lease to independents. It came back with no exemption at all for royalty owners.

This legislation as presently written imposes an excise tax rather than a true profit tax, and this excise tax can be passed straight through to the consumer virtually penny for penny.

With the price of gasoline already at $1.25 a gallon and still climbing, the American automobile owner can expect even higher prices at the pump as a consequence of this tax. And we should remember, as the motorist will, that President Carter intends to levy an additional 10 cents conservation fee on every gallon of gasoline, as well.

Substantially higher prices are having some effect on energy consumption in this country. People are being forced to conserve, to use their energy resources more carefully and prudently.

But conservation is only part of the equation. Our most urgent need is to greatly expand the production of domestic energy—energy of every kind.

I had hoped that this windfall profit tax would provide for a "plowback" provision as an incentive for energy companies to plow back their increased profits into investments for increased production.

This provision is missing from the legislation, having fallen to the argument that it would be difficult to administer.

So we have, essentially, still another tax on the American consumer. We are left with a windfall profit for the Federal Treasury. And we have left both the Treasury and the oil companies with a vested interest in an increasing world market price for oil.

Some of the funds to be raised by this tax can be put to good and productive use—for research and development of a new generation of fuels, for assistance to those who cannot bear the full brunt of increased energy costs, and for other worthwhile purposes.

And if this legislation is necessary to securing approval of deregulation and decontrol of domestic oil and natural gas—as I believe it is—then it is necessary to the energy security and thus the national security of the United States.

It is on those terms that I have decided, with reluctance, to vote for passage of this legislation.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield 1 minute to the Senator from Oklahoma (Mr. BOREN).

Mr. BOREN. Mr. President, this bill is a tragic mistake. This country needs more oil and more energy to be produced here at home. All we are going to get as a result of this bill is people paying a higher energy price with more taxes and more Government instead of more oil. At a time when we need to look to our national security, when we need to make sure the lives of our young people will not ultimately be endangered or placed in jeopardy by reliance on overseas oil, we are taking action which will add to our problem by discouraging energy production here at home.

We have discussed this bill as a bill to put a tax on profits. It does not include any tax at all on profits. It ends up putting an undue share of the burden on the small, independent domestic producer, and on the small royalty owner. It is a mistake and not in our financial interest and should be rejected.

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

Mr. LONG. I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I would like to summarize briefly why I shall vote against the conference report.

First. The conference report adds $50 billion more in taxes than the Senate bill.

Second. It now seems clear that the windfall profit tax will not be borne by oil companies but by all consumers of petroleum products.

Third. The tax will have substantial detrimental impact on domestic oil production. Some industry experts have suggested this tax will cause a loss of as much as 1.5 million barrels per day of domestic oil production.

Fourth. The bill unfairly subjects small royalty owners to the same onerous tax rates as imposed on the giant multinational oil companies.

Fifth. The bill represents a massive shift of resources from the private sector to the public sector at a time when the Nation should be reducing the tax drag on the economy and the size of the Federal Government.

Mr. President, I want to take 1 minute to put in the RECORD a number of tables on stripper oil prices, the Federal, State, and producer's share of $100 additional income from decontrol; the significant House concessions to the Senate position in the conference—I think that has been overlooked; I think some in the Senate feel we did not gain any concessions—the chronology of the time spent on the windfall profit tax, how the net income limitation would work, and other tables and a short statement in summary of the bill. I ask unanimous consent that those all be printed in the RECORD, and anything else we can find.

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

CHRONOLOGY—WINDFALL PROFIT TAX

Period	Venue	Action
5 days—May 7, to July 2, 1979.	Subcommittee on Energy and Foundations.	Hearings on crude oil tax proposals.
6 days—July 10 to July 31, 1979.	Finance Committee.	Hearings on House-passed H.R. 3919, crude oil tax.
27 days—Aug. 1 to Oct. 25, 1979.	do	Markup and reporting with amendments of H.R. 3919.
23 days[1]—Nov. 13 to Dec. 17, 1979.	Senate floor	Consideration and passage (with amendments) of H.R. 3919.
2 days—Dec. 17 and 18, 1979.	House and Senate	Determination that conference on H.R. 3919 is required.
16 days—Dec. 19, 1979 to Feb. 27, 1980.	House-Senate conference.	Conference on H.R. 3919.
6 days—Mar. 19 to Mar. 27, 1980.	Senate floor	Conference report on H.R. 3919.

[1] Includes 2 days on low-income assistance later incorporated in H.R. 3919 (Nov. 13 and 14).

COMMITTEE ON FINANCE,
Washington, D.C., March 27, 1980.

DEAR COLLEAGUE: Today, before any vote on final passage of H.R. 3919, we intend to offer a motion to refer the Conference Report to the Finance Committee. This motion will instruct the Finance Committee to hold hearings on the impact of the tax on royalty owners, on independent producers, and on future domestic oil production and to report back to the Senate within 15 days of actual session.

The purpose of our motion is not to kill the windfall bill or to unnecessarily delay its passage. Rather it is intended to ensure that the Senate has all the pertinent facts before it acts on the Conference Report. Since H.R. 3919 is the largest single tax bill ever considered by the Congress, we should not act with haste and without a full understanding of the profound implications that the Conference Report will have.

ROYALTY OWNERS

Some may not realize that the Conference Report would impose the same onerous 70 and 60 percent tax rates on small royalty owners as on giant multi-national oil companies. The vast majority of royalty owners are small farmers or landowners and many are retired individuals who rely on modest royalty checks to supplement Social Security payments. Finally, domestic production will be adversely affected if these landowners postpone new leasing until after the termination of the windfall profit tax.

INDEPENDENT PRODUCERS

The Senate overwhelmingly approved an exemption for independent producers; however, this exemption was deleted in Conference. The reasons for originally exempting independents are still persuasive. Independent producers are small businessmen who find most of the oil in this country. As a group they reinvest 105 percent of their profits in new exploration and development. Imposing the windfall profit tax on independents will unquestionably have a serious impact on domestic oil production.

FUTURE DOMESTIC PRODUCTION

Virtually all experts agree that the windfall profit tax will have a serious detrimental impact on domestic oil production, although there is no agreement about the exact size of the production loss. Estimates varied on the production loss caused by the original House bill from a low of 450,000 to a high of 2 million barrels per day by 1990. This is the most important piece of energy legislation that we have ever considered, yet no one has undertaken a careful study on its effect on future oil production.

For all of these reasons, it is essential that the Senate send this Conference Report back to the Senate Finance Committee for a short period of careful consideration.

Sincerely yours,

BOB DOLE,
DAVID BOREN,
U.S. Senators.

WHERE DECONTROL REVENUE IS GOING—FEDERAL, STATE AND PRODUCER'S SHARE OF $100 ADDITIONAL INCOME FROM DECONTROL

	No windfall profit tax	70 percent windfall profit tax (old oil)	30 percent windfall profit tax (new oil)
Federal share:			
Noncorporate producer	$44.87	$63.87	$53.23
Corporate producer	39.37	73.00	53.96
State share:			
Noncorporate producer	13.68	13.00	13.20
Corporate producer	14.42	13.20	13.50
Producer's share:			
Noncorporate producer	41.45	23.13	33.57
Corporate producer	46.21	13.80	32.54

The above table assumes no current reinvestment of the "producer's share." If on the other hand, it is assumed that the producer reinvested all of his share remaining after reserving enough funds to pay taxes, and that one-half of the amounts reinvested represented intangible drilling expenses or dry holes (thus causing reduction in income tax), the producer's share would be as follows:

Noncorporate producer	$64.76	$36.14	$52.45
Corporate producer	60.48	18.15	44.13

One-half of these amounts would consist of the intangible drilling expense and dry hole expense, and the remaining one-half would consist of equipment costs, leasehold costs, geological and geophysical costs and other capital expenditures; no cash would remain on hand.

TABLE 2.—NONCORPORATE PRODUCER

	No windfall profit tax	70 percent windfall profit tax (old oil)	30 percent windfall profit tax (new oil)
Additional income from decontrol	$100.00	$100.00	$100.00
State severance tax (12.5 percent)	−12.50	−12.50	−12.50
Total	87.50	87.50	87.50
Windfall profit tax	0	[1] −61.25	[2] −26.25
Total	87.50	26.25	61.25
Federal percentage depletion	−22.00	−22.00	−22.00
Total	65.50	4.25	39.25
Individual State income tax (6 percent)	−1.18	−.50	−.70
Total	64.82	3.75	38.55
Individual Federal income tax (70 percent)	−45.37	−2.62	−26.98
Total	19.45	1.13	11.57
Add back percentage depletion	22.00	22.00	22.00
Producer's share	41.45	23.13	33.57

[1] 70 percent times $87.50.
[2] 30 percent times $87.50.

TABLE 3.—CORPORATE PRODUCER

	No windfall profit tax	70 percent windfall profit tax (old oil)	30 percent windfall profit tax (new oil)
Additional income from decontrol	$100.00	$100.00	$100.00
State severance tax (12.5 percent)	−12.50	−12.50	−12.50
Total	87.50	87.50	87.50
Windfall profit tax	0	[1] −61.25	[2] −26.25
Total	87.50	26.25	61.25
Federal percentage depletion	0	0	0
Total	87.50	26.25	61.25
State corporate income tax (8 percent)	−1.92	−.70	−1.00
Total	85.58	25.55	60.25
Federal income tax (46 percent)	−39.37	−11.75	−27.71
Producer's share	46.21	13.80	32.54

[1] 70 percent times $87.50.
[2] 30 percent times $87.50.

PROFIT OF INDEPENDENT PRODUCER BEFORE AND AFTER DECONTROL

[Dollars per barrel]

	With decontrol and windfall profit tax	
	Old oil at 70 percent	New oil at 30 percent
Selling price	$40.00	$40.00
Royalty (12½ percent)	−5.00	−5.00
State severance tax (12 percent)	−4.20	−4.20
Lifting costs	−5.00	−5.00
Windfall profit tax	[1] −16.093	[2] −5.78
State taxable income	9.707	20.02
State income tax (12 percent)	−1.165	−2.40
Percentage depletion (22 percent)	−7.70	−7.70
Federal taxable income	.842	9.92
Federal income tax (70 percent)	−.589	−6.94
Percentage depletion	+7.70	+7.70
Net income per barrel	[3] 7.953	[3] 10.68

[1] 70 percent times $22.99.
[2] 30 percent times $19.25.
[3] The royalty has been deducted for purposes of determining net income per barrel but has not been deducted from the amount subject to the windfall profits tax.

CONFERENCE REPORT ON H.R. 3919: SIGNIFICANT HOUSE CONCESSIONS TO THE SENATE POSITION

A. The Windfall Profit Tax:

Special Tier 2 treatment for high water cut oil and Cook Inlet oil.

The merger of Tiers 1 and 2 adopted by the Conference accomplishes the same result as the Senate bill.

North Slope Alaska oil: The Conference followed the Senate bill by agreeing to tax Sadlerochit oil in the merged Tier 1.

Definition of newly discovered oil: The less restrictive definition in the Senate bill was adopted by the Conference.

Heavy oil: Although the tax rate was increased, the special treatment for heavy oil in the Senate bill was incorporated into the Conference report.

Incremental tertiary oil: The Conference generally adopted the Senate bill's provisions on incremental tertiary oil, with some modifications.

Deduction of State severance taxes: The Conference generally followed the Senate's position that even most March 31, 1979 increases in a State severance tax should be deductible except that a 15-percent limitation was added and Indian severance taxes were excluded.

Taxable income limitation: The Conference adopted the Senate 90% limitation rather than the 100% limitation in the House bill.

Exemption for oil interests owned by State and local governments: The Conference adopted the more liberal Senate position of extending the State exemption to oil revenue used for any public purpose, not just for educational purposes.

Exemption for oil interest owned by medical and educational charities: The Conference adopted the Senate's exemption with only a few modifications.

Exemption for Indian oil production: The Conference adopted the Senate Indian exemption, except that it limited the exemption to interests held on January 21, 1980.

Percentage depletion: The Conference followed the Senate bill in rejecting the restrictions on percentage depletion that were included in the House bill.

Delayed deposit rules for independent refiners and nonintegrated companies: The rules in Senate bill adopted by the Conference.

Termination of the tax: The Conference adopted a triggered phase-out of the tax as in the Senate bill, but agreed not to begin the phase-out before January 1, 1988.

B. Energy Tax Credits: The House bill contained no energy tax credit provisions and House Conferees strongly argued that no such credits should be included in the Conference Report. Nevertheless, the Conference adopted a majority of the credit provisions in the Senate bill, although a number were scaled back. The following credits were adopted:

Residential solar, wind and geothermal: The credit was increased to 40-percent on the first $10,000 of expenditures.

Treasury Authority: The Conference followed the Senate bill in retaining the Secretary of Treasury's discretionary authority to add items to the energy tax credit list and spelled out specific standards for the Treasury's authority.

Business solar, wind and geothermal credits: An increase to 15-percent and an extension through 1985 for the energy investment credit for solar, wind and geothermal equipment, and extension of the credit to equipment providing process heat.

Ocean thermal credits: A 15-percent energy credit for ocean thermal equipment.

Hydroelectric credits: An 11-percent energy credit for small-scale hydroelectric equipment.

Cogeneration credits: A 10-percent energy credit for cogeneration equipment not fueled by oil or gas.

Petroleum coke credits: Restoration of the investment credit and accelerated depreciation for boilers using petroleum coke and pitch.

Coke oven credit: A 10-percent energy credit for coke ovens.

Alcohol fuel equipment: Extension through 1985 of the energy credits for biomass and gasohol equipment.

Intercity bus credit: A 10-percent energy credit for intercity buses.

Affirmative commitment rule: A transition rule for those energy credits that will expire in 1982 to extend those credits through 1990 where affirmative investment commitments have been made for long-term projects.

Alternative energy production credit: A $3 per barrel tax credit for oil produced from shale, tar sand, or coal; gas produced from brine coal, tight sands, or shale; and steam produced from agricultural byproducts. Credits are also provided for "processed wood."

Gasohol exemption: Exemption through 1992 of the excise tax exemption for gasohol, plus other tax incentives for gasohol.

Hydroelectric bonds: Tax exemption for industrial revenue bonds used to finance small-scale hydroelectric, equipment, solid waste facilities, and renewable energy programs.

Tertiary injectants: Current expensing for the cost of injectants used in tertiary oil recovery.

C. Low Income Energy Assistance:

The Conference adopted the Senate's low income energy assistance programs for fiscal year 1981.

D. Repeal of Carryover Basis:

The House receded to the provisions in the Senate bill to repeal the carryover basis rule.

E. Interest and Dividends Exclusion:

The Conference adopted for two years the provision in the Senate bill to exclude from income up to $200 ($400 for a joint return) per year of qualified interest and dividends.

F. LIFO Inventories:

The Senate LIFO amendments were accepted by the Conference, except the effective date on the LIFO income recapture provision was extended to January 1, 1982.

HOW THE NET INCOME LIMITATION WORKS

NET INCOME LIMITATION

Under the Conference Committee bill, the excise tax base for a property cannot exceed 90 percent of the producer's actual net income from that property.

Without the net income limitation, it would be possible for the so-called "windfall profits" tax to tax away more than 100 percent of the producer's profit on a property.

The net income limitation was included in the bill in an effort to prevent the premature abandonment of high cost properties because of the burden of the new excise tax.

In applying this limitation, the net income attributable to a barrel generally is determined on the basis of the producer's special rules for using cost depletion instead of deduction for percentage depletion and intangible drilling to develop costs.

EXAMPLE

Hypothetical stripper oil producer's actual net income on a marginal property: $40, selling price for barrel of stripper oil; −$30 total cost attributable to barrel of production (cost basis, lift costs, local taxes, etc.); $10 net income per barrel.

Normal computation of windfall excise tax: $40, selling price; −$16 Tier 2 base price; $24 taxable "windfall profit."

$24×.30 independent stripper tax rate; $7.20 regular windfall excise tax.

Tax computation using net income limitation alternatives; $10 net income per barrel; ×.30 independent stripper tax rate; $3.00 income limitation.

Stripper oil prices

[Yearly average]

Year:	*Price/barrel*
1976	$12.16
1977	13.59
1978	13.95
1979	21.14
January 1979	14.55
February 1979	14.88
March 1979	14.88
April 1979	16.71
May 1979	17.53
June 1979	20.24
July 1979	24.76
August 1979	26.01
September 1979	28.05
October 1979	29.41
November 1979	31.45
December 1979	33.49

NOTE.—These prices are national average stripper oil prices taken from the Monthly Energy Review and Platt's Oilgram Price Report. Kansas prices tend to be $2–$5 per barrel higher. Kansas producers are currently getting about $39–40 per barrel for stripper oil.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a statement by Mr. KENNEDY in support of the conference report on the crude oil windfall profit tax be printed in the RECORD.

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

STATEMENT BY MR. KENNEDY

If I had been present for the final vote on the conference report of the Crude Oil Windfall Profit Tax, I would have voted for this report. However, I would have cast my vote with reluctance, because this tax is a direct result of the President's energy decontrol policies, which are imposing unfair burdens on consumers and dealing new setbacks in the fight against inflation.

I oppose the decontrol of domestic oil prices. In fact, I vigorously opposed this presidential action when it was taken last year. I believe that ultimately it will be judged as an unwise and futile action that crippled the effort to control our runaway inflation and failed to decrease our dangerous dependence on foreign oil.

We are asked to approve this windfall tax because it would be unjust to permit the oil industry to reap the huge unearned profits made possible by decontrol. The President seeks to blame OPEC for the soaring cost of oil. But it is the President, not OPEC, who is decontrolling domestic oil prices and creating the windfall that this bill would tax. The act of decontrol is an act that should never have been taken.

Over the next decade, decontrol is estimated to transfer $1.02 trillion from consumers to producers—an enormous drain on family and industry budgets in this country. More than $1,000 per year each year will be lost to the average family because of decontrol. Some of this revenue will be kept by the oil industry and some will be paid to various levels of government in the form of taxes. But from the perspective of the average family, the important issue is the fact that the family loses $1,000 a year.

The President said in 1976 that he would never let domestic oil be sold at prices determined by a monopolistic foreign cartel. He said he would stand up to the special interests. Now he has yielded to those interests and broken his promise on decontrol.

Last April, as Chairman of the Energy Subcommittee of the Joint Economic Committee, I held a hearing on the economic impact of oil decontrol. At that time, the Administration testified that its decontrol decision was premised on the assumption that energy consumer costs would rise $17 billion through 1981, the CPI would rise .5 percent through 1981, gasoline prices would rise 5–7 cents, and the average family would pay about $300 more.

It was clear even at that time that decontrol would be highly inflationary and unfair to the American public. But now the impact is far more severe. The overall increase in energy costs from decontrol through 1981 is now estimated at $57 billion—more than three times higher than the President's advisers estimated when they recommended decontrol.

The impact on the CPI will be even more dramatic—a 2.1 percent increase attributable to decontrol, or four times higher than the President predicted. The longer term inflation impact will be 3–4 percent.

One final point should be made. Gasoline prices have already soared at the gas pump. Yet the President has just said that the price of gasoline must be forced still higher through the oil import fee he has recently proposed. At a time when inflation is our most serious domestic problem, it makes no sense to take a step like this, which will add another full percentage point to the present inflation rate. If additional energy revenues are needed to balance the federal budget, they can be obtained by raising the windfall profits tax, instead of raising the price of gasoline by an oil import fee that only makes inflation worse.

Mr. CRANSTON. Mr. President, the passage of the conference report on the windfall tax on domestic crude oil, in these very tight budget times, is the sine qua non of our energy policy.

It will provide the resources which make the development of new energy sources possible, to relieve our dependence on foreign crude oil—a dependence which is weakening our economy and causing much of our current inflation.

It will permit us to offset some of the impact of rising energy prices on those with low incomes.

It will enable us to increase the availability of mass transit in this country and to encourage other kinds of energy conservation.

And, beyond our energy policy, it will assist us to keep the Federal budget in balance, and to consider future cuts in Federal taxes.

For all these reasons, I support adoption of the confernce report.

There are some technical deficiencies in this final work product which will ultimately need attention: One is the increase over the Senate-passed version in the taxation of California's heavy oil, which will partially offset the economic incentive to new production of heavy oil provided by the President's order to decontrol to 20° API—at my strong urging. I believe a 30-percent tax rate for oil 16° API or less and a 70-percent tax rate for oil 20° API or less is too severe and will take away some of the incentive which price decontrol provided for heavy oil production. With more favorable tax treatment we could get 500,000 new barrels a day in California alone produced by 1985. I thought the Senate-passed bill was far better in that respect.

Another is the base pricing problem in California that I addressed earlier, which hopefully Department of Treasury regulations will fully correct.

A third is the discriminatory treatment of producers using residual fuel to generate steam to produce heavy crude.

California producers use some unique processes to produce heavy crude oil. One is to inject steam into a formation to heat the formation so that oil will more readily flow to producing wells, so they can get it out of the ground.

A producer using steam-injection techniques produces his steam by burning either raw crude oil or residual oil—after "topping off" the barrel at the refinery to remove the "light ends."

The use of resid is more efficient both because the Btu content of the fuel is higher, resulting in the consumption of fewer barrels of fuel in the production process; and because the "light ends" are available for refining into heating oil, diesel fuel, jet fuel, and gasoline, rather than burned up with the rest of the barrel.

This "topping" has historically been used by some independent producers who rely on this activity for the economic survival, where a refinery is close enough to its field to justify the procedure.

Moreover, when resid is used, because fewer barrels are burned up in the production process, the net number of barrels of oil produced is increased, and the revenue generated for the Treasury by the windfall profit tax would also increase.

Since use of the "topping off" process and the burning of resid to produce steam, where it is economic, is more efficient, less costly, produces important, usable byproducts, and more oil and could produce more Federal revenues, I believe the windfall profit tax should not create a disincentive—as it now apparently does—to the use of resid for this steam production process by treating resid used in this way differently and disadvantageously from the way crude oil to generate steam is treated.

The windfall tax now seems to apply to the net barrel produced when crude oil is used, but applies to the gross barrel produced when resid is used after "topping." This will, for obvious economic reasons, force producers to burn crude to get their steam. The windfall tax should apply equally to the "net barrel," whichever method is used. Producers would then continue to use the "topping off" process and resid to get their steam, where they can, and everyone will benefit.

I am hopeful these deficiencies can ultimately be corrected.

But even in its present form, this legislation will have many very favorable impacts on my State.

Under the combination of price decontrol and special taxation for heavy oil—of which there are 20 billion barrels producible in California alone—the production of heavy oil will increase substantially in California, adding significantly to our national domestic crude oil supply, perhaps by as much as 40,000 barrels per day by later this year.

The exemption of State and local government-owned production from the windfall tax—for which the Senator from Louisiana (Mr. LONG) and I fought so hard—will not only increase the production of that oil, but will give the State and local governments some $2.6 billion in additional revenue.

In addition, the State of California will realize an additional $3.4 billion in new revenues from increased oil production in the private sector.

Finally, Mr. President, I want to remind my colleagues of the importance of title III of the conference report, the Home Energy Assistance Act of 1980, which authorizes, for fiscal years 1981, 1982, and 1983, a program of block grants to all States to provide assistance to low-income households for residential energy expectations.

In the days and months ahead, when we face difficult decisions on whether to eliminate or radically reduce Federal programs, many of which benefit poor and less advantaged people in our Nation, it is encouraging to note that the home emergency assistance program—totally funded out of revenues from the crude oil tax—in no way compromises our desire to balance the Federal budget.

The Home Energy Assistance Act will be of great assistance by providing a vital subsidy to individuals unable to withstand recent massive increases in the cost of residential energy.

I especially want to thank the conferees for agreeing to my suggestion to correct, during conference deliberations, a serious flaw in the allocation formula of the Home Energy Assistance Act as passed by the Senate. This formula had singled out and excluded California from the minimum allocation available to all other States in the Nation.

Mr. President, I believe the members and staff of the windfall profit conference led by the distinguished and remarkably able Senator from Louisiana (Mr. LONG), have done a remarkable job not only in correcting this problem on low income energy assistance, but in putting together in a rational way the greatly divergent views of the House and Senate on this terribly complicated and tremendously significant piece of legislation. I, for one, am grateful to them.

Mr. BAKER. Mr. President, the Senate today is about to complete its work on one of the most complex and important legislative measures in recent history—the windfall profit tax.

Several Members of the Senate, on several sides of this intricate issue, are worthy of special praise in this monumental legislative effort.

Of course, great credit must go to the distinguished chairman of the committee, the Senator from Louisiana (Mr. LONG), for his careful attention to the intricacies of this measure. While many Members on this side of the aisle were in profound disagreement with him on many of the aspects of the bill, all of us, I believe, recognize the great talent he brings to this matter and to this measure. I pay him tribute for his usual skillful job in managing this bill through its consideration by the Senate.

No Member deserves greater credit than the distinguished Senator from Kansas (Mr. DOLE), who as ranking Republican on the Finance Committee has helped guide this legislation through a long and tortuous process from its first day to its final passage.

Senator DOLE has been a model of diligence in this endeavor, devoting precious time to fashioning a workable and useful bill even at the expense of his campaign for the Republican nomination for the Presidency of the United States.

He has placed the public interest in this vitally important field above his own personal interest, and he has earned the enduring respect and appreciation of the entire Senate for his devotion to duty and his talented and tireless work.

I also pay special respect to the distinguished Senator from Oklahoma (Mr. BELLMON), the ranking member of the Budget Committee, who has once again rendered exemplary service to the Senate and its budgetary process by raising the important issue of congressional control over the future use and appropriation of these tax revenues.

Members of the Senate staff deserving special mention for their dedicated work on this legislation include Bob Lighthizer, minority counsel for the Finance Committee; Bob Boyd, minority staff director for the Budget Committee, and his associate Rod DeArment; and Carol Cox of the staff of Senator BELLMON.

A great many more people have brought credit on themselves in this laborious and endlessly complicated enterprise, and I commend everyone who played a part in the consideration of this bill.

Mr. HELMS. Mr. President, time and time again the Wall Street Journal has editorialized against approval of the massive, falsely labeled, "windfall profit tax." Today's Wall Street Journal carries another excellent editorial on this tax, once more asking the question, "Why is the United States doing this to itself?"

As for this so-called windfall profit tax, it seems to me that logic demands any Senator to oppose it purely on the basis of the energy supply situation in this country today. I do not need to tell any Senator that it is dangerous to fool around with the possibility, let alone the probability, of increasing even further our dependence on foreign oil. Instead, we should be doing everything we can to increase the production of energy here at home, and this bill goes 180 degrees away from that objective.

I simply cannot in good conscience vote for this legislation because it is bad for the country, it is harmful to the free enterprise system, and it will be a disaster for the consumer. This is a chance for all Senators to put up or shut up because how we vote on this issue will determine, first, whether we understand the free enterprise system; and, second, whether we believe in it.

Mr. President, I ask unanimous consent that the editorial entitled, "Death of Reason," in the March 27, 1980 Wall Street Journal be printed in the RECORD at the conclusion of my remarks.

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

DEATH OF REASON

Barring a redemptive miracle, the United States Senate today will sacrifice the nation's future security to its own unslakable thirst for revenues. It will give final approval to the massive, falsely labeled, "windfall profits tax."

It is hard for us to understand how the Congress could actually pass so misguided a piece of legislation. Admittedly, Washington has been picking off one major industry a decade: the steel industry with the price "jawboning" of the 1960s, and the auto industry with the safety, emissions and fuel standards of the 1970s. But even with that record, we would have thought it beyond belief that Congress would set out to destroy this industry in this decade, hamstringing the domestic oil industry just when energy is a paramount concern not only economically but politically and militarily.

Looking on the spectacle of Congress slapping a huge tax on domestic oil production just when it needs to reduce oil imports, our friends abroad look on with alarmed incredulity. Why is the United States doing this to itself? a cabinet member of one ally asked us recently. We could only reply, tongue-tied, that simple logic sometimes falls victim to complex political forces.

The evolution of this latest self-inflicted blow is bound up in the broader history of U.S. economic policy through the 1970s. It began when Congress, led by many of the same people who lead it today, embraced wage and price controls as the remedy for the inflation its overspending had generated, and finally succeeded in inducing President Nixon to apply them in 1971. Most of the controls were blown off by inflation in 1973 and 1974, but the ones on energy continued. They indeed blossomed into a huge regulatory bureaucracy, the Department of Energy. The DOE became an instrument for strangling domestic energy production.

Public frustration with the fruits of this process—gasoline lines, rising energy costs and increased dependence on imports—was diverted by American political leadership to the oil industry, which, guided by its traditional opportunism, was an easy victim. This exercise in political cynicism was augmented by more virulent anti-business, anti-capitalist forces. Soon the attack on oil lost whatever rationality it ever had and became a religious movement bent on punishing the oil industry and diverting its cash flow into the public treasury. As it happened, this was just the ticket for a government that had through most of the 1970s enormously overspent its budget and generated progressively worse inflation. President Carter conceived the brilliant idea of removing price controls on domestic crude oil but taxing away most of the added revenues that he presumed would flow from letting prices rise above the ceilings. The DOE bureaucracy found ways, as we noted in this column yesterday, to preserve and expand its power even after decontrol.

The oil revenues tax Congress will pass today—again barring some last-minute conversion—will combine with raging inflation to run the American crude oil production industry into the ground. It will solidify OPEC's grip on oil prices, leave us politically and militarily exposed from further dependence on imported oil, drain huge funds out of the savings/profit pool needed to stimulate investment and productivity, and increase the incentives for inflationary money creation. To find a similarly destructive single piece of legislation, you have to hark back to the Smoot-Hawley Tariff, which helped throw the world into the Great Depression.

● Mr. JOHNSTON. Mr. President, it would not be an overstatement to say to my colleagues in the Senate that the debate on the windfall profit tax legislation has been a very painful one for me. Being from an oil- and gas-producing State, I have grown up in the midst of one of the most entrepreneurial industries in this country. I have found producers on the whole to be industrious, and honorable men and women with a very bullish view on the future of our country. With this in mind, it was not hard for me to cosponsor and actively work for the passage of Senator BENTSEN's independent producer exemption from the tax. Independents, as the Senate is now well aware, do drill 90 percent of the wildcat wells in the country, and must depend on the revenues from the producing ones to continue to reach out in frontier areas for more discoveries.

The independent producer continues to be optimistic about the remaining oil and gas to be produced in the United States. But as one oil producer has noted, "All the slow rabbits have been shot," meaning that the oil and gas that is easy to find has already been found. To produce the less accessible oil will take more capital. That was the intent of the Bentsen amendment which I supported. Unfortunately, the House in conference was opposed to the 1,000-barrel exemption. However, the Senate was able to work out some special reductions in the tax rates for the independents that I feel will help in the exploration for new reserves.

Mr. President, the independent exemption amendment included stripper wells in its purview. This was important because the average production from these types of wells is only 2 to 3 barrels a day. It is important that reworking costs and other stimulative processes keep these wells in production. The extra capital from the amendment would have served this purpose. I am encouraged, however, that the price of stripper oil has risen from an average in 1976 of $12.16 to an average of $18.70 in 1979. Reports are that some stripper wells are receiving as high a price as $42. This rapid increase in price, hopefully, will keep our marginal wells producing.

It was unfortunate that the Senate rejected an amendment offered by Senator TOWER and myself which would have set up an adjustment procedure in the IRS to allow adjustments in the payment of the tax as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens. The effect of the amendment would have been to prevent the shutting in or premature abandonment of wells. A similar provision currently exists in DOE regulations for adjustments in its pricing regulations and would have been a perfect complement to our proposed Treasury adjustment procedure. Perhaps in the years to come, data will show the need for such a procedure and the Congress will provide for the mechanism.

Mr. President, the windfall profit tax conference report is not a perfect piece of legislation but under the circumstances I think it is the best compromise that is obtainable. This is especially the case when one considers the President's public statements that he will reimpose and/or stop the phaseout of controls on domestic oil. American producers need decontrol, the conference report is not too great a burden in order to have the essential measure of decontrol.●

● Mr. STONE. Mr. President, the conference report includes provisions granting residential energy tax credits and business tax incentives designed to encourage energy conservation and to reduce the level of imported oil. Some items which qualify for these credits are listed specifically in the bill. There is also authority given to the Treasury Secretary to add items to the list of property eligible for both the residential and business energy credits with standards set forth governing the Secretary's authority.

The way the Secretary exercises his authority in this respect will greatly determine how effective this tax credit is. If not, I respectfully submit that the impact of these energy conservation tax credits will be limited indeed.

The way the Secretary exercises his authority in this respect will greatly determine how effective the residential and business energy tax credits will be in bringing about more energy conservation. I am concerned that the regulatory process becomes so discouraging and cumbersome that items which can clearly save energy may not ultimately qualify for the credit. It is my understanding that this has already been true to some extent under the existing energy tax credits.

Just this week I have had the opportunity to review the great energy savings which result from the installation of "heat exchangers." Attached to an air conditioning unit, these "water heat recovery units" can provide the heating source for all the water used in a home, saving oil or electricity normally used for hot-water heating. This device can also be used in small businesses, such as restaurants, which use large amounts of hot water. This kind of unit, Mr. President, is a proven and practical and affordable energy saver. I hope the Treasury Department will set up an expeditious and reasonable procedure by which items like a heat exchanger can qualify for this tax credit. If not, I respectfully submit that the impact of these energy conservation tax credits will be limited, indeed.●

● Mr. PRYOR. Mr. President, last December I voted for the Senate version of the windfall profit tax legislation. I did so because I support the concept that the major oil companies should not experience a sudden trillion dollar windfall as the result of decontrol of oil prices. In my judgment the Senate proposal struck the proper balance between the need to avoid any such windfall and, at the same time, the need to stimulate and encourage the development and production of new energy in America.

I do not believe the conference report strikes that same balance. To my mind, the exemption which the Senate-passed version of the windfall profits bill contained for independent producers was extremely important. My preference would have been a plowback provision whereby the oil companies would have been encouraged to turn back those revenues raised by decontrol into energy production. However, no workable plowback provision having been found, I felt that the exemption for oil produced by independents was the next best thing to insure that new energy production in this country would be encouraged. In fact, this exemption was largely what enabled me to cast my vote for the Senate version of the windfall profit bill.

Mr. President, this conference bill fails to recognize the critical role that independents must play if our Nation is to reduce our imports to a safe level. That the conferees at least saw fit to set lower rates for independents in the old oil and stripper categories is laudible, but it is not enough. Independents will still be required to pay almost $23 billion in taxes over what they would have paid under decontrol.

Because of the ever-higher risks and expenses associated with exploration and drilling, I think that we should give every possible incentive to insure that there will at least be some glimmer of hope that these risks will be worthwhile. Decontrol of oil prices presented such a hope. However, I fear that with the tax rate for independents in this bill, we are writing a guarantee that much of our oil is going to remain in the ground.

There is a most plausible rationale for treating the major oil companies and the independent producers differently. If we fail to adequately address this difference, we and our constituents will regret it for many years to come as it becomes increasingly apparent that our domestic production goals are not being met.

An independent producer is, by definition, an explorer and producer of oil only, and not a marketer. He has one activity, one source of income, and one purpose: to find new sources of oil and gas. No one can deny that the independent has proved his worth in this area, historically accounting for the discovery of more than 50 percent of domestic reserves in America and 90 percent of all wildcat wells drilled.

Any tax levied against the independent is directly deducted from cash flow and thus unavailable as drilling funds. I am sure that the integrated oil companies will take advantage of the opportunity to pass increased tax costs on to the consumer. However, nonintegrated independents have only their aftertax profits and borrowed funds for investment in drilling programs.

The 12,000 independent producers in America constitute over 99 percent of the oil producers in this country. They have a good record for plowing back their revenues into production, with a 105-percent turnback rate in recent years. Reinstating an exemption would thus serve the dual purpose of maximizing development of crude oil supplies at the lowest cost, while greatly simplifying the problem of administering the complex crude oil tax.

Another issue was, perhaps, not given due consideration during earlier debate on windfall profits, and I am glad to see that attention has been focused on it during debate on the conference report. It is the matter of taxing royalty owners.

I was very disappointed that the conferees destroyed the consideration we had given royalty owners in the Senate bill. I can see absolutely no justification for the way the conference report handles this issue.

I think that the American public, and we ourselves, had always conceived of this windfall tax as a tax against big oil and those with massive profits. Yet the bill before us today punishes the "little people" too, those whose involvement in the oil business does not and will not reap them excessive profits. Some may snicker at the "little old lady" argument, but I feel that it is a very real concern and one that we must deal with. Most royalty owners are not wealthy. Many are retired persons who invested in royalty interests to supplement their social security payments. I do not want to be the one to explain to them that they have to pay a windfall tax equal to the rate Exxon pays. For these reasons I am going to vote against the conference report.

Mr. President, there is yet another provision that I would like to see changed. It is how we are going to use the enormous revenues raised by this measure.

The conference report specifies that 25 percent will be used for aid to lower income households, 60 percent for income tax reductions, and 15 percent for energy and transportation programs. All of these are pressing and serious needs. However, an even more critical need which bears on all our other problems has demanded our attention ever since the conferees made their recommendations for disposition of the windfall tax proceeds. We have been jolted to the reality that inflation has an almost lethal stranglehold on our country. Republicans and Democrats, liberals and conservatives all alike are, I believe, unified in the conviction that we must take drastic measures to put this monster in check.

If we are going to pass this bill, knowing that it is likely to cause even higher prices for consumers, let us at the same time improve life for all Americans by improving the state of our economy.

Mr. President, if we pour this money into social programs, we are applying a bandage to the wound without getting at the disease. Let us first examine the problem. Why do social security taxes need to be increased? Because the cost of living continually outpaces social security benefits. Why does the cost of living continue to rise? Because of inflation.

To me it makes infinitely better sense to apply at least a part of the hundreds of billions this tax will raise over the next decade toward attacking our cancerous inflation problem. I think it is safe to say that the other economic ills of our Nation will only continue to deteriorate, no matter what we do, until we have brought inflation down to a reasonable level.

It is my understanding that the formula for disposition of the tax proceeds is advisory in nature only and that any allocation of the windfall profit revenues will be subject to the normal authorization and appropriation process. If we are successful in defeating the conference report, I hope the new conference will give serious consideration to providing that the first $10 billion recovered each year from the oil companies should be used to balance the Federal budget, or to reduce the national debt in the event the budget is balanced that year.

With $10 billion per year over a probable 10-year life of this tax, we are talking about $100 billion, or less than half of the revenues to be raised by this bill as it now stands. If our goal truly is to improve the lives of the elderly, the poor and the disadvantaged in this Nation, the best thing we can do is to halt the inflation which eats up a larger portion of their dollars with each passing day.

Mr. President, applying a substantial portion of the windfall profit tax revenues toward balancing the Federal budget will demonstrate that we are serious about getting our economy into shape. If we are not willing to take this course of action, I wonder just what steps we will be willing to take.

In the days ahead a myriad of squeaking wheels will be vying for the benefit of the windfall tax proceeds. We will be challenged again and again with the decision of how to best spend these revenues. I intend to stress repeatedly, with each authorization and appropriations bill, the need to use the windfall profit revenues to balance the budget and reduce our national debt. Mr. President, in the event that the conference report is adopted, I intend to introduce legislation to accomplish this reallocation of windfall profit tax revenues.●

● Mr. BOSCHWITZ. Mr. President, before the Senate takes final action on the so-called windfall profit tax, it is important to remember the contributions of the small, independent oil producer to our Nation's energy supply. These businesses are most willing to drill high-risk, low-yield wells. Since 1976, when stripper oil was decontrolled, there has been a boom in drilling marginal wells. Small, independent producers have built their capacity to a point where it now accounts for nearly one-fourth of the U.S. oil production. Many small producers often pump no more than 10 barrels each day.

Just as these independents are becoming more and more important for our country's energy security, the Federal Government is stifling their ability to generate adequate capital for more exploration and production by imposing a windfall profit tax. This is a punitive excise tax, Mr. President. It will hinder our effort in achieving energy independence and provide an enormous windfall for the Federal Government.

Mr. President, this article from the Los Angeles Times, dated February 26, 1980, is an excellent illustration of how important independent producers are to our Nation's energy security.

I ask that the article from the Los Angeles Times be printed in the RECORD.

The article follows:

INDEPENDENTS—U.S. GROWING MORE RELIANT ON "TINY OIL"

(By Bill Curry)

HONDO, TEX.—There was a smile on Ted Baird's face as he pressed his ear against the 8,820-gallon steel tank. "Listen to that," he said. "Go ahead. Put your ear to it. You can hear production."

Inside, an echoing, drippy stream of thick black crude oil was splashing into the tank, rising by the inch, with each inch equal to about a barrel—and each barrel equal to about $40.

Ted Baird is an independent oilman, but he is not Big Oil, or even Little Oil. He can only be Tiny Oil. His eight-month-old Tresor Petroleum Corp. has but seven wells and one employee—himself. The average daily output from each well is 1.2 barrels.

In these piddling amounts, Tresor's oil nevertheless passes through the nation's largest refinery, the Exxon U.S.A. plant at Baytown, Tex. There most of it is turned into gasoline and shipped to the nation's service stations.

Although Baird's contribution is small, U.S. oil supplies are increasingly dependent on low-production wells. Because of the record prices for crude, oil from these stripper wells, those pumping 10 barrels a day or less, now accounts for one of every six barrels produced in the United States. Just four years ago, the figure was one of eight.

Once gladly abandoned or never brought into production because they were uneconomical, stripper wells today have become profitable ventures. And while most of them used to be mostly big wells petering out after years of production, people are now out drilling strippers.

All of this has made it possible for people like Baird, 35, who grew up in the "oil patch" (any petroleum producing area), to put a sign saying "Oil Operation" on a one-room office and go into business.

"I may never get rich, but I've got a shot at it," says Bill Mullen, 49, a child of the Texas oil patch and a former carpet salesman. His 18-month-old Cimarron Oil & Gas Co. in Oklahoma City has five small wells that had been left behind long ago as not worth further drilling. "We roll the dice every day," he says.

"Drippings, little bitty stuff," says Clyde La Motte, the executive vice president of the National Stripper Well Assn., which is run out of a post office box in Texas and a telephone in his Tulsa home. "But it adds up," he said. "It's just a little bit less than Prudhoe Bay . . ."

Domestic stripper wells—some of them mom-and-pop operations, some owned by Big Oil—now supply 1.4 million barrels of crude a day to the nation, 100,000 barrels more than Saudi Arabia, the largest exporter of oil to the United States, according to Department of Energy figures.

Although consumers may complain about paying more for their gasoline and home heating oil, the men of Tiny Oil say that without the higher prices the oil just wouldn't be on the market.

"At $10 a barrel, the numbers won't work," Baird said while driving around his oil field. At even twice that price, he said, he would be forced to plug and abandon his little wells.

As it is, Tresor plans to drill 100 wells on 220 acres of oil-producing acreage here. "That will be 35,000 barrels a year we won't have to buy from the Arabs," he said.

In the oil patch, stripper wells are seen as a textbook example of how higher prices can increase oil supplies, the kind of thing that oilmen say will happen when all oil price controls are ended. Stripper oil production began to boom in 1976 when the federal government freed strippers from price controls. Stripper oil sold then for about $12 a barrel, today it brings $35 and up, depending on the quality.

While the prices have gone up, the number of wells abandoned each year as uneconomical has dropped about 40%. And new wells are being drilled in long-abandoned fields where three- and four-barrel-a-day wells were once sold for the scrap value of their pipe.

This could be stunted, oilmen say, by the imminent windfall profits tax on oil sales. "We're gonna have to slow down (drilling) in '80 cause I've got 700,000 less bucks," says G. W. (Bill) Deck Jr., president of the Deck Oil Co. in Tulsa.

The firm pumps 325 barrels a day, most of it from stripper wells, and last year participated in the drilling of 23 wells, eight of which became producers. Deck Oil planned a $2.5 million drilling program for this year, but Deck figures the new tax will reduce that by $704,550.

The company puts together limited partnerships of up to 35 people who share the costs of drilling, or "making hole," as it's called. If oil is found they share the profits, if not, they share the losses at tax time.

Al Geiger, a 64-year-old oil operator who works out of his Tulsa home, says the windfall profits tax will force him to consider giving up several of his 60 wells, which produce an average of two barrels a day.

But whatever the future effect of the tax, the higher oil prices are producing, if not more oil, at least more oilmen.

"There's a deal on every corner in Oklahoma City," says Mullen as he wheels his pickup truck not far from the Phillips Petroleum pump that lifts oil right out from under the dome of the state capitol.

Mullen grew up, in his words, "wading around in the leases" of the Texas Gulf Coast, being a roustabout, testing oil, trucking—and he loved it. But the oil patch fell on hard times in the '60s because of cheap foreign crude.

So Mullen became a sales representative for a line of designer carpeting in Oklahoma City.

Although most Americans looked with horror on the Arab oil embargo of 1973–74, Mullen saw in it opportunity, a chance to get back into the patch.

He quit carpets and started putting together oil deals. He would round up drilling investors, find the money for drillers and keep a share as commission. "I was carrying most of my stuff in my briefcase," he recalls. "What I was doing was selling other people's deals."

Next he formed a small company that put its own deals together. Then, in September of 1978, he joined with a geologist and five financial backers to form Cimerron. They bought old seismic charts and drilling reports and began looking for prospects. The geologist would look for the oil while Mullen would look for the money to finance the drilling.

They drilled five holes and found oil on four. On the fifth they accidentally struck natural gas, a million cubic feet a day.

Now, he says, "we've finally reached the point where we'll be hiring our first full-time employee this month."

"We aren't shooting for bear," Mullen says. "We'll take a small well and, with prices the way they are, we'll get our money back and people (investors) will get their money back. You're always hunting a big one, a barn-burner, but you'll take less if you get it. And every barrel we get out of the ground is money spent right here, not sent to the Arabs.

"It's just like playing poker with a 25-cent limit. You'd like to win $50 but if you go home with $5 you're happy and it's been a good time."

Bill Mullen is having a good time. He missed those days in the 1950s when you could look out across the oil patch and see the lights twinkling like stars on the drilling rigs stretching across the countryside. Now, once again, the rigs are everywhere, and it seems that where there isn't a rig there is a pump.

As Mullen drives out to visit one of the wells, a man in a pickup truck passes him, signals him to stop, and there, by the side of the road, they talk about an oil lease Cimerron is negotiating with the man.

"It started producing in March," Mullen said after we arrived at an eight-barrel-a-day well in Noble County, Okla. "It's what used to be a marginal well; it's not any more." Last month the oil from it sold for $40.98 a barrel. "And we're going to punch some more holes, if the government doesn't mess it up."

Each of Baird's Texas wells are producing at the rate of about $18,000 a year, and of Tresor's share, he says, "every dollar the lease has produced in the last eight months has gone back into the lease." And while Mullen hopes for barn-burners, Baird says, "Here we're hoping to get a barrel (a day). Now if we hit a 10-barrel well . . . ."

"The whole thing," says Mullen, "is to keep on drilling."

● Mr. STENNIS. Mr. President, during 1973 and early 1974, we witnessed an oil price increase of 70 percent in October 1973 and within 2 months, a second increase of 130 percent which meant that the price of oil experienced a cumulative increase of 470 percent in 1 year. These price increases which were set by the Organization of Petroleum Exporting Countries—the so-called OPEC—heralded the greatest transfer of wealth in the history of the world. In those days it became very clear to me that the warning alarm had sounded. We as a nation had allowed our economy to become excessively dependent on oil that had to be imported from sources which were concentrated in a politically unstable part of the world.

Further, it was evident that the oil prices were not operating on a free market basis, but were being used as a political weapon. Prices could be established without regard for cost of production, and supply contracts were granted for political purposes rather than to the highest bidder. The citizens of our country endured the inconvenience and economic hardships of an embargo on oil to this country which was put into place for political reasons. In 1975, the full effect of the OPEC price increases were felt by the nation and the world as we plunged into a deep recession which stunned the economy with a severe blow which this Nation had not felt since the Great Depression.

We are well aware that we must reduce our dependence on foreign oil. We know that we have the technology to provide the energy this country needs. We know that we can develop our abundant coal and shale resources. We know that we have great potential in nuclear power. We know that we can in time harness the Sun, the wind, and our geothermal resources. It is my belief that we need to end our indecision and put our shoulders together on this problem.

This Congress has worked hard on a package of energy bills which I believe is a step forward in establishing a solid energy policy for this country. I am in support of the synthetic fuels bill. I am in support of cutting redtape and I am in support of the incentives programs which we have included in the windfall profit tax bill to encourage residential and business conservation, exploration, and the development of our oil resources.

I have reservations about each of these bills as they passed the Senate, but I believe that the Senate should approve the windfall tax conference report because the country needs action on its energy problems. Seven years have passed since the first warning was sounded. Three Presidents have struggled with an energy problem. I believe that time is running out; therefore, I urge my colleagues to pass this bill and I urge my colleagues conferring on the other energy bills to complete the work and bring it to the floor of the Senate. I am eager to get on with achieving energy independence and bring an end to our Nation's economic problems and an end to inflation. I hope that this conference report will be adopted.

For the sake of our military preparedness, we absolutely must make definite progress in assuring our fuel and other energy requirements for the present and the future. Time is running out on us. Time has been lost already. We must act. This is a major factor in my support of this bill. We must make a start on the energy program, and can never get exactly the measure we want.●

RECOVERING A PORTION OF THE OIL WINDFALL

● Mr. CHURCH. Mr. President, after months of deliberation by the Congress, the Senate now has the opportunity to favorably vote on the Crude Oil Windfall Profit Tax Act of 1980. This bill is important to Idahoans who are watching to see whether the well-organized and financially lubricated interests of the oil companies will prevail over the deep concerns of the oil consuming public.

Half our oil requirements are purchased abroad from a cartel controlled by foreign governments. This cartel has pushed up the price of their oil by 1,000 percent since 1973. Last year alone this cartel rammed up prices again by doubling the price for oil in just 1 year.

Last year the President decided to remove price controls on our own domestically produced oil. That was a decision with which I did not agree, because I do not believe that the solution to our energy problems is to allow our own oil to be sold at the same high, politically dictated price that OPEC oil sells for. I can understand the motivation of the big, multinational oil companies that lobbied so heavily to win the decontrol battle. For each 1 cent per gallon that gasoline increases, the oil companies take in an additional $1 billion per year. The lure of fabulous profits to be made by selling domestic oil at OPEC prices proved to be a powerful stimulant to the giants of the oil industry.

Mr. President, there are those who argue that the only solution to this dire set of energy problems is to let the big oil companies charge as much for domestic oil as we are forced to pay for imported oil. They suggest that by "unshackling" the oil companies, by letting them charge what they like to call the free market price for oil, by putting their swollen profits to work, we will soon be awash in a glut of domestic oil. These medicine men peddle the story that if we just get the Government out of the way and unleash big oil, we will solve our energy problems in short order and happy days will be here again.

What nonsense. How many times do we have to be knocked in the head before we concede that no free market exists in the marketing of oil? Both the price and the supply of the world's oil are tightly controlled by an international cartel. A cartel is the exact opposite of the meaning of a free market. We are looking at a very determined monopoly, and monopolies ignore the conventional working of supply and demand.

For example, U.S. consumers have reduced their consumption of gasoline. We now are in the situation where consumers are cutting down on the use of heating oil and gasoline. What will be the result of this reduced demand? Will it stop the upward price spiral? The answer is clearly no. Our Nation's stockpile of crude oil is up. The inventory of diesel fuel, gasoline and heating oil is also up. In fact, our refineries have recently been running at only 79 percent of their capacity. World oil prices, especially on the spot market, are said to be softening. This should mean a slowdown in the runaway increases in prices to consumers.

Yet we now are told that Libya will reduce its output from 2.1 million barrels per day to 1.75 million barrels. OPEC as an entity is now expected to cut back production by 800,000 barrels per day with the prospect of further reductions this fall. That means supply will decrease so that prices can keep on rising and consumers who are battling to conserve will be rewarded for their efforts by having to pay $2 per gallon for gasoline by the end of this year. So much for the fairy tale that we have a free market in oil.

The impact of OPEC price and supply machinations and the decision to remove price controls from our own oil are now starting to be felt. During January and February, energy costs were the biggest components of an enormous inflationary surge. Idaho farmers, struggling to get the planting season underway, are faced with paying twice as much for diesel fuel and credit terms that require full payment within days in cash. Idaho's potato growers wonder how long they can continue to ship our marvelous bakers to distant markets when the cost of energy to ship those potatoes continues to skyrocket.

Virtually every product we buy is touched by the soaring cost of energy. Airline tickets, clothing, manufactured products, fertilizer, even record albums, to name a few items, are all costing more because of oil prices. The resultant inflation, fueled by extortionate energy prices, threatens the very survival of Idaho's small businesses, farmers, and forest products industry.

Yet the advocates of high energy prices, backstopped by expensive oil company advertisements, soothingly say this is all right because swollen profits for oil companies will mean more domestic oil. The facts are otherwise. First, the overall net income of the eight largest oil companies rose from $7.2 billion in 1975 to nearly $15 billion last year.

The decision to decontrol prices means that a trillion dollars more than would have been earned otherwise will flow into the oil companies during the decade of the 1980's. How will they use this money? A big chunk of past profits has gone into buying up nonenergy businesses. Thus, while Mobil bought Montgomery Ward for $1.7 billion, while Exxon bought Reliance Electric for $1.2 billion in cash, while Arco purchased Anaconda Copper for $784 million, an increasing number of Idahoans were finding it difficult to pay for gasoline, diesel, and home heating oil.

To add insult to economic injury, there are no upward domestic production developments to report to Idahoans as a consequence of the record oil company profits. Ever higher oil company profits do not mean energy independence is just around the corner. Why is this so? Part of the explanation lies in the fact that big oil does comparatively little exploration for new oil. The fact is that we have seen a boom in domestic exploration since 1973.

However, over 80 percent of this exploration has been done by the nonintegrated or independent oil companies. That is why I supported efforts in the Senate to exempt these producers from the windfall profit tax. The smaller independents reinvest heavily in exploration; big oil does not. The conference committee did not retain this exemption but did agree to lower tax rates for independents.

Despite this upsurge in exploration, oil production from domestic fields is declining, and by knowledgeable accounts, will continue to do so. The United States is the most explored land in the world. While there is more oil to be found, it is harder to find and discoveries are not keeping pace with the exhaustion of older fields discovered in the oil heyday of decades past. Even Exxon, the oil giant of U.S. corporations, acknowledges that U.S. production in 1978 totaled 10.7 million barrels of oil per day. With price controls removed and profits soaring, Exxon projects domestic production to decline to about 8.5 million barrels per day in 1985, and then continue on down to 7.2 million barrels in 1990.

Mr. President, we hear great cries of anguish from the oil companies that the tax in this proposed bill is "criminal" and "unjust." Yet of the $1 trillion of new unanticipated revenue they will gain in this decade, the net amount recaptured by this tax will be about 23 percent of the windfall. It is clear that, even with passage of this bill, oil company revenues will grow impressively.

While this bill will not right the ripoff which results from uncapping domestic oil prices at the wellhead, it will at least recapture part of the windfall for public use. Additionally, there are provisions in this bill that are of importance to Idahoans and that will prove to be beneficial:

Tax credits for the installation of solar, geothermal, and wind equipment in personal residences are expanded.

Tax credits are made available to businesses, small and large, to invest in solar, wind, geothermal, cogeneration, biomass, and other energy-efficient equipment.

The current 4-cents-per-gallon exemption from the Federal excise tax for gasohol is extended to provide incentives to get this promising source commercialized.

Farm cooperatives, for example, are encouraged to get into the gasohol business by other tax credit provisions for those who produce and consume their own alcohol fuel without buying it from others.

Favorable tax changes designed to provide expanded incentives for the installation of hydroelectric power are included in the bill.

Repeal of the 1976 estate tax carryover basis law is included in this bill. This repeal is extremely important to those Idahoans who will face the inheritance of a family farm or small business.

Provisions were included to change our tax laws to begin to encourage thrift, capital formation and thus lower interest rates. This provision exempts from taxation an initial amount of interest earned on savings accounts.

Mr. President, our choice is clear. We can continue to watch the major, integrated oil companies drain more and more of our national wealth into their treasuries, or we can insist that a portion of this trillion dollar, unearned windfall be returned to the public. This is not a new tax to be passed on to the consumer. Consumers are going to pay the decontrolled. OPEC price with or without this bill. With this bill, the consumer will at least know that a portion of this massive transfer of wealth will be recaptured for the public benefit. I urge the Senate to approve this bill, as our colleagues in the House have already done by a large margin.●

● Mr. DURENBERGER. Mr. President, the concept and particulars of the crude oil windfall profit tax have been difficult for me since President Carter first announced the proposal almost 1 year ago.

As a member of the Senate Committee on Finance, I helped construct a bill that fairly taxed the excess profits of producers and, more importantly, returned to the energy-conscious consumer a share of the higher price he or she will be paying for energy as a result of the President's decision to decontrol U.S. oil.

The committee bill was significantly changed on the floor of the Senate, but I voted for final passage because the elements I most strongly favored—tax credits for persons who conserved energy or switched to alternative sources of energy—and a program for income assistance to those unable to pay the huge increase in energy costs of shelter—remained intact.

Today, we are dealing with final passage of legislation that bears little resemblance to the bill structured by the Finance Committee or passed by the Senate in December. Not only has the concept of a windfall profit tax changed considerably through this legislation, the intentions of the administration are markedly different today from what they were last April when the President announced his proposal for a tax to recover a portion of the cost of his decision to decontrol oil prices.

On March 4, 1980, I asked the President to clarify the administration's position on the conference committee's report on H.R. 3919. In July 1979, President Carter stated that:

> The windfall profit tax will be paid by Americans to Americans.

However, the conference report has no such guarantees. Instead, it allocates 60 percent of the revenues from the tax to reductions in individual and corporate income taxes; 25 percent to fuel assistance; and 15 percent to energy and transportation programs. Considering the President's earlier statements, I asked him to detail how these allocations, which were not accompanied by authorizing legislation, would be transformed into specific programs and the role of those programs in the administration's new anti-inflation effort and the ongoing formation of a national energy policy.

This week, I received a response from Emil M. Sunley, Deputy Assistant Secretary of the Treasury, on behalf of the administration. I must admit that I am more confused now than ever. In one paragraph, Mr. Sunley says:

> The Administration . . . accepts the allocation formula . . . and will propose to Congress . . . how the net revenues for fiscal year 1981 are to be allocated.

In the next paragraph, the administration states, in Mr. Sunley's words:

> This is not the time for tax reductions. It is the time to reduce the Federal deficit, and

to this end the President has proposed spending reductions.

I agree that this is the time to balance the Federal budget. I agree that this is the time to reduce Federal spending. I agree that this is the time to fight inflation.

But, this is not the time to give up on our country's goal to become energy sufficient. And, this is not the time to balance the budget by placing the entire burden on the back of taxpayers and captive energy users.

Energy prices are a cause of the high inflation rate that we are now experiencing. The demand to balance the budget arises from the need to combat inflation. But, the primary tools that will be used to balance the budget, according to the President and reinforced by Mr. Sunley's letter, are new taxes on energy—taxes that will exacerbate the very inflation we are trying to combat.

There can be no avoiding the fact that decontrol of oil prices is a tax. It is an OPEC-created tax, but a tax, nevertheless. Decontrol allows domestic producers to impose the OPEC tax on U.S. consumers.

The President is apparently willing to use the $13.7 billion from the windfall profit tax in 1981 to help balance the Federal budget—to operate the same old programs in the same old way with little innovation to solve our energy problems. The administration's import fee—another tax on consumers—will contribute another $11 billion to balancing the budget. And, the corporate income tax on decontrol revenues—an indirect tax on the public—will add billions more to the budget.

Let us make no mistake about what we are doing. H.R. 3919 is no longer an energy bill. As it exists in it present form, it is a bill to balance the Federal budget at the expense of the public. Rather than take the opportunity to address the energy problem directly by efficiently investing the revenues from the decontrol and the tax, it now appears that vast sums will be swallowed up by the Federal budget to support existing programs and the offices of incumbent politicians.

Mr. President, this sad history has brought me near the point of abandoning my support for the windfall profit tax. My disappointment in the conference report led me back through the entire series of judgments to determine if there was some one decision that should be reversed. It even caused me to reconsider my basic support for the decontrol policy. But, as the representative of the people of one of a very few States which is totally dependent on fuel sources from outside its borders for its energy needs I will vote in favor of final passage of H.R. 3919.

I will vote yes on the windfall profit tax because I believe that producers should not be allowed to charge monopoly prices in domestic markets. I will vote yes because I do not believe that all the revenues from decontrol can be efficiently reinvested by the oil producers. I will vote yes because I believe the structure of the tax is better today than any future bill may be. I will vote yes because a vote in favor of this legislation will put a responsibility on me and I am willing to accept that responsibility.

And, finally, I will vote yes on the windfall profit tax because to vote to defeat it while Jimmy Carter is President is to vote to reinstate price controls and to destroy our fledgling efforts at energy independence.

I will not balance the budget by passing new legislation to tax the public. As President Carter said, we must balance the budget through the discipline of the administration and Congress, not by placing the burden on the public in the form of new taxes.

The revenues from this tax must be returned to the people who are paying the higher cost of energy. Over the course of the next decade I will make every effort to satisfy the public demand for wise investment of the revenues from this tax to secure energy independence. Every Senator who supports decontrol and votes for final passage of the windfall profit tax faces that same responsibility. I can only hope that others will join me in faithfully discharging this responsibility.

Mr. President, my specific objections to this legislation, and the objectives I will seek to implement for using the windfall profit tax revenues, are spelled out in a February 29 editorial in the Red Wing Republican Eagle. I ask that this editorial, my letter to President Carter, and Mr. Sunley's response be included in today's RECORD.

Thank you, Mr. President.

The material follows:

[From the Republican Eagle (Minn.) Red Wing, Feb. 29, 1980]

DURENBERGER'S "THIRD VIEW": NOT PRO, NOT ANTI BIG OIL

About the windfall profits oil tax bill, finally out of House-Senate conference and headed for Jimmy Carter's signature, you might identify three points of view:

(1) The "pro" viewpoint of Big Oil-hating liberals; (2) the "anti" viewpoint of industry-defending conservatives; and (3) Sen. Dave Durenberger's viewpoint.

We recommend the Durenberger article here today, but not so much for the views expressed as for what went into the article's preparation and what this says about Durenberger.

Keep in mind that Durenberger, unlike Sen. Rudy Boschwitz, voted FOR the windfall tax bill in the form it originally passed the Senate.

This was after he had thoroughly immersed himself in the subject—committee hearings May, June, July; bill drafting Sept.-Oct.; floor debate Nov.-Dec.—so that he was able to say, of himself and fellow Finance Committee senators, "I believe we were the only members of Congress who took the time to understand the issues before taking a position on the tax."

Durenberger accompanied today's "scam" denunciation with a very detailed exposition of his own views that occupies 16½ closely typed pages.

Plainly, Durenberger was stung by the charge from Nixon-Ford Treasury secretary William Simon (in the Wall St. Journal) that branded as a "Judas" those Finance Committee conservatives who helped frame the Senate bill rather than opposing it at every turn.

Some of Durenberger's conclusions run counter to our own preconceptions about the windfall profits issue. We'll try to summarize some of his major points:

(1) Contrary to the Wall St. Journal, "decontrol is NOT a return to free markets. It is only an admission that low domestic prices forced by government controls encourage consumption and, thus, make us more dependent on OPEC."

(2) Government should tax revenues from decontrol to speed development of oil alternatives—synthetics, solar.

(3) Price controls have not discouraged domestic oil drilling. "Investment in exploration and development quadrupled during the price control period . . . The decline in the domestic industry occurred in the 1960s when there were no price controls . . . Price control was a mistake because it encouraged consumption, not because of its impact on production."

(4) Big Oil's argument that the industry's return on investment has been no greater than for most U.S. manufacturing firms is true, but misleading. Decontrol without a windfall profits tax would create extraordinary profits in the production (as opposed to the refining, marketing, transportation) segment of the big, integrated oil firms.

(5) Durenberger disagrees that the industry needs all the decontrol revenues in order to expand domestic oil supplies. He doubts that we can "produce our way out of the energy crisis." "There simply is not that much additional oil to be found."

(6) While Pres. Carter initially asked a flat windfall tax rate of 50 percent, and the House passed its original bill at 60 percent, Durenberger backed a Republican amendment to raise the rate to 75 percent—on "old oil" only.

But he also favored a much lower or zero rate on new and hard-to-get oil, such as "tertiary production." Historically, for every three barrels brought up from a U.S. oil well, seven barrels are left in the ground—because they're so costly to get. Durenberger wanted maximum incentive to bring up these seven barrels, this "tertiary production."

(7) Durenberger thinks it's a crime that the Senate insisted on exempting state-owned oil from the windfall profits tax. As a result of decontrol, four states—Texas, Alaska, Louisiana, California—will reap $128 billion in extra revenue. This will permit them to "slash existing taxes" and give them "immense advantages" in pulling jobs and business investment away from other states. (Minnesota?)

(8) "I am insulted" by the earmarking of 60 percent of windfall tax revenues for unspecified future income tax reductions—something incumbent Congressmen will offer as vote bait but which represents only a portion of the tax increases that rising inflation and Social Security rates will force on the American people.

Without endorsing all Durenberger conclusions, we commend his exposition as reflecting a senator who laid philosophies and ideologies aside and delved deeply into this extraordinarily complex subject in an attempt to determine, objectively and pragmatically, where the true U.S. public interest lies.

DEPARTMENT OF THE TREASURY,
Washington, D.C., March 17, 1980.

Hon. DAVE DURENBERGER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DURENBERGER: Thank you for your letter of March 4 to President Carter regarding the windfall profits tax. In your letter you specifically ask about the allocation of the funds and the Administration's position on a general tax cut.

The Administration would have preferred one trust fund for the development of new energy sources, mass transit, and low-income energy assistance. The Administration, however, accepts the allocation formula contained in the conference agreement, and it will propose to Congress within 90 days after enactment of the tax just how the net revenues for FY 1981 are to be allocated among the purposes specified in the legislation. For succeeding fiscal years, the President will propose in the annual budget how the net revenues are to be allocated.

The President's position on tax reductions has not changed since the State of the Union Address. This simply is not the time for tax reductions. It is the time to reduce the Federal deficit, and to this end the President has proposed spending reductions. When economic conditions permit, the President will propose individual and corporate income tax reductions.

Sincerely,

EMIL M. SUNLEY,
Deputy Assistant Secretary.

U.S. SENATE,
Washington, D.C., February 28, 1980.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: After many months of consideration, the Congress will soon consider final passage of a windfall profits tax on the revenues from the decontrol of crude oil prices. The legislation reported by the House-Senate Conference Committee on H.R. 3919 is significantly different from your original proposal of a windfall profits tax. Before the Congress acts on this legislation, we respectfully ask you to clarify several points.

First, in your April, 1979, address to the nation you proposed that revenue from the windfall profits tax be dedicated to specific energy-related programs. This proposal was repeated in July, 1979. In the July speech you added that the windfall profits tax "will be paid by Americans to Americans."

The Conference Committee does not guarantee Americans that the cost of decontrol will be returned to them. Instead, the conferees have chosen to "allocate" 60 percent of the windfall profits tax revenues to a reduction in individual and corporate income taxes, 25 percent to fuel assistance and 15 percent to energy and transportation programs. There is no authorization accompanying the windfall profits tax to implement these goals.

It is very important, therefore, that before we vote on this report we know whether you still favor the concept of dedicated funds. How do you propose to transform unspecific allocations into programs that will return a portion of the cost of decontrol to Americans as you promised?

Second, in your State of the Union Address you said that "the timing and structure of any tax reduction is of critical importance and must be dictated by our economic circumstances; the urgency of the anti-inflation fight requires that we defer such tax reductions at this time."

Does your reported support of the current windfall profits tax include acceptance of the allocation for general tax cuts? If so, what specific programs of tax reduction or tax reform will you support?

Finally, the Conference Committee estimates that the windfall profits tax will produce $3.14 billion in FY '80 and $13.1 billion in FY '81. Will you propose specific programs for the use of this revenue or will you encourage or allow the revenue to be used to reduce the federal deficit or increase current spending programs? If a tax reduction is approved, what spending cuts will you support to reduce the federal deficit?

We share your concern that the windfall profits tax relieve the burden of decontrol on the American public. Although it may be possible to achieve this goal within the context of the allocations recommended by the Conference Committee, it is important that we reaffirm our commitment to this objective. As the proponent of the windfall profits tax, your assistance now in establishing a clear record in regard to the future uses of this revenue is essential and will be greatly appreciated.

Respectfully,

DAVE DURENBERGER.●

● Mr. WILLIAMS. Mr. President, I am most pleased to have the opportunity to rise and express my support for the conference report on H.R. 3919, the Crude Oil Windfall Profit Tax Act of 1980. This conference agreement is the product of many long months of negotiations by the House and Senate conferees to come to a satisfactory resolve on many difficult and complex issues. In this effort, my esteemed colleagues, Senator LONG, the chairman of the Senate Finance Committee, and Senator DOLE, the ranking minority member of that committee, and the other Senate conferees on H.R. 3919 deserve our praise and appreciation for their persevering efforts to arrive at an accord on this landmark legislative initiative.

While there are many important areas that I could address, I would most specifically like to focus my remarks on title III of the bill, which authorizes the Home Energy Assistance Act for fiscal year 1981. As my colleagues will recall, it was essentially this low-income energy assistance program that was brought before the Senate by the Labor and Human Resources Committee in November of last year. That measure, S. 1724, the Home Energy Assistance Act, was considered by the Senate and, as amended, was incorporated as an amendment to H.R. 3919 as a substitute for the Senate Finance Committee's fuel assistance program for low-income persons.

As the author of S. 1724, it is particularly gratifying that the many long hours of work that went into the Labor and Human Resources Committee deliberations on the Home Energy Assistance Act, the thoughtful efforts that the Senate Finance Committee members spent on their own low-income energy assistance program, and the efforts of House and Senate conferees on H.R. 3919 on this matter have been to a productive end.

The need for this low-income energy assistance program has been validated as a result of the rapid and continuous OPEC price increases. In the past, energy in the United States has traditionally been in abundant supply and the cost of energy for residential use was within the means of most households. Unfortunately, the era of cheap energy is over. OPEC price increases have translated into steady, upward surges in the price of home heating oil, natural gas, and electricity—the main sources of energy for heating American homes during winter.

One year ago, low-income households paid between 20 and 25 percent of their incomes on utility costs alone. One year from today, many of these households may be paying over 75 percent of their income for energy—leaving a scarce amount to pay for other necessities such as food, shelter, clothing, and medicine.

To respond to this growing crisis, the Congress approved legislation this past fall which appropriated $1.6 billion to provide energy assistance to SSI and AFDC recipients and low-income families at or below 125 percent of the Office of Management and Budget poverty line. Unfortunately, because of severe time pressures to get an assistance program in place for the winter, adequate time was not available to devise a program which was completely free of problems. The Home Energy Assistance Conference provision is designed to redress these problems and to rid the program of inequities, abuse, duplication, and other problems that may have occurred in this winter's fuel assistance program.

Before going into the details of the compromise, I would like to extend my sincere appreciation to my good friend and colleague, Senator LONG, who graciously invited me to participate in the Windfall Profit Conference deliberations on the low-income energy assistance provisions. As part of this process, I had the privilege of having the able assistance of my esteemed colleagues on the Labor and Human Resources Committee, Senator RICHARD SCHWEIKER, the ranking minority member of the committee, and Senator JACOB JAVITS, the senior minority member of the committee, to represent the Labor and Human Resources Committee views on these provisions.

Specifically, the conference agreement on H.R. 3919 would authorize the Home Energy Assistance Act for fiscal year 1981 but would add the following provisos to the Senate-passed measure:

First. An additional $90 million would be added to the authorization for the home energy assistance program for fiscal year 1981 for a total authorization of $3.115 billion;

Second. The allocation formula for the distribution of moneys under the act would remain the same as passed by the Senate, with the caveat that all States, including States which would receive allotments equal to or greater than $100 million, would now be entitled to the minimum allocation otherwise provided in the act;

Third. The Secretary of the Department of Health, Education, and Welfare would be empowered with the authority to waive compliance with any of the State plan requirements, when it is determined that such a waiver is likely to assist in promoting the objectives of the program; and

Fourth. For fiscal year 1982 and beyond, of the 25 percent of the base level revenues generated by the windfall profit tax set aside for low-income assistance, 50 percent would be reserved for an energy assistance program to be authorized and appropriated through the legislative process. In addition, of the revenues over the base windfall level (those revenues derived from oil priced above $30 per barrel), one-third is intended for use in programs for low-income households subject to the budget and appropriations process.

While it was our sincere hope that the Senate provision on the low-income energy assistance program would prevail in its entirety, and that a full 3-year authorization for the home energy assistance program could be secured, I believe that the compromise evolving from the negotiating process represents the best possible agreement that could be achieved under the existing circumstances. As chairman of the Labor and Human Resources Committee, which retains full jurisdiction over low-income energy assistance programs, I would like to state for the record, however, that the committee will soon be developing legislation to secure an energy assistance program for fiscal year 1982 and beyond to respond to the need for a long-term program.

Now with respect to the program itself, title III of the conference bill authorizes the Secretary of Health, Education, and Welfare to make grants to the States to distribute funds to eligible low- and lower-middle-income households to help pay for home energy costs.

Households eligible for home fuel assistance are those whose incomes fall below the Labor Department's Bureau of Labor Statistics (BLS) lower living standard level and families eligible for AFDC, food stamps, SSI, and certain needs tested veteran's pensions.

Approximately 18 million households will be eligible for assistance under title III, which is focused on the low- and lower-middle-income households which are least able to absorb the skyrocketing costs of home energy. This expanded eligibility will mean that many elderly and working poor households that did not qualify under last winter's program will be eligible for the fiscal year 1981 program.

The Secretary of HEW will distribute 95 percent of the funds to the States based upon a formula which takes into account: First, residential energy expenses for the States; second, the number of heating degree days; and third, the size of the eligible population.

The remaining 5 percent will be set aside for energy crisis activities of the CSA, home energy assistance to Puerto Rico and the territories, and for incentive grants to States which provide State funds for energy assistance.

To receive Federal funds, States must submit a plan describing the arrangements for administering the energy assistance program, including provisions for certifying eligible households. I would like to add, however, that in the instance where a State has opted to have the Department of Health, Education, and Welfare make direct payments to eligible households containing a recipient of supplemental security income (SSI), a point of clarification must be made. Since the SSI program is basically designed to make payments based on individual circumstances, there is no application of the household concept to the definition of eligibility. This caveat is very important since it clarifies the intent and makes this provision administratively practical for HEW.

Payments may be made either directly to the energy suppliers or to the eligible households, with States contracting agreements with home energy supplies on methods of payment, lines of credit, and reimbursements.

Each State will also make plans for outreach activities to contact those Americans who are often underserved by Federal programs and who are in the greatest need of home fuel assistance—the elderly, handicapped, the working poor, and those living in rural areas.

Overall, the basic framework of the program has been designed in such a way as to give appropriate flexibility to the States to best meet the needs of their eligible population, yet at the same time build in the necessary safeguards to assure that those with the lowest incomes and those with the highest energy costs will receive the highest benefits.

Mr. President, an extensive record has been built on the need for a fuel assistance program for low-income families and individuals. The Home Energy Assistance Act has been crafted with the valuable assistance of consumer, local, State, and Federal Government officials, industry and organizations representing the elderly, the poor, and the suppliers and consumers of energy.

In conclusion, Mr. President, I would like to give my personal thanks and express my deep appreciation to the members of the Labor and Human Resources Committee; the members of the Finance Committee; and the contributions of all the members who worked together diligently to secure the home energy assistance program.●

● Mr. HEINZ. Mr. President, ever since the dramatic increase in oil prices that followed the Arab oil embargo of 1973, the Congress has wrestled with the equity implications of such a massive transfer of resources from the consuming public to a single industry. As a Member of Congress, I have strongly supported efforts to insure that no one profiteered from the hardship experienced by Americans as a result of either a shortage of petroleum or the staggering increase in prices.

Attention was again focused on this transfer of resources last year by rapidly rising oil prices and President Carter's decision to decontrol the price of all domestic crude oil.

As a member of the Senate Finance Committee, I have been working to prevent unfair windfall for any segment of our society, in other words, to prevent a massive transfer of resources, but in a way that would allow us to maximize the production of new and additional oil from domestic sources.

I believe the legislation originally passed by the Senate would have achieved these goals better than the conference report before us. I am concerned that changes made during the conference with the House of Representatives to insure that the legislation will raise a specific amount of revenue jeopardize our ability to meet the goal of reducing our dangerous dependence on foreign oil which is the linchpin of our national energy policy. Specifically, I fear that, by placing a substantial tax on newly discovered oil, incremental tertiary oil, and heavy oil, the conference report limits the incentive to develop aggressively additional domestic oil reserves. Every barrel of oil produced domestically will directly replace a barrel that otherwise would have been imported at a high price paid to wealthy oil sheiks. A policy which significantly constrains the incentive to produce more domestic oil is clearly shortsighted.

In addition, I am disappointed that the legislation does not include an exemption for stripper oil produced by independents, as the Senate-passed bill did. This category of oil is extremely sensitive to variations in price because most of the wells are operating at the economic margin.

In fact, in recognition of the special conditions confronting stripper oil, Congress took legislative action in the Energy Conservation and Production Act of 1976 to exempt stripper oil production from price controls on domestic crude oil. While the contribution of each stripper well on its own may not seem significant, the cumulative impact of the more than 300,000 stripper wells in the country amounts to production of 1 million barrels per day or 14 percent of total domestic crude production. Imposing a tax on this oil effectively reduces our ability to extract more oil from existing wells by further limiting the economic viability of such marginal wells.

These two shortcomings concern me; nonetheless, I believe the limit on the applicability of the tax to 90 percent of net income, which I proposed during the Finance Committee markup of the legislation, and the sunset or phaseout provision will help restrict the potential negative production consequences of the bill.

On other fronts, such as solar and conservation, I believe the legislation contains very valuable incentives for individuals and businesses who invest in renewable energy resources and energy conservation measures. These alternatives offer the most immediate and enduring solutions to our need to become independent of imported oil.

Also on the plus side I am reassured to note that the legislation contains both a mechanism to provide Federal assistance to elderly and low-income individuals who are being hit the hardest by rising energy prices and guidance for "recycling" a substantial amount of the $227 billion in the form of tax reductions for hard-pressed taxpayers.

Mr. President, while the provisions of the conference report are not completely satisfactory to me, I believe President Carter's decision to decontrol domestic oil prices places a responsibility on us to pass this legislation, and I will vote for it.●

Mr. PERCY. Mr. President, today marks the completion of one of the most controversial and complicated taxing measures ever addressed by the U.S. Congress. Surely it is the most significant tax bill I have considered in my 13 years in the Senate.

Last winter, Congress placed the most awesome of responsibilities on the shoulders of House and Senate conferees, when we asked them to resolve our many differences and report out a final version of H.R. 3919, the Crude Oil Windfall Profit Tax Act of 1980. We asked them to settle a $100 billion disparity in the amount of revenues the House and Senate wanted to collect as a result of decontrol. We asked them to take a bill with $61 billion in residential and business tax credits and incentives, and make peace with another bill which contained absolutely none. We asked our conferees, in sum, to make some of the most exceedingly difficult and vital choices ever faced by a joint assembly of Congress.

From where should the windfall profit tax be collected? To whom should it be delivered? At what point should it end? Generally, in what way can our Government best seize this rare opportunity to take significant tax revenues and use them to improve our economy, turn our Nation away from its dangerous dependence on foreign oil, and turn it toward the development of abundant domestic alternative sources of energy?

Mr. President, the conferees balanced a great many interests during their preparation of this final bill. They deserve our commendation and respect for their efforts.

I am nonetheless forced to conclude that the bill we are asked to vote on today contains a great many problems which cause me concern. While the bill has many excellent and important provisions, in some respects I am afraid it is a poorer piece of legislation than that which this body approved last December. Earlier today I voted with 31 of my colleagues, to insist that the bill be re-referred to the Finance Committee on an expedited schedule, so that some of the problems which emerged during the conference's consideration of it could be resolved. We were defeated in that effort. Now, on our final vote on H.R. 3019, I am going to support this bill only with considerable reluctance.

The windfall profit tax does take important first steps in turning the United States toward building conservation, solar power, gasohol, and increased use of mass transit. The progress in these areas cannot be ignored; but they must be enhanced.

This particular tax may end up collecting much of the $227.3 billion to be gained from a sector of the population we tried very hard to protect last winter—the little man. I am going to support H.R. 3919 so that we have some taxing scheme to recoup a portion of the money coming to producers through decontrol, and so America can begin to develop the alternatives to imported oil that we so sorely need. But at the same time, I pledge to work closely with other Members of Congress to monitor the collection of this tax, and to insure that it ultimately lives up to the noble intentions we have long had for it—as a tool for, and not against, the American public.

Let me explain in a little more detail some of my more acute objections to this legislation.

I am highly concerned about the tax's application to the hundreds of thousands of royalty owners across the country, foremost among them the owners of stripper well property. Many of these individuals are elderly citizens; most are highly dependent on the small but steady dividend they receive from companies discovering and selling oil from their land.

The Senate last December voted to exempt royalty owners from the tax, if the working interests in their properties were owned by independent producers. Among these royalty owners were included many holding stripper property, some who bought after stripper oil was decontrolled in 1976. These people made considerable investments, and important leasing decisions, based on the expectation of certain secure dividend payments.

Mr. President, as the price of oil on their property reaches world value, the dividend checks for many of these people will increase as well; it is correct that some equitable tax be assessed on these increases. The Senate, however, is now faced with a bill which will tax royalty owners not at the rate of an independent producer—the individual so often responsible for the production on these private lands. Every royalty owner would now be taxed at the rate of a major oil producer; for example, either 70, 60, or 30 percent.

Royalty owners of decontrolled stripper property—and this means most of the royalty owners in my home State of Illinois—will actually experience a sizable drop in their monthly earnings. I fear that many of these citizens will be hard pressed to survive such a drop. I fear, too, that, as many of my constituents have pointed out to me, landowners may be unwilling to lease their properties to oil companies in the first place, if they have to contend with a tax of this size.

A second major concern of mine involves the conferees' removal of the Bentsen 1,000-barrel-per-day exemption for independents. The tax rate on independent oil is now 50 or 30 percent, depending on its tier.

During the Senate's original debate on H.R. 3919, I voted against the Bentsen amendment because of my belief that large independents could pay, and deserved to pay, a windfall profit tax on their 1,000-barrel production. I continue to believe that. I did support throughout that bill, however, the exemption for producers of stripper oil produced by independents. These independents often work on tiny profits and seldom reach anything close to 1,000 barrels of daily production. These producers were fully protected in the Senate bill.

The conference version now before us, however, taxes all independents regardless of size of production levels. With this tax, many may decide to close down marginal wells. Others may conclude that they cannot afford to reinvest in additional drilling. All will find the time and expense required to comply with this tax's highly complex requirements to be a burden on their limited resources.

Having said all this, Mr. President, it may seem at odds to report that I am now, and always have been, for a strong windfall profit tax. The $227.3 billion this tax will collect is not an unreasonable sum to expect, given the nearly $1 trillion expected in windfall revenues through decontrol. And I am convinced that we would revert to pricing controls if we did not adopt a so-called windfall profit tax now.

But the question we must ask ourselves is: From whom will this tax be collected? With independents exempted in the Senate bill—the group responsible for 90 percent of our domestic drilling and 75 percent of our new production—the answer at one time was the major oil companies.

Under the present conference report on H.R. 3919, however, I am not so sure. If our major oil companies are able to invest more capital on overseas production—something we must work to avoid—it will be, more and more, the independent producer of limited means who will end up footing much of the tab.

If the major producers paying the tax are able to pass through their assessments to the American consumer, through higher heating oil prices for example, once more it may be the independent producer, without this same passthrough ability, who suffers. If this tax has the net effect of creating the scenario I have just described, Mr. President—greater reliance on foreign supplies, a severe impact on America's small producer and consumer—then our energy future will be little brighter in 10 years than it is today.

An expedited re-referral of this bill would have been a good idea, I believe. Many of my colleagues in favor of a strong windfall profit tax have expressed similar concerns about some of the problems I have raised. A re-referral would have given the American consumer a tax that boosted domestic production, and alternative energy sources.

The defeat of that motion, however, has given the Senate a choice of this conference report, or no bill at all. Because of my belief that we cannot continue our important decontrol program without some institutionalized protection for consumers, without some targeting of windfall profit to new energy alternatives, I will support final passage of H.R. 3919. Furthermore, I do not believe that the doomsday scenario I have outlined need occur, if we are careful, and committed, to the essence of a strong tax.

An important element of H.R. 3919 is the requirement that the President submit a report to the Congress by 1983 on the overall production, import, profit, inflation, employment, economic growth, Federal revenue, and national security effects of decontrol and the windfall profit tax. This is a very important provision, one of Congress best hopes for monitoring and revising the tax wherever it needs improvement. I urge the President to examine and report on this tax on an even more regular basis, so that Congress is kept fully and continually apprised of the successes and failures of the important legislation we are acting on today.

The Congress has a tremendous opportunity to use the many excellent parts of this bill—and there are many excellent parts—as building blocks toward a truly comprehensive and equitable energy strategy. The tax credits we provide for conservation, solar, gasohol, biomass; the increased funding for mass transit; synthetic fuel production incentives: these things are direly important to us now. The small savers provision I cosponsored along with Senator BENTSEN is going to prove its tremendous value as an economy stabilizer, I am convinced. The moneys set aside for fuel assistance for the needy are necessary, basic tools we must provide to help these individuals offset the drastic effects of rising oil prices.

I have made it very clear that this bill is far from perfect. I have also made it clear that we need some bill, and soon. I thus go on record in support of this windfall profit tax, but committed to work for its improvement wherever I feel improvement is needed. I urge all of Congress to not rest with the bill we have now, but to scrutinize it continuously, thoroughly, and revise it where need be. This bill, as law, and all that goes with it must serve the strong purpose it was originally intended for—the strongest tool we have ever had to reduce our dangerous, crippling reliance on foreign oil.

● Mr. CULVER. Mr. President, among the provisions of the conference report on H.R. 3919, the windfall profit tax bill, I particularly support that section which makes railroad rehabilitation a "permissible use" of windfall profit revenues.

The decline of the midwestern railroads in recent years has placed a heavy burden on farmers, shippers, businessmen, and consumers throughout Iowa and the region. There has been an unchecked downward spiral of car shortages, "deferred maintenance," bankruptcies, and abandonments. One of the basic causes of this condition is the lack of capital to maintain track and equipment in sound condition. The industry faces a potential capital shortfall of as much as $16 billion by 1986, which would disrupt transportation and the economy of the midwest even more drastically.

In order to help avoid this situation, I co-authored the amendment to the Senate windfall profit tax bill reserving $1 billion in revenues for the rehabilitation of railroads. Investing in railroad improvement will not only help strengthen the industry but also promote energy conservation as well. Railroads are the most energy-efficient mode of transportation, if track and equipment can be kept in sound condition. With an energy future of even higher prices and reductions in imported oil, we can achieve substantial energy savings by improving the efficiency of the transportation sector which currently uses almost 25 percent of all the oil consumed in the United States.

Those of us who supported this amendment on the Senate side worked hard to have the conferees retain this provision. I am pleased that the conference report retains the principle of using windfall revenues for railroad rehabilitation. The report establishes a $34 billion energy and transportation fund that can be used for several kinds of projects and improvements. During the consideration of this provision, the conferees explicitly stated that some of the revenues from the fund could be used for rail rehabilitation.

I believe that windfall revenues can profitably be used to assure farmers, shippers, and consumers the sound and modern rail system we need for the future: One with no service disruptions, fewer abandonments, and more reliable transportation for our critically important agricultural and industrial goods.●

● Mr. HART. Mr. President, I opposed the conference report on the windfall profit tax because it represents substantial disincentives for new domestic oil production at a time when we face the very real possibility of being drawn into a war in the Middle East because of our our unfortunate reliance on Persian Gulf oil.

The colliding political and economic forces in the Middle East could cause Americans to shed their blood over OPEC oil. The surest way to avoid conflict there is for America to eliminate oil imports.

Unlike the Senate bill which I had supported, this bill increases the tax on new oil where we do not need it and places too low a tax on old oil where we can afford it. It would not achieve our goal of reducing oil imports through greater domestic production.

The stakes in our efforts to reduce our dependence on foreign oil are the highest imaginable. Unless we can increase domestic production and decrease consumption sufficiently, our economic and national security are at great risk. I cannot overemphasize the dangers in our continuing reliance on foreign oil and our current lax approach to eliminating it.

This bill places the wrong tax on the wrong oil. It does not put a high enough tax on "old" oil owned by the major oil companies. Higher revenues on old oil are the direct result of arbitrary OPEC cartel price increases and the President's decision to lift price controls. There should be no cartel-induced profits for major oil companies from the sale of previously-discovered oil that is already providing investors a fair return on their capital.

On August 2, 1979, I proposed an alternative to the windfall profit tax which eliminated the tax on new oil and oil produced by independents—to maximize new production—and imposed a "severance" tax on oil already in production—to insure revenues on it remain commensurate with the original cost of production. I worked to get that proposal adopted. Because I was unsuccessful, I voted for the Senate bill in December because it at least reduced the tax on new oil and provided an exemption for independents, who are responsible for 90 percent of all new exploration and production in this country.

This conference bill obviously puts the goal of raising revenues above the goal of raising domestic energy production. It puts a tax of 30 percent on new oil and hard-to-produce oil. It puts a tax of 50 percent on "old" oil for independents (only 20 percent below the tax on the majors).

These high tax provisions on independents will reduce the funds available to explore and develop new oil supplies. The tax on newly discovered oil will reduce the incentives to undertake the great risk of trying to find new supplies.

The Congressional Budget Office has estimated that the higher tax on new oil and the tax on independent producers in this bill would result in a loss of 100,000 barrels of oil per day compared to what would have been produced under the Senate bill. That is equivalent to the total production of oil from Colorado wells. We cannot afford that loss of domestic oil production.

I did not oppose this entire windfall profit tax agreement, and I strongly believe we need to pass a bill soon which would maximize the amount of new oil production.●

● Mr. BAYH. Mr. President, the Senate has before it the conference report on the crude oil windfall profit tax, H.R. 3919. Since July of last year, when President Carter began the process of decontrolling domestic oil prices, the Congress has been debating tht fate of the windfall profits which that action will bestow upon the major oil companies. Over these 9 months, the prices charged by the major oil companies for their petroleum products have risen dramatically, and have not been at all related to their production costs or the pressures of the marketplace. Rather, prices of domestic petroleum have risen in lockstep with the OPEC cartel's prices. The profits of the major oil companies have likewise risen dramatically.

In the face of these facts, I have favored a strong and permanent tax on these windfall profits to recoup some of these hard-earned dollars for consumers to help solve some of our pressing national problems. I did not favor the lifting of price controls on domestic crude oil because I disagree with the using pricing policy as a means of rationing gasoline, and because of the effect of decontrol on the consumer and inflation. I did not favor decontrol as a market mechanism to stimulate domestic oil production because the limitation of our reserves precludes dramatic increases. Letting the major oil companies reap huge windfall profits due to OPEC price increases cannot give us greater reserves or decrease our dependence on foreign oil.

The Congressional Budget Office estimates that by 1990 production of domestic crude oil under the conference report will be 7.4 million barrels per day. This compares with 7.9 million barrels per day with decontrol and no windfall profit tax. I would point out that either production figure lags behind 1979 production of 8.5 million barrels per day.

Decontrol does not reward the major oil companies for greater effort or bring America any closer to energy security. Decontrol has placed a tremendous burden on our economic structure and devastated those trapped on fixed incomes.

Mr. President, while I do not agree with the premises behind decontrol, I do agree that given decontrol we must act to use the opportunity to work toward greater energy security. On December 20, 1979, I called upon the House-Senate conferees to provide us with a conference report which would produce more revenue than the Senate version of the bill, while preserving the important energy incentives contained in that Senate bill. The conference agreement generates $227.7 billion over the next decade. The conference agreement retains most of the alternative energy incentives which are the truly significant developments produced by this legislation. I think we should enact the conference report.

WINDFALL PROFIT

Mr. President, because of decontrol the major oil companies will receive more than $1.1 trillion in additional revenues over the next decade. $227.7 billion of that sum will be recycled into the economy through this tax. After other Federal and State taxes are paid, the major oil companies will be able to keep about a quarter of a trillion dollars of the profits attributable to decontrol. This figure will about double 1978 oil company profits, which were an all-time high. These profits have risen as the price of oil has been set by the sheiks, the shahs, and the ayatollahs beyond our shores. Decontrol permits the OPEC cartel to set domestic oil prices and only assures that our oil prices will continue to rise dramatically.

Since March of last year gasoline prices have risen more than 72 percent. Home heating oil prices rose at a rate of over 90 percent. These increases were a main cause of soaring prices for other consumer goods.

Opponents of this tax claim alternately that the taxing of windfall profit will discourage domestic production or that the cost of the tax will simply be passed on to consumers. I maintain that neither of these views is persuasive.

Our oil and gas reserves are finite, and they are being rapidly depleted. The U.S. Geological Survey and the oil companies themselves admit that domestic oil production will continue to decline because there is only so much oil and gas left within our borders. Simply pouring more money into the coffers of the major oil companies will not change that unwelcome fact. We want to get all our remaining oil out of the ground. But a sound energy policy must recognize that is limited.

Even the administration, which supports decontrol, has drastically scaled down its original projections about the amount of additional oil which we can expect to result from decontrol. What we face then, without a windfall profit tax, is the prospect of continually decreasing oil production, while companies charge more and more for their oil.

With a windfall profit tax, we can at least recoup some of the revenues which will flow from the pockets of American consumers to the treasuries of the oil companies and use those funds to address our energy problems. Our national security is jeopardized, Mr. President, every day that we remain dependent on other nations for the energy we need. If we are to have decontrol, then we must tax the windfall to reduce this dependence.

The prospect of the oil companies passing the burden of the windfall profit tax to the consumer was raised several times during the House of Representatives' debate on the conference report. While this clearly was not the intent of the conferees. I have endeavored to seek a definitive assurance on this point from the Department of Energy. Specifically, I have asked the Secretary of Energy to utilize his regulatory authority to prevent the pass through of the windfall profit tax to consumers. Mr. President, I ask that Mr. Duncan's reply to my request be printed in the RECORD at this point in my remarks.

The letter follows:

THE SECRETARY OF ENERGY,
Washington, D.C., March 19, 1980.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: My staff has apprised me of your concern that opponents of the windfall profits tax are suggesting that this Department's regulations permit the cost of the tax to be passed through on the price of gasoline as an additional increased cost. I, too, am concerned about this.

I asked the General Counsel to look into this allegation, and he assures me that our existing regulations absolutely prohibit refiners from treating the windfall profits tax as an increased cost that may be passed through in the price of gasoline. Therefore, the impact of the tax will be upon producer's profits, not upon consumer prices.

Sincerely,

CHARLES W. DUNCAN, Jr.

DECONTROL AND INFLATION

Mr. BAYH. Mr. President, it is important to note that the oil company revenues in question here are only those revenues resulting from decontrol of domestic oil prices, not the total revenue of the oil companies. Moreover, it is of equal importance to note the effect the dramatic increases in major oil company profits have made on domestic inflation. During 1979 the profits of the 20 largest oil companies increased by 64 percent. During the same time the annual inflation rate has risen from about 11 percent in January 1979 to more than 18 percent in January of this year. There is little doubt that one of the most important contributors to this inflationary spiral has been the effect of surging crude oil prices. The price is paid by the consumer of oil and petroleum products and again by all consumers as these price rises ripple through the economy.

While I have disagreed with the premise which resulted in the decontrol of domestic oil prices, I have strongly supported the efforts of my colleagues in the House and Senate to use the revenues of the windfall profit tax to make changes in our basic tax structures, to encourage business and residential energy consumers to conserve, and to invest in alternative technologies all of which will reduce our Nation's dependence on oil.

ALTERNATIVES TO CRUDE OIL

Mr. President, we need to strive for energy independence through conservation and reliance on domestically produced and renewable energy resources. Decontrol of crude oil is not, in my estimation, the answer to our energy problem. However, during our efforts to tax the windfall profit produced by pegging domestic crude oil prices to OPEC prices, we have made significant progress toward encouraging reductions in crude oil use. We have been able to provide incentives to business and homeowners to utilize domestic alternatives to crude oil. We have extended the Federal excise tax exemption for gasohol and alcohol fuels until 1992 and provided an alternative production tax credit for alcohol fuel production in industrial, farm and other applications. We have provided new incentives for investment in the production of fuel from solid wastes.

It seems particularly appropriate to me, that this bill provides tax breaks for consumers and businesses who have carried the burden of ever-increasing prices for energy, as well as the inflationary impact of those costs on the price of essential goods and services. The windfall profits tax bill will redistribute part of the huge windfall profits of the major oil companies to those Americans willing to invest in domestic energy sources that have not yet become widely commercialized.

GASOHOL AND ALCOHOL FUELS

Mr. President, I was most pleased by the provisions agreed to by the conferees to provide for the rapid commercialization of alcohol fuels. Alcohol fuels can be produced from a broad range of renewable resources available in this country, including not only grains, but waste materials from food processing plants, surplus or distressed crops, sugar crops, and others. In the longer term they can be produced from cellulosic waste materials, including municipal solid waste. Alcohol fuels have tremendous potential to enable this Nation to convert urban and agricultural waste materials to much needed liquid energy supplies.

Mr. President, as chairman of the National Alcohol Fuels Commission, I am particularly gratified by the extension until 1992 of the 4-cents-per-gallon Federal excise tax exemption for gasohol—the 90–10 mixture of gasoline and alcohol fuel. The inclusion of this provision assures investors of a stable and reliable Federal tax incentive. Given the 30- to 40-year amortization periods for large-scale commercial alcohol production facilities, private financial institutions have been hesitant to make the needed investments in alcohol production facilities without a clear signal from Congress. The extension of the 4-cents-per-gallon Federal excise tax exemption for gasohol will provide the favorable financial climate necessary to stimulate rapid commercialization of this important renewable domestic petroleum extender. The provision of a 40-cents-per-gallon tax credit for those circumstances in which the tax exemption does not apply, such as the use of alcohol fuel (either blended or straight) in industrial plants, by State and local governments, in on-farm production, or as an octane booster by refiners in less than 90–10 blends, will provide further incentives for the use of homegrown alternatives to crude oil.

BUSINESS ENERGY INCENTIVES

The conference report includes business energy investment tax credits to stimulate such alternatives to crude oil as: Solar and wind energy; geothermal; ocean thermal; small-scale hydroelectric, cogeneration and biomass equipment; and alternative fuels production.

The conference report will encourage the production of coke and coke gas from our abundant coal supplies and other sources. We have provided important investment tax credits for coke ovens which, as in my home State of Indiana, are important to foundry operations as well as providing additional supplies of gas to be mixed with natural gas. The credits will lead to the increased utilization of domestic energy supplies to produce diverse byproducts of fuel, chemicals, and feedstocks.

RESIDENTIAL ENERGY INCENTIVES

Of equal importance are the residential energy tax credits which the conference report includes. Up to 40 percent of the first $10,000 of expenditures for solar, wind, and geothermal equipment will be eligible for energy tax credits. The list of items eligible for these credits has been expanded to include equipment to generate electricity from solar or geothermal energy, costs of drilling an onsite geothermal well, and a limited category of structural components of a dwelling need to install renewable energy property.

Also, the conference reports grants the Treasury Department authority to approve additional items if it determines that the use of such equipment would reduce the Nation's dependence on oil and that the equipment would not damage the environment or public health.

Encouraging households to use alternative energy sources will ease the demand for crude oil and free those households from the economic pressures of ever-increasing prices. These are the sound objectives of our energy policy which will be advanced by the conference report.

LOW-INCOME ASSISTANCE

The conference report authorizes $3.1 billion for fiscal year 1981 to fund a program of block grants to the States to provide assistance to lower income families for heating and cooling costs. Households will be eligible for energy assistance if their incomes are less than the Bureau of Labor Statistics (BLS) lower living standard, which was $11,600 for a family of four in 1979. In addition, States may give assistance, regardless of income, to households which receive food stamps, AFDC, needs-tested veterans pensions or are eligible for the supplemental security income program. This aspect of the conference report provides help to those least able to pay the price of decontrol. We must provide assistance to those on fixed incomes to pay for higher energy costs brought on by decontrol. This assistance will allow all States to create programs like Indiana's project SAFE—the State allowance for energy—which helps people pay their energy bills. Programs like Project SAFE are vital to the well-being of citizens unable to pay the bill of decontrol.

TAX RELIEF

The conference report increases the existing income tax exclusion for "small savers" interest from $100 to $200 (from $200 to $400 on joint returns). The report also repeals the "carryover" provisions for inherited property which will allow heirs to use the value of property at the time of their inheritance for income tax purposes. Both of these provisions will provide important tax breaks for the consumers who have carried the burden of decontrol.

INDEPENDENT OIL PRODUCERS

While I generally support those elements of the conference agreement outlined above, and I recognize full well the true compromise that H.R. 3919 represents, I must criticize our failure to provide an exemption for independent oil producers and royalty owners.

When the Senate considered H.R. 3919, I supported Senator BENTSEN'S amendment to exempt from this tax the first 1,000 barrels per day produced by independents. This provision of the Senate bill protected hundreds of family farmers in my State, and others in the Midwest, for whom the small additional income derived from a few oil wells can provide an economic backup in these days of rapidly escalating prices associated with food production material and equipment and clouded agricultural markets. In addition to this Hoosier concern, it is also true that the independent producers and royalty owners of this country fund most of our new oil wells and have an excellent record of reinvesting their profits in new energy explorations.

For these reasons, Mr. President, I believe we should have retained the independent producers exemption. It is the loss of production from small wells and the corresponding loss of income to the farmer and the landowner which has been the greatest concern to me in evaluating the conference report.

It is because of my concern for the independent producer and royalty owner that I have decided to vote for Senator DOLE'S motion to refer the conference report to the Finance Committee for a limited time prior to any vote on final passage. I believe that we must have firm commitments on another bill to provide relief to independents and royalty owners before we can approve the conference. This is an extraordinary measure for the Senator from Indiana because I have fought so hard for the incentives to gasohol, business and households which are contained in the conference report. But extraordinary measures are called for to prevent injustice to the independents and royalty owners.

I urge the Finance Committee to move firmly and aggressively to forge the necessary vehicle to provide relief for the independents and royalty owners. I have every confidence that under Senator LONG'S strong and able leadership the Finance Committee can hold hearings and get legislation moving to help the independent producer and the royalty owner.

This request is not unlike my desire to seek clarification of issues throughout our debate on the windfall profits tax. I sought clarifications from Secretary Duncan on the tax being passed on to consumer. Now, I seek a clarification and review of the effects of the tax upon a specific group of taxpayers. If the case for the independent and royalty owner can be made, then I want them to have the opportunity to make it.

CONCLUSION

The conference report on the crude oil windfall profit tax is not all that any one of us desired. But it is necessary because of the decontrol of domestic crude oil price. I intend to support the conference report because of the alternatives to crude oil use which can be encouraged through the recycling of the windfall revenues into domestic renewable energy sources. We must end our dependence on crude oil, for it is a limited and insecure resource. This agreement provides an opportunity to use the profits of decontrol in sound and affirmative energy alternatives. To this end, the conference report is a significant and timely step in the right direction. It is a long journey to energy independence and we must do all in our power to advance that cause.

Mr. President, we need the conference report but, in my view we need to consider tempering its effects on the independent producer and royalty owner. But, Mr. President, we also need to advance the other elements of our Federal energy policy. I urge the conferences on the Energy Mobilization Board and synfuels legislation to move swiftly to provide the Nation with those crucial elements of our energy policy. And, I urge the Congress to deliver an aggressive coal conversion bill during this session with these elements of our energy policy in place. I believe the Nation can make great strides toward energy independence once all the elements of the energy progam are laid in place.●

● Mr. GLENN. Mr. President, I am voting today to approve the conference report on H.R. 3919, the crude oil windfall profit tax bill. I do so with reservation because the legislation has certain imperfections of an important nature. Given an alternative other than defeat of the entire tax measure, I would strongly strongly consider that other choice.

The windfall profit tax bill that passed the Senate contained an exemption for the first 1,000 barrels per day of oil production by independent producers. I support this exemption, believe it to be a wise and prudent way to encourage domestic production, and I am very concerned that the exemption was eliminated from the conference report.

I am also concerned about how the proceeds from this tax will be applied. It is my view that this country has not made the commitment that must be made in the field of energy research and development, and that this area should be funded in part by windfall profit tax revenues. This is extremely important if we are to work our way out of the clutches of the OPEC cartel.

It is clear, however, that in the absence of some form of windfall profits tax, we could not reasonably expect crude oil prices to remain decontrolled. I favor such decontrol because I believe it necessary to stimulate and encourage increased oil production in this country, and reduced reliance upon imported oil.

The conference version, however, retains some provisions which I do favor. Included among these provisions is the additional 10 percent energy property tax credit for coking facilities which I cosponsored, an energy production tax credit of 50 cents per thousand-cubic-feet for natural gas from Devonian shale which I authored, and an expanded exemption for interest and dividend income for small savers which I cosponsored. The bill also retains the important Senate-passed provision which repeals the 1976 tax provision pertaining to carryover basis on inherited property.

Mr. President, this bill is the better of two bad choices. My concern about independent producers remains, and I will still be working for ways to encourage additional production. Additionally, Congress must, in the future, consider how these tax revenues are to be applied, and not necessarily along the lines or in the amounts suggested by the conference committee report. I look forward to working with my colleagues in making the changes necessary to improve this legislation.●

Mr. ROBERT C. BYRD. Mr. President, there may be other votes during the afternoon—not on this measure, of course.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from Pennsylvania (Mr. SCHWEIKER) is necessarily absent.

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

The result was announced—yeas 66, nays 31, as follows:

[Rollcall Vote No. 67 Leg.]

YEAS—66

Baker	Glenn	Packwood
Baucus	Hatfield	Pell
Bayh	Heinz	Percy
Biden	Huddleston	Pressler
Bradley	Inouye	Proxmire
Bumpers	Jackson	Randolph
Burdick	Javits	Ribicoff
Byrd, Robert C.	Johnston	Riegle
Cannon	Leahy	Roth
Chafee	Levin	Sarbanes
Chiles	Long	Sasser
Church	Magnuson	Stafford
Cohen	Mathias	Stennis
Cranston	Matsunaga	Stevenson
Culver	McGovern	Stewart
Danforth	Melcher	Stone
DeConcini	Metzenbaum	Talmadge
Durenberger	Morgan	Tsongas
Durkin	Moynihan	Warner
Eagleton	Muskie	Weicker
Exon	Nelson	Williams
Ford	Nunn	Young

NAYS—31

Armstrong	Goldwater	Lugar
Bellmon	Hart	McClure
Bentsen	Hatch	Pryor
Boren	Hayakawa	Schmitt
Boschwitz	Heflin	Simpson
Byrd,	Helms	Stevens
Harry F., Jr.	Hollings	Thurmond
Cochran	Humphrey	Tower
Dole	Jepsen	Wallop
Domenici	Kassebaum	Zorinsky
Garn	Laxalt	

NOT VOTING—3

Gravel	Kennedy	Schweiker

So the conference report (H.R. 3919) was agreed to.

Mr. LONG. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 5 minutes each.

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

The Senate will be in order.

THE 442D VETERANS CLUB CALLS FOR EARLY ENACTMENT OF S. 1647

Mr. MATSUNAGA. Mr. President, the 442d Veterans Club of Hawaii, whose membership is made up of Veterans of the 442d Regimental Combat Team of World War II fame, recently adopted a resolution calling for the early enactment of S. 1647, a bill which would provide for the establishment of a Federal commission to study the World War II detention of civilians under Executive Order 9066.

Members of the Senate will recall that the 442d Regimental Combat Team was the most decorated combat unit of World War II. Its exploits were immortalized in the movie entitled "Go for Broke," which was also the battle-cry of the Japanese-American regiment.

Upon its return from overseas, President Harry S Truman awarded to the 442d its seventh Presidential Unit Citation and told its Japanese American members:

> You fought not only the enemy, but you fought prejudice—and you won. Keep up that fight, and we will continue to win—to make this great republic stand for what the Constitution says it stands for: "The Welfare of all the people all the time."

The members of the 442d Regimental Combat Team, which include my colleague, the senior Senator from Hawaii, DANIEL K. INOUYE, and myself, have continued their fight to make sure all Americans enjoy the rights and privileges granted by our Constitution. I am sure that my colleagues will find of interest their views with respect to S. 1647, and I request unanimous consent that the text of their resolution be printed in the RECORD.

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

RESOLUTION

Whereas, on February 19, 1942, President Roosevelt signed Executive Order 9066 which resulted in the mass evacuation and incarceration of Japanese Americans in Concentration camps; and

Whereas, 1942 marked the beginning of a period of American history in which the ideals of democracy and individual freedom guaranteed under the Constitution of this Nation were denied to these citizens solely on the basis of ancestry; and

Whereas, apart from its economic and psychological impact on the victims, the Evacuation placed a stigma of guilt upon all Japanese Americans and, in the minds of most Americans, has led to the erroneous belief that the government's actions were completely justified in the name of national security; and

Whereas, after many, many years of continued effort by the Japanese American community and their legion of friends to bring before the United States Congress and the American public the events of this "sad episode in our history"; the unprecedented abridgement of the rights of American citizens; and

Whereas, with the courageous leadership of our esteemed comrades in arms, The Honorable Daniel Inouye and Spark Matsunaga, together with the co-sponsorship of Senators S. I. Hayakawa and Alan Cranston of California, and Frank Church and James McClure of Idaho, Senate Bill 1647 was introduced in the United States Senate on August 2, 1979; and

Whereas, on September 28, 1979, HR 5499 was introduced in the House of Representatives with 114 co-sponsors; and

Whereas, both measures seek to establish a Presidential study commission whose purpose will be to inquire into the events of 1942 through a series of public hearings and to determine whether the government's actions were justified, and if not, to recommend appropriate remedies; and

Whereas, the members of the 442nd Veterans Club of Honolulu, Hawaii, comprised of the original members of the 442nd Regimental Combat Team, and widely recognized as one of the most highly decorated combat units during World War II, firmly believe in the principle of "Redress" as proposed in HR 5499 and SB1647; now therefore,

Be it resolved by the 442nd Veterans Club of Honolulu, Hawaii, that its entire membership wholeheartedly endorse the immediate passage of the bill to establish the Commission on Wartime Relocation and Internment of Civilians Act and

Be it further resolved that copies of this resolution be transmitted to: The Honorable Abraham Ribicoff, Chairman of the Senate Governmental Affairs Committee, The Honorable Daniel Inouye, United States Senator; The Honorable Spark Matsunaga, United States Senator; The Honorable S. I. Hayakawa, United States Senator; The Honorable Alan Cranston, United States Senator; The Honorable Frank Church, United States Senator; and The Honorable James McClure, United States Senator.

Respectfully submitted,

EDWARD M. TAMANAHA,
President.

HAWAII CELEBRATES KUHIO DAY

Mr. MATSUNAGA. Mr. President, the people of Hawaii are celebrating all this week the birthday anniversary of Prince Jonah Kuhio Kalanianaole.

Prince Kuhio was born on my own home island of Kauai. My claim to fame is that I was born within a few miles from where he was born. From 1902 through 1922, the prince served as Hawaii's nonvoting delegate to the U.S. Congress. Hawaii's new Federal building, in Honolulu, is named for Prince Kuhio and will be the site of part of the festivities today.

The record tells us that "Prince Cupid," as he was amiably called, was one of the best-liked Members of Congress of his time. He introduced the first measure providing for Hawaii's admission to the Union as a State. In addition, he introduced and guided to passage legislation which established the Hawaiian Homes Commission. The Hawaiian Homes Commission Act of 1920 was intended to permit Native Hawaiians retain some of their land by leasing homesteads and farmlots.

The adopted son of Queen Kapiolani, consort of the King Kalakaua of Hawaii, and a favorite of Queen Liliuokalani, Hawaii's last monarch, Kuhio was personally interested in the preservation of the Native Hawaiian culture. He was the founder of the Hawaiian Civic Clubs, a statewide organization, which will sponsor many of the festivities marking the anniversary of Kuhio's birth.

With the thought that my colleagues will find it of interest, I ask unanimous consent that a schedule of activities in honor of Prince Kuhio on the Island of Oahu be printed in the RECORD. Similar celebrations will take place on the Neighbor Islands of Hawaii.

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

HAWAIIAN CIVIC CLUBS SLATE KUHIO CELEBRATION SATURDAY

The Oahu Council of the Association of Hawaiian Civic Clubs will hold a day-long celebration Saturday at Kalanianaole Beach Park in Nanakuli in honor of Prince Jonah Kuhio Kalanianaole (1871–1922).

The royal prince and delegate from the territory of Hawaii to Congress was born on March 26 so Wednesday will be a holiday for state, city and county employees.

Hawaiian exhibits, demonstrations and entertainment will be featured from 11 a.m. to 2 p.m. Wednesday at the Prince Kuhio Federal Building, 300 Ala Moana.

And at Kawaiahao Church on Sunday, an "Alii Sunday" will be celebrated for Prince Kuhio.

Gov. George R. Ariyoshi has proclaimed Saturday Hawaiian Civic Club Day.

"Prince Kuhio's life was dedicated to the . . . enhancement of Hawaiian culture . . . which resulted in the establishment of Hawaiian Civic Clubs which today total 41 throughout the state of Hawaii and California," Ariyoshi said.

The theme for Saturday's Prince Kuhio Celebration is "Kuhio, Ke Kanaka Pa'ani" (Kuhio, the Sportsman) and there will be Hawaiian games competition conducted by the Queen Emma Hawaiian Civic Club at 1 p.m.

"The 'Pahe'e"—Sliding Spear, "ae'o"—stilts, "o'o ihe"—spear throwing, "ulu maika"—bowling, "moa pah'e"—sliding darts and "hukihuki"—tug of war are the games to be conducted by Aunty Elaine Mullaney.

Among the day's "VIPs" at the celebration will be six National Football League players from Hawaii: Rockne Frietas of the Detroit Lions, Karl Lorch of the Washington Redskins, Kale Ane, Arnold Morgado and Jim Nicholson of the Kansas City Chiefs, and Hal Stringert of San Diego Chargers.

The Saturday celebration will begin at 9:30 a.m. with a parade from Ulehawa Park to Kalanianaole Park along Farrington Highway. The NFL players, Miss Hawaii—Sheron Leihuanani Bissen—Pacific Joint Armed Forces Honor Guard, and the Royal Hawaiian Band will be among those marching in the parade.

There will be a number of Hawaiian celebrities who will entertain at the park beginning at 10:30 a.m.

Food booths will offer beef stew, shoyu chicken, chicken curry, and Hawaiian and teriyaki plates.

Prince Kuhio, a cousin of Queen Liliuokalani and King Kalakaua, was made a prince by royal proclamation in 1884. March 26, the day of his birth, will be a holiday for city, county and state workers, but not federal employees.

Buses will run on a Saturday schedule and there will be free on-street parking.

Banks will be closed, but stores at the major shopping centers will be open.

Refuse will be collected as usual and the Peoples' Open Market will be in operation.

Students at the University of Hawaii are on spring recess but administrative offices, open the rest of the week, will be closed Wednesday.

Hamilton Library will be closed all day, while Sinclair Library will be open for three hours, from 2 to 5 p.m.

The zoo, city firing range and swimming pools will remain open.

Federal workers may be able to enjoy some of the festivities scheduled at the Prince Kuhio Federal Building.

Feather crafts, coconut weaving, poi pounding, Hawaiian instruments and fresh flower lei making may be seen between 11 a.m. and 2 p.m. The exhibitions and demonstrations will be sponsored by the Kalihi-Palama and Waianae Coast Culture and Arts societies.

In addition, a Hawaiian quilt exhibit from the Kauai Museum and the private collection of Elizabeth Akana will be on view through March 28 in the Prince Kuhio Federal Building's courthouse lobby.

The Men of Waimapuna (hula) will perform from 1 to 2 p.m. and a special Hawaiian menu will be available in the fifth-floor cafeteria of the federal building.

About seven Hawaiian societies, whose members will be dressed in turn-of-the-century costumes, are expected at the 10:30 a.m. Sunday service. The societies were organized for benevolent work, to take care of scholarships and to help in orphanages.

The Kawaiahao choir will sing two Hawaiian anthems, "Hoonani Ika Haku Jesu" (Praise to the Lord Jesus) and "Nani O Ierusalema" (Beautiful is Jerusalem).

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BOREN). Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, may we have order?

The PRESIDING OFFICER. Will the Senate be in order please?

Mr. HARRY F. BYRD, JR. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Virginia is recognized.

THE FEDERAL BUDGET

Mr. HARRY F. BYRD, JR. Mr. President, there are several figures in connection with the Federal budget to which I hope the Senate will give careful consideration.

The first figure is the spending for fiscal year 1980 that the Senate approved 4½ months ago—namely, on November 16, 1979. Congress approved spending for fiscal year 1980 of $548 billion; 4½ months ago, it projected a deficit for fiscal year 1980 of $30 billion. Today, the 1980 deficit is projected at $40 billion.

Is that restraining spending? Have Congress and the administration restrained spending, when the projected increase in the deficit has gone up $10 billion in 4½ months?

Another figure that I think it would be well to keep in mind is President Carter's proposed spending for fiscal year 1981. President Carter, on June 28, when he submitted his budget, called for spending of $616 billion for the new fiscal year.

Six weeks later, on March 14, in a television speech to the American people, he revised that figure, and his new spending figure is $613 billion.

In subtracting the $548 billion authorized for 1980 from the $613 billion sought by President Carter for fiscal year 1981, one will easily see that he has proposed a spending increase of $65 billion in that 1-year period.

NOMINATION OF CURTIS ALAN HESSLER

Mr. HARRY F. BYRD, JR. Mr. President, I note on the Executive Calendar, the name of Curtis Alan Hessler to be an Assistant Secretary of the Treasury.

Mr. Hessler yesterday came before the Finance Committee, which committee unanimously approved his confirmation to this position of Assistant Secretary of the Treasury for Economic Policy.

I might say I was well impressed with Mr. Hessler. I was particularly impressed with his candor.

I had a rather lengthy dialog with Mr. Hessler in connection with Government spending, and at this point I ask unanimous consent that the transcript of the committee hearing of yesterday, containing the dialog between the new Assistant Secretary of Treasury for Economic Policy and the Senator from Virginia, be printed in the RECORD.

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

DIALOG BETWEEN SENATOR BYRD AND THE ASSISTANT SECRETARY OF THE TREASURY FOR ECONOMIC POLICY

Senator BYRD. Mr. Hessler, you certainly have a fine background. Let me ask you this. What is our economic policy?

Mr. HESSLER. As I understand it, the economic policy of the administration is to move—the fiscal policy is to move the budget into balance over a long term so it would remain balanced over swings of economic activity. In monetary policy, of course, it is not a direct matter for the Executive Branch, but my understanding of the policy of the Federal Reserve Board, in general terms, is to bring the rate of credit expansion methodically back into line with the rate of growth of the real economy.

Those would be the two major instruments over a very long period of time for assuring that we in the 1980s do not suffer the kind of inflation that we had through the 1970s. In addition, of course, in each sector of policy, there are important structural elements particularly in energy.

On fiscal policy and monetary policy, those rather conventional formulations, I take it to be the long-run policy of the administration and the Federal Reserve and I think they are promising over the long run.

But it will be very difficult in terms of the consequences in the short run.

Senator BYRD. You are, at the present time, Associate Director of the Office of Management and Budget. Is that correct?

Mr. HESSLER. Yes, sir.

Senator BYRD. Prior to that, you were Executive Director of the Cabinet Economic Policy Group charged with formulating economic policy for the administration?

Mr. HESSLER. That is right.

Senator BYRD. How do you propose that the inflation of 18 percent that we now have, how do you propose that that inflation rate be brought down?

Mr. HESSLER. For the long term, Senator, I think the only way it can be brought down is to assure that the two policies I mentioned are carried out with conviction.

Senator BYRD. Excuse me. Just delay a moment. I cannot hear you.

Mr. HESSLER. The long term policies on the fiscal side or the monetary side, the long term policy of budgetary balance over economic cycles for the fiscal side and the monetary side, controlling the rate of credit expansion and bringing impact in line with the real rate of growth of the economy, I would think would insure that we will not be suffering 18 percent inflation in the long term.

For the very short term, for the next five or six months, I think there is very little that can be done because those high rates have been built in by energy price increases and home financing price increases through higher interest rates that already have happened and we see them feed right through the indexes and there is virtually nothing you can do to stop those high rates of inflation in the near term from occurring.

Senator BYRD. Now, the American people are faced with a very high and apparently increasing inflation. My first question is, do you favor the policies that the Federal Reserve Board has been pursuing over the past few months, presumably tightening up on the expansion of money?

Mr. HESSLER. I think those are sound policies. In general, I could not comment intelligently or in detail on this policy. I guess it is a tradition of Treasury not to comment in great detail on the monetary policies of the Fed in general.

I think they are moving in precisely the right direction and have been since last October.

Senator BYRD. Let us get, then, to fiscal policy, which is more in your area, I take it?

Mr. HESSLER. Yes, sir.

Senator BYRD. On November 16, 1979, that is a little over four months ago, the Congress approved spending for fiscal 1980, outlays for 1980, of $548 billion. And it said that the appropriate level of deficit was $30 billion.

My understanding is—and you correct me, if I am wrong—my understanding is that the deficit for this fiscal year 1980 instead of being $30 billion as projected and approved by the Congress, a little over four months ago, will be between $39 billion and $40 billion, if not higher—say $40 billion, give or take, a little bit.

Mr. HESSLER. I think that the administration hopes to squeeze that deficit down somewhat with the announcement of the details of its budget cut package on Monday but the general point, I think, is quite right, Senator. It has gone up significantly.

Senator BYRD. In the past four and a half months the deficit has increased in round figures $10 billion. Is that correct?

Mr. HASSLER. That is correct. The projection of the deficit.

Senator BYRD. The projected deficit increased in four and a half months by $10 billion. Do you consider that getting spending under control?

Mr. HESSLER. I do not think anybody could consider that. A lot of it is happening through entitlement programs.

Senator BYRD. I am not speaking of the cause. I just want to get the facts.

What we tend to overlook, many of us in the Congress, are what the facts are, what the facts and figures are.

Now the news media and the White House and members of the Congress give out figures, stating we are going to reduce spending, that we are going to reduce the President's budget, but when you look at the facts—or maybe I do not look at the facts accurately. That is why I am glad you are here today because probably you can straighten me out on my own facts.

Let me state the facts as I see them.

Senator DOLE. If the Senator would yield for one moment?

Senator BYRD. Yes.

Senator DOLE. I have to go to the Agriculture Committee for a quorum. I have no questions, Mr. Hessler, but I think Senator Byrd is on the right track.

Personally, we would like to know what the policy is. As far as we are concerned on our side, there are no questions. We are pleased to confirm your nomination.

Mr. HESSLER. Thank you, Senator.

Senator BYRD. Now, when the President sent his budget message to the Congress which budget was developed by OMB, it called for spending in FY '81 of $616 billion. Is that correct?

Mr. HESSLER. That is right.

Senator BYRD. When he spoke to the American people on March 14, about six weeks after his budget was submitted, he indicated that he felt that his original proposal was too high and he was going to reduce it, so he asked for spending of $613 billion.

Is that figure correct?

Mr. HESSLER. I think that is correct. I do not recall exactly what those numbers were.

Senator BYRD. The way I do arithmetic, if you take $613 billion from $616 billion, that means a reduction of $3 billion.

Mr. HESSLER. That is right. In absolute amounts, that is correct.

The base was going up, so a very large package of cuts brings the net cut down in spending to a small amount.

Senator BYRD. Now, the President consistently used the $13 billion reduction. Here is the way he got the $13 billion reduction. If I am not doing it right, you correct me.

He increased—he projected an increase in spending of $10 billion and a reduction in spending of $13 billion, giving a net reduction of $3 billion.

Is that correct?

Mr. HESSLER. That is correct, but the net reduction is only $3 billion. The way the $13 billion or $14 billion list was compiled was going program by program and actually cutting out and then adding up the costs of all those cuts, so there is nothing cosmetic about that list.

Senator BYRD. The bottom line to the American people, to the taxpayer, the bottom line to the people who decide whether to buy bonds or not to buy bonds, the bottom line to the homeowners and the rest of the citizens is what is our spending?

Our spending, as I read the figures, will be in round figures $613 billion.

Mr. HESSLER. I think that is correct, Senator.

Senator BYRD. That is correct.

His original proposal was $616 billion. Now, let's take that $613 billion, which the President now proposes. The Budget Resolution approved by Congress on November 15, four and a half months ago, was for $548 billion.

Now, when you subtract $548 billion from $613 billion, that gives an increase in spending of $65 billion.

That is correct, is it not?

Mr. HESSLER. That is correct.

Senator BYRD. This afternoon, every homebuilder in the state of Virginia is coming to Washington. I guess they are here now, but I am meeting with them at 1:30 this afternoon.

What can I tell the homebuilders that the government is doing that will change the situation facing the homebuilders and, for that matter, the entire American public.

Mr. HESSLER. I think first, Senator as far as the budget is concerned that the fiscal stance of the budget over a period of less than a year is going to swing $50 billion from the deficit, as you pointed out, of close to $40 billion to a surplus of $10 billion or more.

That is the biggest fiscal swing we ever had.

Senator BYRD. That does not result from a reduction in spending. That results from an increase in taxes. Is that not correct?

Mr. HESSLER. From both.

There is the real reduction in spending programs of $13 billion to $14 billion.

Senator BYRD. Just a minute. Let's see where the real reduction is.

We have just established the fact—you just confirmed the fact—that there will be a $65 billion increase in spending?

Mr. HESSLER. That is correct.

Senator BYRD. Then where do you get the reduction with the $65 billion increase?

Mr. HESSLER. I fully agree that is by increases in revenues due to inflation in the income tax and a number of other sources—windfall profits tax and others.

Senator BYRD. The deficit is lessened by an increase in taxes, not by a decrease in spending.

Mr. HESSLER. There is the decrease in spending program. But you are correct.

Senator BYRD. It goes from $548 billion to $613 billion; you have already said it is a $65 billion increase in spending.

Mr. HESSLER. That is correct. That is correct in absolute numbers. Because of inflation, there is clearly a rise in the amount of spending and in large amounts, but in terms of real programs, inflation-adjusted programs, there are decreases throughout the budget.

Senator BYRD. In the total budget, it is up?

Mr. HESSLER. That is correct.

Senator BYRD. Up $65 billion in total?

Mr. HESSLER. In nominal terms, that is correct.

Senator BYRD. You explain to them how your figures work. I am just going to cite to them the figures and let them see whether they think you are going to get inflation under control by increasing your spending by $65 billion.

I do not know of anyone in the Congress, including myself, who advocates reducing spending below what we are spending now. My great quarrel with the administration is the sharp increases in spending.

It is the increase in spending that must be moderated. It is the increase in spending that must be reduced, not reduced below what we are spending now, but a reduction in the increase in spending.

Do you have any comment one way or the other on that?

Mr. HESSLER. I do not disagree as a general principle, Senator. However, the increases that you cite are coming largely in two areas: defense and entitlement programs indexed to inflation.

Senator BYRD. Just wait a minute now. I happen to have some figures on defense.

On the total increase of $65 billion, no more than 25 percent goes to defense.

Mr. HESSLER. That is probably correct. That is about right.

Senator BYRD. That is about right.

Mr. HESSLER. That is about right, yes.

Senator BYRD. You cannot blame that on defense.

Mr. HESSLER. I do not want to blame it on anything. I am not saying that these are not worthy increases, particularly for defense, but it is very difficult if one is not going to deal with those two large spending areas to bring both rates down dramatically without severe cuts in programs which I believe these are, as I suggested.

Senator BYRD. Let me ask you this. Do you see a reduction in interest rates in the near future?

Mr. HESSLER. I would think over this calendar year. Beyond that, I do not think I could be more precise.

My guess would be there would be some reduction in this calendar year, no more than a guess.

Senator BYRD. Would you want to venture a figure?

Mr. HESSLER. No, sir. No, sir. I do not think that would serve you very well because it would not be worth a great deal. I do not think anybody is prescient enough to know what interest rates are going to be next week or next month.

Senator BYRD. You are certainly right. I know I am not competent enough to guess. I certainly do not hold you responsible for not being able to guess it either.

Let me ask you this. In developing your economic policies, do you rely pretty much on the economists who have been around this town for quite a while, or how do you do it?

Mr. HESSLER. Well, I have not started doing it yet, but my impression is that perhaps we rely too much on people who have been around this town too long of a time. The actual models or forecasts come off the commercial models: DRI, Chase Econometrics, etc. But those can turn out somewhat incestuous—you get to see the same people all the time.

Since we have not had great success in forecasting, I think it is probably a good reason to start casting about a little more broadly for different types of forecasting advice.

Senator BYRD. I am not speaking so much of forecasting as I am of direction of policy, formulation of policy.

Mr. HESSLER. I think there the sweep is much broader. I think you go out to the whole country then to hear people's views on whether or not there ought to be a liberalized depreciation measure and, if so, when, etc.

That is not a closed view.

Senator BYRD. I was speaking still in the context of spending. Let me give you my impression. It may not be right, but let me give you my impression.

My impression is that the administration has been relying pretty heavily on individuals who have been around this town quite awhile and who consistently through the years have favored heavy spending and have been advocates of deficit financing.

Could you enlighten me as to whether my assertion is reasonably correct?

Mr. HESSLER. I have not bumped into too many of those people in the Executive Office of the Treasury, recently. I am not sure to whom you are referring, Senator.

Senator BYRD. Well, I do not want to get into names. I guess maybe I will not pursue that subject. I just have the impression as one individual that some rather famous people in the sense of prominent in the field of economics and what-not have been consistent advocates through the years, go back 15, 20, 25 years, many of these people have been advocating heavy spending and have been advocating deficits.

My impression is that this administration has been receptive, to say the least, to the advice of those individuals. Maybe those individuals have changed their views.

Mr. HESSLER. I think there has been a lot of change of view.

Senator BYRD. There has been a lot of change of views?

Mr. HESSLER. I believe so.

Senator BYRD. You have noticed that among your colleagues?

Mr. HESSLER. I have heard of that, of course. I would not see most of these people after they have changed their views, so I am told.

Senator BYRD. You feel there has been a change of view in that respect?

Mr. HESSLER. Yes.

Senator BYRD. That is good news. That is the best news I have heard in quite awhile.

Let us get back to what, in addition, I can tell the homebuilders today.

Mr. HESSLER. Well I hope you will mention to them the $50 billion fiscal swing, even if much of it concerns revenue, because it will take the government out of the capital markets to a large extent and allow better financing.

I think the second thing——

Senator BYRD. Takes government out of borrowing by taking the money out of the pockets of the taxpayers? Is that the way it is done?

Mr. HESSLER. That is a colorful and correct way of putting it, I think.

Senator BYRD. Thank you.

Mr. HESSLER. I would also remind you in the direct credit control program invoked by the President, that housing is exempted from that and the deposit requirements that have been put on money market funds, we hope, will cause some flow of funds back into the thrift institutions which will improve housing finance.

There are several forces in motion, not terribly powerful and the markets are very difficult, but we are making an attempt to see a revival of the housing market over the course of the year. Times are very tough in that industry right now, of course.

Senator BYRD. Do you feel that our country is in a very grave, very serious economic situation today?

Mr. HESSLER. I think the economic situation is very serious, yes.

Senator BYRD. I hesitate to use the word, because I really think it is too strong, but I think some other words may be too weak. But some very knowledgeable people, not from Washington, but from elsewhere—New York, Chicago, Philadelphia—feel that we could very well have an economic collapse within the next three to six months.

Do you see anything like that?

Mr. HESSLER. I would think the odds on that are fairly small, partly because the international financial system and the position of the dollar is somewhat stronger and healthier than anyone had expected. A good deal of that is short term interest rates, but I think that situation is less of a crisis than it has been in some time and domestically there are going to be great difficulties coming down off this inflation rate.

No country has ever come off an inflation rate this high without undergoing very difficult and austere times, and I expect that we will, too, but I do not believe that it will amount to an economic collapse. In fact, I think the system will be settling back into a more stable pattern, but it will be very difficult in the short run, I imagine.

Senator BYRD. Do you see any painless way out of our present situation?

Mr. HESSLER. No, sir.

Senator BYRD. You mentioned the dollar's being strengthened. You are an expert on this and I am not, so let me ask you this.

Is not the basic reason that the dollar is stronger is because of the very high interest rates that now prevail in our country?

Mr. HESSLER. That, I think, is the major short-term reason. There is, however, a feeling on the part of many people in the foreign investment community that the President's package and the whole direction of fiscal and monetary policy is going to bring down the rate of inflation in the United States fairly swiftly relative to rising rates of inflation in Europe, and this is a good place to invest long term, but most of the money is flowing in the short terms in response to interest rates. You are right about that.

Senator BYRD. What you mention there, that many people may feel that the anti-inflation package will bring down the inflation rate, but I am wondering whether the very shrewd people—I am wondering, those who check into the figures, if they will feel that way when we see by your own assertions that there is going to be a $65 billion increase in spending?

I am very doubtful that the real experts, those with large sums of money involved, whether they are going to pay much attention to the headlines which says that the President is going to reduce spending by $13 billion and the commentators say that the President is going to reduce spending by $13 billion.

I think that those guys go to the figures and when they see the figures they see he is not reducing spending at all.

Mr. HESSLER. I expect, Senator, what they really would like to know and none of us know is whether this passion throughout the country for fiscal restraint that we have seen over the last couple of months is going to be a lasting thing.

Senator BYRD. Where do you see fiscal restraint?

Mr. HESSLER. Everything is relative.

Senator BYRD. I do not see any fiscal restraint.

Mr. HESSLER. The cuts that have been made in the controllable programs, both by the Congress and by the Administration.

Senator BYRD. In the first place, the Congress has not made any cuts. There have been no votes on cuts.

Mr. HESSLER. I was just referring to the work of the House Budget Committee last week.

Senator BYRD. That has not faced the House; it has not faced the Senate.

The Congress has voted no cuts in the President's budget. The President himself has only advocated a $3 billion reduction in his original budget proposal which increased spending by $68 billion.

I take exception to your statement that either the Congress or the President has shown fiscal restraint. You may argue your point and say whatever you wish, but I do not see any fiscal restraint.

Mr. HESSLER. I went through a week and a half and two weeks of trying to find places in that original 1981 budget to cut and watch constituency groups and Cabinet members wince, bleed, yell and scream, and if those were not cuts—I agree with you on the total numbers, because the base is rising through inflation and there is no way of getting around that. We are talking about cuts from a higher base.

But if those are not real cuts, an awful lot of people screamed and yelled in the night for no good reason and I think that they are not cosmetic. I think this is a real process. My question is, can it continue? Can it continue over a period of two or three years to bring the whole thing back into some kind of stable balance?

That is what I would ask, if I were an international investor.

Senator BYRD. I think that basically the proposed reductions are cosmetic. It gets back to what you said earlier—and I certainly agree with—that there is no painless way out of this. There is no easy way.

I think that this country is in trouble. I think that we are going to face greater trouble. I think that we have to take what many would consider very severe steps budgetwise. There must be substantial budget cuts in the budget—not these rhetorical cuts, but substantial cuts in the budget. Our nation is very much like someone who drinks too much whiskey at night: we have got to do one of two things—take the discomfort of a hangover the next morning or start drinking again.

And when we start drinking again, eventually we are going to become an alcoholic. And our country, for 15 years now, maybe 20 years, has been trying to solve every problem by more spending. We become a spendaholic. We cannot get back to sanity without some discomfort, and I am afraid that the longer it goes on the greater the discomfort will be.

I am glad to get your views today and I am glad to get these facts and figures confirmed. I wish you good luck in your new assignment and I want to work with you in any way that I can.

As one individual citizen, I urge this administration not to rely on gimmicks, not to rely on speeches and not to rely on rhetoric, but get down to brass tacks and make some sharp cuts in the increases in spending. It is not going to be easy. Every pressure group in the country will be down here and all of us in the Congress are going to have to face that vote, and none of us like to do it.

I assume the President does not like to do it. As a matter of fact, the President told the people in New York that the programs he cut out which would affect New York, that he was going to put the precise sum of money back in new programs.

If that is getting spending under control, I do not quite understand the idea, but that is not your problem.

Mr. HESSLER. No, sir.

Senator BYRD. Thank you.

I will be glad to support your confirmation.

EXTREMELY LOW FREQUENCY COMMUNICATIONS FOR SUBMARINE IS THE LITMUS TEST FOR THE MX ICBM

Mr. HUMPHREY. Mr. President, on February 19, 1980, I expressed my concerns over the inordinate dependence we will have to place on the submarine-launched ballistic missile (SLBM) leg of our strategic nuclear TRIAD until we are able to increase the survivability of our land-based intercontinental ballistic missile (ICBM) and our bomber forces in the late 1980's.

I have talked to our military leaders and defense strategists about whether our strategic submarines are as invulnerable as is often proclaimed by the administration.

I hear varying opinions on U.S. submarine vulnerability, and, quite frankly, I have an uneasy feeling about whether we will even be able to know when our strategic submarines are vulnerable to Soviet detection and destruction.

Our current Under Secretary of Defense for Research and Development believes that our strategic submarines will not be vulnerable until at least the 1990's. I am disturbed about staking our entire national security on one man's judgment that our strategic submarines will be invulnerable until the 1990's. This view is contested by many outside experts not on the Carter administration's payroll.

Just last week, even a layman, Congressman BILL DANNEMEYER stated that recent Soviet antisubmarine warfare tests in the Pacific suggest that the Soviets have already developed sophisticated sensing devices that could enable them to track our strategic submarines.

Moreover, there are recent reports that the United States has actually allowed the sales of seismic technology useful in antisubmarine warfare to the U.S.S.R. Seismic technology, which was sold recently to the Soviet Union, contains a capability that may now be enhancing Soviet antisubmarine warfare (ASW).

Seismic technology has helped protect our military lead in an area which has a dual purpose, such as the small array transform processors, or ATP's.

ATP's are electronic devices which enhance computer speed in interpreting millions of tiny variations in the sounds of geologic formations below the earth.

These ATP's when attached to shipboard computers, perform the central functions of ASW. They assist the computer in digital signal processing and analysis, thereby enabling the computer to identify tiny differences in the sounds below the ocean surface. This in turn could locate a submarine.

It is remarkable that President Carter has allowed the sales of seismic technology useful for ASW to the Soviets, all the while unilaterally constraining our own capability to overcome Soviet ASW.

The history of the success of our strategic intelligence in forecasting Soviet technological progress shows that we have often been surprised. Look, for example, at our faulty forecasts of Soviet ICBM accuracy, Soviet warhead capability, SLBM range, Soviet hard target capability, new ICBM capability, and Soviet defense expenditures.

Because the Soviets have constantly surprised us with their progress in strategic technology, I am prompted to insist again that we do something now to insure against any unforeseen Soviet breakthrough in antisubmarine warfare.

Should we move now to increase the survivability of our strategic submarines, upon which we will be increasingly dependent for deterrence throughout the 1980's?

The answer is that it is imperative for us to insure the survivability of our strategic submarines.

Where is the weak link in the way our submarines operate?

The overriding limitation that our strategic submarines face today is the availability of a means of staying in communication with the National Command Authority at all times. At present the primary method of communicating with the strategic nuclear submarine is by low frequency and very low frequency (LF and VLF) radio transmissions from shore communications stations or from aircraft.

The LF or VLF radio wave can only penetrate a few feet of sea water, however, so it is necessary for the submarines to deploy some form of antenna near or at the surface. But this requires the strategic submarine to stay close to the surface and operate at very low speeds, thus greatly increasing the submarine's chance of detection.

In order to receive messages, an attack submarine operating at its designed depth must come up much closer to the surface. If the subs are in a hostile antisubmarine warfare climate at the time, such an ascent can be very dangerous, even suicidal.

Indeed, we need to ask a fundamental question about our present submarine operational procedures. There has long been a great disparity between the capabilities of our strategic submarines and the ways we are forced to operate them. We must ask why we build fast and deep-diving ballistic missile and attack submarines at all, if command, control, and communications requirements limit these submarines to slow speeds close to the surface, where they are most vulnerable to ASW?

The high costs of our modern nuclear missile and attack submarines derive primarily from the requirements that they be able to travel at high speeds and dive deeply.

We could save enormous sums of money in submarine procurement if we built slow, shallow-diving submarines which are consistent with existing communications requirements.

The United States has worked for 15 years and spent about $330 million to solve this communications problem. Radio energy at extremely low frequencies (ELF) penetrates the oceans to depths of hundreds of feet, and a submarine can receive messages even while traveling at high speeds.

Basic research on the use of ELF was started in 1958. An experimental test facility was installed in Wisconsin in 1969. Exhaustive environmental studies were conducted, and the National Science Foundation has given the ELF program a clean bill of health regarding biological and ecological concerns.

Why then do we not get on with deploying an operational ELF submarine communications facility? This answer is simply that it is politically difficult for President Carter. President Carter, prior to his election in 1976, told the people in the Upper Peninsula of Michigan—a prospective site—that he would not put Seafarer in Michigan against the wishes of the local people.

This is a novel approach to a national security issue. Must we now have the consent of every radical environmentalist in order to provide for the common defense mandated by the Constitution?

President Carter subsequently canceled the full Seafarer program and directed the Department of Defense to come up with a minimum, austere, ELF capability concept. The present austere ELF system emerged with about 120th of the land requirements of the full system, itself a very minor land use compared to the proposed MX ICBM basing mode or even the existing Minuteman ICBM.

In December 1978 the austere ELF program was presented to Mr. Carter with a request to go forward with the program. All that was missing from the President was his own certification that continued ELF R. & D. was in the national interest and his approval of a site for deployment. Nothing has happened since that time except that the Wisconsin Test Facility has been shut down, and development of the system has been stopped because the President has failed to make a decision.

As late as February 1, 1980, President Carter told a group of Wisconsin community and poltical leaders that project ELF "* * * still a viable necessity * * * we intend to go ahead eventually with that kind of program."

What must we do to get the President to act now to protect the survivability of our submarine forces?

Vice Admiral Charles H. Griffiths, U.S. Navy, Deputy Chief of Naval Operations for Submarine Warfare, before the Senate Armed Services Committee on February 20, 1980, testified that:

> Communications modernization affects both present SSBNs and Trident submarines, when they become operational. SSBN reliability for receipt of communications is extremely high. Our principal problem with submarine communications today, however, is that current systems can penetrate sea water only to limited depths. This means that our strategic submarines must have a receiving antenna constantly deployed at or near the surface of the ocean to receive command and control communications.
>
> In addition to restricting the freedom of the submarine to use its optimum speed and depth capability, this communications constraint increases the potential for detection of the submarine. Approval of the proposed ELF System, consisting of a small antenna system in upper Michigan electronically connected to the existing antenna network at the Wisconsin Test Facility, would provide significant coverage of the SSBN operating area with the much deeper penetrating ELF signals. Thus, this system would reduce restrictions on the SSBNs operating depth and speed, permitting greater operational flexibility to cope with postulated threats.
>
> Criticisms that the ELF System is both unnecessary and ineffective are not borne out by the Facts. The ELF System is a counter to future anticipated advances in ASW technology and will provide increased concealment which is not available to our strategic and attack submarines who must receive communications today.
>
> The effectiveness of ELF has been proven in test communications to attack and ballistic missile submarines operating deep and fast in locations throughout the Atlantic and Pacific Oceans, the Mediterranean Sea, and beneath the Polar Ice Cap. In its operational mode, the recommended system will greatly enhance the long term survivability of our Poseidon and Trident SSBN forces in the mid 1980s.

The mid 1980's. Dwell on that thought, my colleagues. That is when our top submariner, a lifelong naval officer, is telling us he needs ELF to protect our submarines. And what are we doing for him? We are second-guessing him and quibbling over the location while time is running out.

What more has to happen in the world to convince everyone of the danger that threatens our national security?

Does not simple logic dictate that we must do everything humanly possible now to assure the absolute survivability of our submarine force?

Do we have to lose one submarine or all of them before we accept that there is in fact a real submarine survivability problem?

As I noted, our ability to predict Soviet technology advancement is poor and getting worse. We may not survive as a nation if there is a gross judgment error on Soviet antisubmarine warfare capability.

For example, it is reported in the press that our intelligence recently estimated that the U.S.S.R. would not be able to attain ICBM accuracy to within 0.2 nautical mile for 3 to 5 more years.

Again, I refer to Congressman DANNEMEYER, who has also recently described successful Russian ICBM tests of a new guidance system that gives Soviet missiles accuracy to within 0.1 nautical mile, thus giving them the potential for a successful first strike capability much sooner than the United States previously anticipated.

Anyone who thinks that he is sure that the Soviets cannot also detect our strategic submarines at their present, shallow operating depths is dreaming a dangerous dream.

I urge my colleagues to join me in urging White House approval of the ELF program. We should pledge congressional support for providing the required funding.

No one in his right mind would publicly suggest that we deliberately continue to take the risk that all three legs of our strategic TRIAD become vulnerable to a Soviet attack at once. But that is precisely what we are doing, and the worst part is that there are no financial or technical reasons for allowing our strategic submarines to be vulnerable.

There is simply a lack of political will and political leadership to take on a minor political problem. What do we want—a 5-knot, shallow depth submarine force? We do not design and build our submarines that way, because it would endanger them.

We keep hearing about force multipliers. Force multipliers are technological capabilities which enhance the military capacity of our forces for little added cost.

What greater force multiplier can there be than ELF? What it does is double the depth and triple the speed of the whole submarine force, at a fraction of the cost of one attack submarine.

Mr. President, I know that President Carter is beset from all sides by demands to increase our real defense capacity but also to reduce the Federal budget. ELF is just the kind of force multiplier that will let us do it.

I am confident that a majority of the Senate will support President Carter to the hilt on this if he only decides to act now.

In conclusion, I want to reemphasize that ELF Seafarer is a good test case of President Carter's avowed intentions to improve our strategic posture and to deploy MX.

The "window" of our strategic vulnerability to Soviet attack is now wide open, yet the President will not insure the survivability of our strategic submarines by deploying ELF.

How will we ever get MX as promised, in any basing mode, if the President will not demonstrate his will now by deploying ELF?

THE CURRENT SITUATION IN EL SALVADOR

Mr. THURMOND. Mr. President, the persistent turmoil and the increasing Communist presence in El Salvador is a matter of great concern to me. The deplorable violence, such as the recent assasination of Archbishop Romero, gives evidence to the seriousness of the situation now prevailing in this Latin American nation. I fear that the freedom-loving people of El Salvador will fall prey to the shackles of communism unless a drastic revision is made in our foreign policy.

Mr. President, it is a very sad thing for a country to be torn by a revolution. However, it is even sadder for a nation to be overtaken by communism. Our own Declaration of Independence unquestionably recognizes the right and duty of the people to alter, abolish, or institute a new government.

I question whether the U.S. foreign policy recognizes this basic principle of democracy in regard to El Salvador. The U.S. Government has threatened to withhold its aid and isolate internationally any new regime established through repression against leftist opposition groups by El Salvador's Armed Forces.

Mr. President, this is exactly what Fidel Castro wants us to do. Intelligence sources which have been made available to me support the allegation that a revolution is unavoidable and that leftist guerrillas are now being trained in Cuba for this very purpose. If this is the case, it concerns me that we may be aiding the Communists by repressing opposition to their attempts to gain control of El Salvador until it is too late to stop them.

Mr. President, I believe that a revolution will occur in El Salvador in the very near future. I do not believe the Communist forces at work there, backed by Cuba, will rest until they have complete control of El Salvador, thus establishing a new base from which they can work to achieve their goal of world domination. It saddens me to think that we may be aiding them to achieve this end.

Mr. President, please do not misunderstand what I am saying. I am in no way advocating or endorsing a revolution in El Salvador. I deplore vioence. The recent murder of Archbishop Romero is appalling. Regardless of who initiated this crime, there is no justification for such an atrocity.

I just want to say that I believe there is a time for the United States to have an active role in the affairs of other nations and there is a time for us not to interfere and allow them to shape their own destiny. I wonder if the latter is not the policy we should pursue in regard to El Salvador.

Mr. President, I was recently visited by several concerned U.S. citizens, including a U.S. Marine, as well as an El Salvador businessman. They expressed great anxiety over the Communist activities in El Salvador and the attitude of the State Department in this regard. I asked Mr. Alfredo Mena, the businessman from El Salvador, to formulate his views and concerns in a letter. Mr. President, I ask unanimous consent that this letter be included in the RECORD at the conclusion of my remarks.

Mr. President, I am asking today for Secretary Vance to inform Congress as to just what our foreign policy is with respect to El Salvador. I urge all my colleagues in the Senate to take an active interest in this matter, as I believe it to be of extreme importance.

Mr. President, I ask unanimous consent that a letter from me to Secretary Vance regarding the U.S. policy toward El Salvador and that an article appearing in the Washington Post Wednesday, March 26, 1980, be printed in the RECORD at the conclusion of my remarks. This article gives further evidence of the Communist pressures being applied in El Salvador.

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

MARCH 20, 1980.

Senator STROM THURMOND,
Old Senate Office Building,
Washington, D.C.

DEAR SIR: First of all I would like to thank you for your understanding and willingness to help my people, the Salvadorean people, choose their own destiny.

The Salvadorean people are being railroaded into Communism against their will by an unpopular and illegitimate government with the help of the U.S. State Department. I say it is unpopular because it hasn't been able to raise more than one thousand people for a political rally after one week of advertising, and I say it is illegitimate because the only reason the Christian Democratic Party is still in power is because pressure is being brought to bear by the U.S. State Department on the El Salvador Army.

I studied for nine years in the United States and learned to respect and admire the American people, the American political system, and the American economic system. It is difficult for me to understand how the U.S. State Department can advocate a system of government in my country which basically goes against the Bill of Rights that is the basis of the U.S. Constitution.

The United States is the bastion of democracy and free enterprise, yet the U.S. State Department is throwing one of the oldest allies of the United States into Communism by maintaining, through its pressure on the El Salvador Army, a "moderate" political party in power against the will of the people. I cannot call a political party moderate if the first thing it does after coming into power is to say publicly, through television, that it does not want to have anything to do with private enterprise; and then goes even beyond rhetoric and nationalizes all the private banks and makes an agrarian reform that bypasses the bounds of our Salvadorean Constitution, which, by the way, is one of the most liberal in Latin America.

We are not opposed to change. We want to eliminate social injustice and poverty in El Salvador. But we also believe in Democracy and free enterprise. I am coordinator of the National Broad Front (FAN), which is a conglomeration of civic, economic and political organizations that want to prevent Communism from taking over our Country.

The U.S. State Department accuses anybody who opposes its policies of defending the interests of "The Fourteen Families". Sir, we do have our Kennedys, Rockefellers and Fords, but we also have a strong and growing middle class, a strong and growgrowing number of small and medium size businessmen. All these people, Sir, are being railroaded into Communism against their will.

We believe that an agrarian reform can be carried out with government land, the land that is developed but is not being used, and the land that is being leased. We also believe that the Country's financial system can be made equitable by anti-trust legislation similar to that now in effect in the United States. We believe that exports can be supervised to insure that badly needed capital will not leave the Country illegally. In other words, Sir, we sincerely believe that we can combat poverty and social injustice without destroying private enterprise.

But what worries us the most is the military situation. We have evidence that leads us to believe that approximately 5 percent of the Officer Corps in the El Salvador Army either belongs to, or has strong sympathies for, the Communist Party. We also know for a fact that about 15 percent of the Officer Corps is deeply Nationalist. These two factions know they cannot co-exist, and we have reason to believe that they will start eliminating each other in the very near future. This will force the 80 percent of the Officer Corps who only follow orders, to choose sides and this, we think, will be the beginning of the end of our Army.

This situation will create a military vacuum, and the ones who are best organized and equipped to capitalize on it are the forces of the extreme left, which means creating another Nicaragua. The Nicaraguan Army was destroyed by isolation; the El Salvador Army may be destroyed by infiltration.

There is no need for me to point out the strategic implications of a "Cubanized" Central America with respect to the Mexican and Venezuelan oil fields and the Panama Canal.

The American public is not being made aware of the strategic implications of Central America becoming another Viet-Nam.

The only force that can effectively neutralize the mistaken and ruinous policies of the U.S. State Department is Congressional pressure.

It would be extremely helpful to my Country if the inevitability of a Central American civil war were made an issue in the upcoming Presidential elections.

The resulting exposure of the true facts I have outlined here could only be beneficial to the United States, and could very well mean the salvation of El Salvador.

In all sincerity,

ALFREDO MENA,
Coordinator, National Broad Front (FAN).

COMMITTEE ON THE JUDICIARY,
Washington, D.C. March 27, 1980.

Hon. CYRUS R. VANCE,
Secretary of State,
Washington, D.C.

DEAR SECRETARY VANCE: Enclosed is a copy of correspondence I recently received concerning the policy of the United States with respect to El Salvador.

While the world's attention is focused on the Persian Gulf area, I am concerned about current activities in locations such as Cuba and El Salvador. Specifically with respect to El Salvador, I would like to hear the State Department articulate its current policy on the amount of foreign aid; whether that aid is indeed reaching the ruling government or the left wing Christian Democratic Party; and what the United States position will be once the "supposedly inevitable" revolution does occur.

I believe the United States should support people everywhere who strive to be free. I indeed hope that our current foreign policy with respect to El Salvador encompasses these principles.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

[From the Washington Post, Mar. 26, 1980]

U.S. CITES CUBA'S ROLE IN EL SALVADOR

The United States yesterday accused Cuba of directly contributing to violence in El Salvador by sending weapons and leftist insurgents into the country to try to topple the civilian-military junta backed by the United States.

The charge was made by Carter administration officials who sought congressional approval to supply military equipment worth $5.7 million to El Salvador's ruling junta.

The accusation of direct Cuban involvement came one day after the assassination in El Salvador of Archbishop Oscar Romero, a popular figure and nominee for the 1979 Nobel Peace Prize. There was no suggestion that Cubans were involved in the killing of the archbishop.

Romero himself had recently written President Carter asking him not to supply more military aid to the ruling junta until it succeeded in stopping the violence that has racked El Salvador for many months.

However, Secretary of State Cyrus Vance said yesterday that the United States still plans to give military and economic aid to El Salvador, noting that the country's rulers recently have taken steps aimed at "healing" the country's wounds and divisions, and that "the junta has been making progress . . . especially in land reform."

Vance condemned the assassination as "appalling, saddening and tragic."

Administration officials testified yesterday that American intelligence believes Cuba is using the territory of Honduras, neighbor of El Salvador, to ship men and arms for use against the Salvadoran junta. The United States also has evidence that Cuba has been training Salvadoran guerrillas for a matter of years, and is sending them back to fight through Honduras, officials said.

"The Hondurans believe, our intelligence agrees, that their territory is being used as a conduit for men and weapons into El Salvador by insurgents with Cuban support," said Franklin Kramer, deputy assistant secretary of defense.

"Cuban influence on El Salvadoran and Honduran leftist organizations is long-standing, and there are clear indications the Cubans are assisting these groups in their attempt to overthrow the current government of El Salvador," Kramer told a House subcommittee.

His charges were echoed by John Bushnell, deputy assistant secretary of state. Both appeared before the House foreign operations subcommittee to request $46 million in military and economic aid for Honduras and El Salvador.

El Salvador's civilian-military junta has enacted a series of sweeping economic and land reforms with U.S. support and about $50 million in American economic aid.

"There is evidence that mountainous and sparsely populated areas of Honduran territory are being used for the illegal smuggling with Cubans support of insurgents and weapons into El Salvador," said Bushnell.

Both officials noted the close ties between Castro and Central American communist leaders, and said Cuba has most to gain from political violence and instability in that region.

Bushnell stressed that, in the wake of Romero's murder, Washington will continue supporting the ruling junta, "which is committed to basic economic and social reforms and to the improvements of human rights."

Bushnell told the subcommittee that the

United States will not become militarily involved in El Salvador. "We will not use military force in situations where only domestic groups are in contention," he said.

DECLINE IN U.S. DEFENSE STRENGTH

Mr. THURMOND. Mr. President, an excellent article entitled "Doubt and Disarmament Could Spell Doom" has been published in the March 1980 issue of Seapower magazine under the authorship of John J. Spittler, president of the Navy League.

Mr. Spittler points out how U.S. defense strength has declined in recent years and the dangers this weakness causes for our Nation.

Mr. President, the Navy League has been at the forefront over the past decade in warning about the huge risks we face if we allow our Defense Establishment to grow weaker. Finally, these warnings are beginning to take hold in the country and I hope that the Congress will respond by increasing defense spending in the current and future budgets.

Mr. President, I ask unanimous consent that this article by Mr. Spittler be printed in the RECORD.

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

DOUBT AND DISARMAMENT COULD SPELL DOOM

The seventies have been described as the decade of doubt. We doubted the damage inflation could and would do; we doubted that energy could become a crisis; we doubted the depth and breadth of dishonest politicians; and most of all, we doubted the information, sparse as the media kept it, that our military-industrial complex was rapidly being relegated to dangerous inferiority.

We doubted in spite of the fact that the Navy League and other like-minded organizations were sounding the alarm. The attitude in general: "Things couldn't be that bad," "We are the strongest nation in history," "We will always have adequate resources and materials," "Didn't we come off the ropes in World War II and win?" "So we were shaky in Korea and less than great in Vietnam, but those were unpopular wars," "Our superior industry, resources, technology, the oceans, and distance from the enemy will always protect us."

But what we didn't realize was that we were playing with a stacked deck. The nation was not aware of the debilitating influence of detente disarmament, and appeasement. And that was all right because we didn't really want to hear about it anyway.

Sure there were government regulations, but we doubted they were stifling industry and initiative. Of course the consumer needed protection, but the government would know where to stop. Children really don't need the three R's, because pride in ability and workmanship are old fashioned—besides, the government will take care of us. Taxes may be high, but then, we must take care of those less fortunate. Look the other way. I can't be bothered. Why vote? And so on, ad nauseam.

Well, while George and the rest weren't doing it, for whatever reason, the Kremlin was. Now we will pay the price. The chips are down. And what was so easy for so few to see has suddenly become obvious to all who will look. Our years of neglect have placed our lives, our families, our future, and our fortunes in jeopardy.

How bad is it? Very bad!

Here is the appraisal which the Chief of Naval Operations, Admiral Thomas B. Hayward, gave to Congress last month: "The U.S. Navy is clearly outnumbered by the Soviet Navy . . . more than 3:1 overall. Although we dominate in aircraft carriers, the Soviet Navy has 80 more principal surface combatants, 235 more submarines, six times as many auxiliaries, and a large land-based aviation strike force. Furthermore, the quality of their naval forces is steadily improving. . . ."

Between 1970 and 1979, the Soviets were launching 40 surface warships and seven submarines annually, while the United States was averaging a little over seven surface ships and less than three submarines. Between 1964 and 1979, the Soviets increased their number of major surface combatants and amphibious ships from 260 to 360, and their total naval tonnage from 2 million to 2.8 million. Ten years ago, according to Admiral Hayward, the U.S. active fleet totaled 926 ships to 1,670 for the Soviets; today that ratio is 426 to 1,764. This is not a typographical error—426 U.S. vs. 1,764 for the Soviets.

In 1980, the Soviets have reached a position wherein their naval forces could utilize sheer numbers to attain both political and military goals, and their improved capabilities make them that much more formidable on the high seas.

Significant, although less spectacular, gains were made by Soviet ground forces. The size of those forces has climbed steadily since the mid-1960s while U.S. numbers declined. The Soviets have 1.8 million men ready to wage ground warfare; the U.S. Army and Marine Corps combined total under a million men. Soviet tanks: 45,000; the United States: 12,100. Similar ratios hold true for other components of the ground warfare inventory. In the last three years, the Soviets outbuilt the United States by a yearly margin of 2,000 to 650 tanks, 350 to 150 helicopters, and 5,000 to 1,000 other combat vehicles. Remember the Kama River truck plant built for the Russians by the Americans?

In the air, strategic forces aside, U.S. and Soviet tactical air strengths are relatively equal. So are the collective NATO and Warsaw Pact strengths. Yet Soviet production of combat aircraft is far ahead of ours. Annual output since 1976: 500 to 275. Furthermore, the NATO air-base structure may be inadequate. In time of war in Europe, U.S. and NATO tactical air capability could be reduced by inability to handle and support the aircraft the United States could deploy. Thus, sheer numbers of less sophisticated Soviet planes would overwhelm individually superior U.S. aircraft.

But it is in the realm of strategic warfare that Soviet gains have been most fantastic. Fifteen years ago the United States had a 4:1 edge in intercontinental ballistic missiles (ICBMs), 10 times as many submarine-launched ballistic missiles (SLBMs), and seven times as many long-range bombers—and led 17:1 in nuclear warheads. Today, Russia has the lead both in ICBMs, 1,398 to 1,054, and in SLBMs, 950 to 656. The United States still has a 2:1 edge in numbers of long-range bombers, but that rapidly dwindling U.S. margin is based on a fleet of B-52s older than the men who fly them. U.S. technical ability to mount independently-targeted warheads on missiles provides a now slender and also decreasing 3:2 U.S. edge in the number of warheads, but Soviet capabilities once questionable have become phenomenal.

What the Soviets didn't buy, they stole, and they now have at least four ICBM series in development, are continuing to modernize their SLBM force, and have a high percentage of their ICBMs on quick-reaction alert—in the past, only a small percentage were maintained in alert status. Also anticipated are new long-range Soviet bombers; the United States has none under development and our ability even to build any is suspect.

A grim picture? Well, it is even grimmer than it first seems, considering that the vaunted U.S. industrial complex, which in World War II created the geratest arsenal the world had ever seen, is by no means ready to emulate those achievements. Our industrial base has been eroded. Our resources are depleted. Lacking are plants to make large forgings and castings, bearings, and semiconductors, all vital in the building of ships and planes. Titanium, cobalt, and chromium are in short supply, as are some specialty steels. Trained engineers, technicians, and skilled labor are lacking—the skilled labor shortage has never been so acute, in fact.

Too, if we went to war tomorrow, we would be short weapons and ammunition. Nor could lost aircraft be replaced quickly, since many firms could not increase their building rates. Consequently, U.S. fighting forces, already spread desperately thin, lack the support to take a heavy toll of the enemy prior to reinforcements. Yet President Carter and the Department of Defense have taken only isolated steps to institute production priorities in industry of the kind that could result in acceleration of output of military hardware for the services.

But apathy and indecision are not confined to the amazing Soviet buildup or to the contrast in this country. They exist, too, in Congress, as witness the lack of attention paid those who man our armed forces. In 1979, the carrier Midway—with over 4,000 men, including her air wing—spent only 84 days in port. And she was not the only ship so overworked. The carrier Independence had but 99 days in port. Jouett and Garcia, a guided missile cruiser and a frigate, were home 94 and 95 days, respectively; the destroyer Parsons, only 77 days. And those figures were compiled, for the most part, before the Soviets invaded Afghanistan and a task force was orderd into the Indian Ocean!

Is there any wonder that our Navymen, underpaid and overworked, are leaving the Navy by the thousands? Just how will they react as time away from home increases, while Congress considers a proposed defense budget that calls for a 1.3 percent—yes, only 1.3 percent—growth for the Navy, and the President proposes a pay increase that is smaller than the inflation allowed for by the government and far less than anticipated by business.

Yes, America is in danger. At home and abroad. But Americans have been underdogs before. Given the time and the will to overcome, they have fought back, persevered, and prevailed.

Are time and distance and all those other intangibles that have saved us before available in the decade of the eighties? If they are not, we are doomed. For we are not ready. And it has been wisely said that today you go with what you have when it starts, for there will be no time then to catch up.

Does the President, does the Congress, realize this? The answers will determine the future of America, and of the free world. We hope the answers are soon and correct. For sure, they are no longer in doubt.

PAKISTAN'S REJECTION OF U.S. AID

Mr. THURMOND. Mr. President, the weakened position of the United States throughout the world has recently been highlighted by the refusal of the Government of Pakistan, a longtime ally, to accept U.S. aid.

This action demonstrates that past U.S. policies of denial to Pakistan of military support such as sale of the A7-D aircraft and more recent foreign policy failures such as in Iran have greatly undercut confidence in our ability to stand by our allies in the Middle East.

Mr. President, an excellent editorial on this subject appeared in the March

18, 1980 issue of the Aiken Standard newspaper in Aiken, S.C.

Mr. President, I ask unanimous consent that this editorial, entitled "Too Little, Too Late," be printed in the RECORD.

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

TOO LITTLE, TOO LATE

Pakistan's rejection of $400 million in American military and economic assistance has confused and dismayed the Carter administration. Here is Washington ostensibly engaged in a crash effort to shore up a traditional ally newly vulnerable to Soviet expansionism, and the ally responds by spurning U.S. aid.

Why? What happened?

For insights we must begin by examining the mechanics of U.S. foreign policy, and we must acknowledge the pervasive doubts around the world about U.S. power and resolve.

In the immediate wake of the Soviet invasion of Afghanistan, President Carter proclaimed it the most serious threat to peace since World War II and then proposed a $400 million aid package for Pakistan, a country now under the shadow of the Soviet army just across the Afghan frontier.

But Mr. Carter proclaimed this assistance program, including its specific dollar amount, as part of his bold new stance without bothering to consult the Pakistanis. As a rule, no country likes to learn of such initiatives in the newspapers. This thoughtlessness must have been particularly irksome to the Pakistanis, whose traditional ties to the United States have been seriously strained during most of the last decade.

More importantly, the President's $400 million figure obviously struck the Pakistanis as being inconsistent with the view of the Afghan crisis as the most serious in the last 35 years.

Under the American proposal, half of the $400 million was to be used for Pakistan's purchase of modern military equipment on lenient credit terms underwritten by Washington. Yet, $200 million could not begin to provide the weaponry necessary to modernize the armed forces of a country that still relies in part on jet fighters of Korean war vintage.

To Pakistan's ruling strongman, Gen. Mohammed Zia ul-Haq, the $200 million in military assistance must have seemed a dangerous half measure—too little to accomplish much in a military sense but more than enough to antagonize the truculent Soviets beyond the Khyber Pass.

Moreover, the inadequate military aid proffered by Washington presumably served to confirm the corrosive doubts about the reliability of the United States, and specifically the Carter administration, as an ally. Given the administration's erratic conduct of foreign policy and its record of backing and filling with the Soviet Union, such doubts are not altogether unwarranted.

What Pakistan seems to have decided is that the Soviet Union has become the dominant power in the region and that the United States has yet to give evidence of sufficient will to stay the course against this new reality. And just such a perception is undercutting U.S. initiatives to enlist other nations in a common effort to defend the Persian Gulf region.

Until we can change that perception, we are due for additional humiliations from countries which fear to gamble on us against the Soviet Union.

NATIONAL DANCE WEEK

Mr. JAVITS. Mr. President, I am pleased today to introduce a joint resolution to honor a unique group of American artists by proclaiming the week beginning April 13, 1980, and ending April 19, 1980, as "National Dance Week." I am joined in this effort by Senators PELL, BAUCUS, CRANSTON, DECONCINI, DOLE, HATCH, MATHIAS, RANDOLPH, RIEGLE, STAFFORD, and WILLIAMS. I also greatly appreciate the courtesies extended to me by the chairman of the Judiciary Committee, Senator KENNEDY, and the ranking member of that committee, Senator THURMOND, in allowing me to call up this resolution at this time.

Mr. President, during my career in Congress, I have sponsored and supported legislation to assist the arts and humanities, including the original legislation which resulted in the establishment of the National Endowments in 1964. Both artists and audiences have reaped huge benefits from these efforts. Dance is among the foremost of the performing arts, and dance is now enjoying unprecedented success, both in the artistic realm and in terms of ticket sales. In the early sixties, the audience for dance was approximately 1 million, mostly centered around New York City. As we enter the eighties, dance companies around the Nation estimate their combined audiences at 20 million Americans—for dance in all forms, modern, ballet, jazz. Resident companies can be found in Des Moines and El Paso, Cleveland and Sacramento, and in hundreds of smaller cities and towns.

Dance in America is a multicultural experience, enhancing the lives of a multitude of individuals and providing a common ground for shared experiences through its myriad forms. In the face of our current domestic ills, we have come to look to dance, unique among the performing arts in its energy and vitality as a source of joy and emotional enrichment to both participants and audience, to provide an emotional and spiritual lift.

Mr. President, there is perhaps no greater expert on dance in our Nation than my great friend, Agnes DeMille, who last June testified before the Subcommittee on Education, Arts and Humanities on the reauthorization of the Arts Endowment legislation. In her brilliant testimony, Ms. DeMille emphasized the critical importance of the arts, and of dance in particular, in the history of Western civilization. I quote from her statement before the subcommittee:

The Renaissance happened in Italy because the Italian Church and the Italian Courts wanted the best possible art, the best painting, the best architecture, the best jewelry, the best poetry. It got them. Suppose Pope Julius II had said to his painter, "Mike, that's enough for you, stop. Cool it. Get a matching funds." This is a rotten time to ask for more money. It is just rotten. We are facing the most terrible crises, and they are very serious.

But I want to remind you that during the blitzes in London, when the city was in smoking rubble, and people walked up to find their neighbors bleeding all over the street, and in the ruins next door, at that time, the National Gallery was open, and Myra Hess played to the citizens of London, and they came and sat on the floor and found the courage to face the next night, and at the end of the war, when England had not the money to paint a house, to put up a fence, to buy a pair of stockings, that is really true—if you were over there you know—then they mounted, most lavishly, most graciously, and most splendidly, the "Sleeping Beauty," by the Sadler Wells Ballet, and brought it here to America, to show us and the world that they were not in the dust, and show themselves that their heads were high.

Mr. President, enactment of this resolution will focus further public attention on the art of dance in America. The resulting increased awareness will help to spread its benefits to millions of other Americans. Therefore, I am asking that my colleagues join me in declaring this working tribute to a vital American art form.

Mr. President, I send to the desk a joint resolution which is proposed by myself, Senators BAUCUS, CRANSTON, DECONCINI, DOLE, HATCH, MATHIAS, PELL, RANDOLPH, RIEGLE, STAFFORD, and WILLIAMS, to designate the week beginning April 13, 1980, and ending April 19, 1980, as "National Dance Week."

Mr. President, I ask unanimous consent that the joint resolution be considered immediately. It has been cleared on both sides.

Mr. ROBERT C. BYRD. Mr. President, may I say that the distinguished Senator from New York cleared this resolution with me earlier. He was under no obligation to wait until I came to the floor, but he very graciously did wait until I came to the floor. I appreciate that. There is no objection.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution providing for the designation of the week beginning April 13, 1980 and ending April 19, 1980, as "National Dance Week."

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration, and, without objection, the joint resolution will be considered to have been read the second time at length.

The joint resolution (S.J. Res. 155) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and requested to issue a proclamation designating the week beginning April 13, 1980 and ending April 19, 1980, as "National Dance Week," and calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

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

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

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I thank very much the majority leader and the acting minority leader.

OUR NATIONAL ECONOMY

Mr. BRADLEY. Mr. President, I rise to state in the strongest terms for the Senate and my colleagues that I fear that we are on the brink of a very serious downturn in our national economy.

I shall take a few minutes to explain my specific position.

We now have in place a policy to fight inflation that is composed first of the effort on the part of Congress to balance the budget in 1981, which begins about 8 months from now.

Second, we have in place an energy program consisting of the windfall profit tax, which the Senate just passed today, and the synthetic fuels bill and its solar and conservation and gasohol components, which should be passed soon, and the Emergency Mobilization Board, an energy package that for at least 4 to 5 years will not make a significant impact on our short-term vulnerability to oil supply interruption or on the level of our dependence on insecure sources of oil.

The third component of this policy is monetary policy. I am sure that every Senator has experienced the effects of 20-percent interest rates on his constituents in the last few weeks as they have come to him or her asking for a solution.

Mr. President, I would suggest that the monetary component of this anti-inflation policy is pushing us to the brink of a very serious break in our economy. In the last few days all Senators have been visited by members of their housing industry. Clearly with interest rates at 15, 18, 20 percent, housing is going to take a very serious and sharp downturn in the coming year.

Business investment, fixed business investment, will be dropping significantly as well, and consumers have already taken their money out of their savings accounts and spent it because of an inflationary whirl in which they expect prices of consumer goods to be higher tomorrow than they are today.

I think we have more or less guaranteed through monetary policy alone, not the balanced budget in 1981 and not the energy policy that is working its way through Congress, but through monetary policy alone, we have assured a very serious downturn in the economy in the next year and, perhaps, sooner.

I know there are those of us in the body, and the distinguished Presiding Officer is among that group in the Senate, who fear that downturn will come sooner than 1 year from now.

But, Mr. President, the theory behind that kind of monetary policy is that it will reduce inflation as sectors of the economy go into recession.

I would suggest that that will not be the result because there is still a strong enough component of cost-push inflation left over from last year's energy increases that we will have guaranteed inflation along with the very serious downturn in specific sectors of our economy. In the manufacturing sector, for example, that is heavily energy-intensive, that sector has had to increase its expenditure for energy in the past year 110 percent. That expenditure distorted its historic profit margin. Over the next 10 to 12 months you will see a gradual upping of price so as to come back to that historic margin. That guarantees us an escalating price in manufacturing and in the industrial sector and other sectors that are heavily energy-dependent, while, at the same time, you have other sectors such as housing that will be in a virtual depression, with the combined effect nationally that we have come to know in recent years as stagflation.

Mr. President, those are serious enough matters. Yet I fear that where it will have its most immediate impact, is in the financial markets. In some ways I feel that the economic policy today has not been as sensitive as it should be to the interaction of financial and economic markets in this world, for we have in this country in the last month entered the black hole of the bond market, where Britain entered in 1975.

Our economy is overheated, overextended, overcredited. We have a system that is built on the promise of long-term financing. But we do not have long-term financing in this country today. The housing industry cannot get 20-year mortgages. The utility industry cannot get 20- to 30- to 40-year mortgages. They are not there, and we have a structure where Government bodies are now borrowing at 17, 18 percent interest, thereby guaranteeing the future inflation because that is the only thing that will generate the taxes that will allow them to repay the interest rates they have obligated themselves to pay.

The phenomenon of this inflationary spiral has also created a series of decisions taken by consumers and businesses which have brought us to the brink. They are basically decisions that a person makes when he decides to borrow money and decides what interest rate he can pay. The first level is that he will borrow, with the knowledge that he can repay interest and principal out of future earnings.

The second level is where he borrows on the assumption that he will refinance his principal, but that he will be able to pay his interest out of his current income.

The third level, where we have arrived in our economy today, is where the individual or institution will borrow to pay the interest. So you have interest on interest.

Mr. President, this, in combination with the savings rate decline, only accentuates the fragility of our financial structure.

I would also parenthetically make the point that the savings rate decline from 6 to 3 percent in the past several years does not even represent the total vulnerability that we have because where the problem of reduced savings comes in and where there is overextension of credit is where a person decides that he can stand to owe 80 percent of the value of his home instead of 40 percent or where a person decides to borrow 3 to 4 times what he would in previous years because he assumes future inflation.

The result of this, Mr. President, is an incredibly fragile economic system, a fragile system that, with the smallest disruption in either the political or economic picture, could tumble our economy into a very serious recession—perhaps a depression.

Let me suggest to you where this interacts with the financial markets. For the last several days we have had the curious phenomenon of having all-time lows for stocks and bonds. Gold is up, and the dollar is at its high in the last 2½ years. There is a clear feeling that the high interest rate policy we have been pursuing has brought us significant quantities of dollars from abroad for investment in this country. There is also the feeling that it is not only interest rate policy but the combination of energy, fiscal, and monetary policy which has restored the faith in investment in this country because of a belief that we are really doing something about inflation.

But, Mr. President, I would suggest that that very phenomenon of high interest rates attracting capital into the country has increased the fragility of our system because as that capital comes in it comes into banks as deposits. It does not come into the stock market or into the bond markets. It comes into banks as deposits.

The banks with those deposits are able to extend loans, thereby creating money at whatever you choose the ratio, whichever economist you talk to, 4 to 1, 6 to 1, 8 to 1, 10 to 1, but certainly increasing the money supply. So foreign deposits are financing credit expansion in the United States, credit expansion that will frustrate our fight against inflation.

This is particularly so when you consider that the absence of long-term financing forces more and more people into the short-term market, generating more loans and increasing the money supply still further.

Those same people who put the money into our banks because the interest rates were high, will also in a few months get the money supply figures, see them going up and see that inflation in the country has not abated, because of the cost-push inflation and increasing money supply. I would suggest that it is at that point that the real danger to our economy lies, because as soon as that confidence is lost, as soon as people believe that the efforts we have made in Congress on the budget and energy and the efforts of the monetary authorities on interest rates have not decreased inflation, then that money will leave this country as quickly as it came in.

When it leaves the country, Mr. President, banks will not have the money to meet their reserve requirements; it will require those banks to call in those loans they have made from the deposits that came from abroad, and when they are called in, we will then be in a very, very serious economic crunch.

Sure, we have a Federal Reserve, a Federal Reserve that has responded in the past, a Federal Reserve that responded in 1974–75 when a major bank in New York failed, the Franklin National Bank.

But the real question, Mr. President, is whether in a credit crunch of the dimensions I have described we can have a Federal Reserve that will perceive the outflow of dollars soon enough to prevent the call on loans which will precipitate that crunch.

That is the question. If they fail to see it, it will be a major crash of unprecedented proportions. Mr. President, this is not a comforting picture, but we can take steps to avert it. Over the next few weeks I hope to be joining with several colleagues in making specific suggestions to put our economy back on the track of noninflation growth. Unfortunately, today's morning business has expired.

The PRESIDING OFFICER. The Senator's time under morning business has expired.

(Mr. ROBERT C. BYRD assumed the chair.)

Mr. BOREN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma (Mr. BOREN) is recognized.

Mr. BOREN. Mr. President, I want to associate myself with the remarks just made by my distinguished colleague from New Jersey. I think that the Senator has shared with the entire body insights of great importance.

I wish, in some ways, that I did not share his opinion, because he has spoken to us of grave possible consequences for our economy if emergency actions are not taken in the near future. Unfortunately, I think that his analysis of the current economic situation is exactly on target.

When we consider that the stock market has had a decline of over 140 points in the last 6 weeks, when we consider what has happened in terms of increasing rates of interest during this same very short period, when we consider that the savings ratios have fallen 60 percent in only 12 months and the impact that this has had on the reserves of many of our financial institutions forcing today a change in the liquidity requirement for important elements of our financial community, I can only conclude that we are, indeed, in a grave situation.

Mr. President, I do not think that it exaggerates the point to say that if something is not done now—and I do not mean 30 days from now, 60 days from now, or a year from now; I mean now, I mean in the next few hours, I mean in the next few days—if something is not done of a decisive nature to change the course of the economy, the effects could indeed be catastrophic and are likely to be.

Mr. President, the economy cannot survive with interest rates at 20 percent. The impact on industry after industry is now being felt—in the homebuilding industry, in the savings and loan communities, in industries which produce materials for construction, like the timber industry, and others. The interest rate is now being felt by farmers, who are unable to renew their loans and to meet payments at this high level.

The interest rate is being felt by auto dealers, small business people whose notes are coming due and they are having difficulty having them rolled over.

This Senator, Mr. President, will certainly not pretend to have all of the answers. I am now researching two or three different pieces of legislation that I expect to be introducing shortly.

But I will say this, Mr. President: It is my fervent hope that the President will undertake, on an emergency basis, to survey the current state of the economy and to prevent this sharp break in our economy, which I see is occurring without further action.

I think it is absolutely necessary that we consider action that will have the practical effect of sharply reducing the interest rate, at least in the near term, making funding available in particularly hard hit segments of the economy like the housing industry.

This is not necessary just for the housing industry. I think it is necessary to preserve the entire economy.

I think we must also take action to consider the possible effects of changes in investment decisionmaking by the international community, as outlined by my colleague from New Jersey just a few moments ago. The Government must set in place policies that will assure the financial soundness of all of our major financial institutions if sharp changes in investment decisions should occur in the international community.

Mr. President, I will be speaking on this subject again in the next few days and, as I said, proposing some pieces of legislation to deal with the situation. I can only say that I implore the President to make an immediate evaluation of where the economy is headed and to consider, in the very near future, additional actions that will be necessary to maintain the confidence of the American people in our economy and to assure that this country is not afflicted with the kind of tragic sharp breaks in the economy that we have known in the past.

I commend the Senator from New Jersey for bringing the nature of the situation to the attention of the Senate. I have confidence that the administration will act. I urge them to act now to prevent a very critical financial situation from developing.

I thank the Chair.

Mr. JEPSEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. JEPSEN. Will the Senator yield?

Mr. HELMS. Mr. President, I am delighted to yield.

ENCOURAGING OLDER AMERICANS TO PARTICIPATE IN THE TAKING OF THE 1980 DECENNIAL CENSUS

Mr. JEPSEN. Mr. President, I send to the desk a resolution and ask for its immediate consideration. This resolution is sponsored by myself and Senators PRESSLER, LUGAR, MOYNIHAN, JOHNSTON, PRYOR, MCCLURE, THURMOND, DOMENICI, WARNER, SIMPSON, JAVITS, DURENBERGER, and HEFLIN.

The PRESIDING OFFICER (Mr. BOREN). The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 395) to encourage older Americans to participate in the taking of the 1980 Decennial Census.

Mr. ROBERT C. BYRD. Mr. President, this resolution has also been cleared on this side of the aisle. There is no objection to its immediate consideration.

There being no objection, the Senate proceeded to consider the resolution.

Mr. JEPSEN. Mr. President, on March 12, 1980, I introduced a resolution to encourage older Americans to participate in the 1980 decennial census. The resolution before us today is essentially the same resolution which was introduced on March 12 except for a few technical corrections which were recommended by the Governmental Affairs Committee.

I thank Senator GLENN and the staff of the Energy, Nuclear Proliferation and Federal Services Subcommittee, and Senator PERCY and his staff for their expertise in perfecting this resolution.

Mr. President, my statement and those of Senators PRESSLER and DOMENICI are in the March 12, 1980, RECORD on pages 5356 through 5359. The primary concern of this resolution is "to put the Senate of the United States on record in support of encouraging all Members of Congress to request their States, citizens of their congressional districts, and the Bureau of the Census to encourage older Americans to participate as census workers in the taking of the 1980 decennial census."

As I noted before, "This is not a work order, or an employment act for older Americans. On the contrary, the sole purpose of this resolution is to try to facilitate an accurate count of older Americans in the 1980 census."

Older Americans more than any other group in our society can be of particular assistance in locating, understanding and speaking with other older Americans.

Again, I would like to stress that participation by older Americans in the census is not going to be an easy task. It will take some initiative and it will be demanding of both personal time and effort. It will also involve a great deal of climbing stairs in unfamiliar places and uncomfortable surroundings.

There are rewards, the most important of which is an anewed and continued acknowledgement that older Americans have an important role to play in the Nation's development. Second, that in order to plan and implement a national agenda to address the needs of older Americans an accurate count of who they are, and where they are located is essential.

Therefore, I urge the Congress, the citizens of this Nation, and government where necessary, to encourage older Americans to participate in the taking of the 1980 census as census workers. I further urge that we begin to utilize and fully develop this Nation's most precious untapped natural resource, "older Americans."

Mr. President, if there are no objections, I ask unanimous consent that the resolution be read for the final time and adopted.

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

The resolution (S. Res. 395) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 395

Whereas 1980 is a very important year to all Americans because it is a Decennial Census year;

Whereas a workforce of approximately 275,000 people will be needed by the Census Bureau to do this job;

Whereas it has been demonstrated that older persons are competent, dependable, loyal and experienced workers;

Whereas Americans have been undercounted in past Decennial Censuses;

Whereas it is in the best interests of all Americans that complete counts be made of every segment of the population;

Whereas the Census Bureau has encountered difficulties in hiring people as enumerators;

Whereas a large portion of older Americans are not in the work force full-time, making them available for employment as census workers: Now, therefore, be it

Resolved, That it is the sense of the Senate that all members of Congress request their States, the citizens of their Congressional Districts, and the Bureau of the Census to take advantage of a potential pool of experienced workers by encouraging older people to participate as Census workers in the 1980 Decennial Census.

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

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

The motion to lay on the table was agreed to.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand recessed subject to the call of the Chair.

The motion was agreed to, and, at 12:40 p.m., the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 2:27 p.m., when called to order by the Presiding Officer (Mr. Baucus).

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, with respect to the conference report on H.R. 4986, the Depository Institutions Deregulation Act of 1979, that when it comes over from the House later this afternoon, it be called up for debate, with no votes to occur thereon; that action not be completed on the conference report today; that the Senate resume consideration of the conference report on tomorrow, Friday, at circa 12:30 p.m. or 1 p.m.; provided, further, that there be no rollcall on final passage; that if the conference report is disposed of tomorrow, the Senate stand in recess at the close of business tomorrow until 10 a.m. on Tuesday of next week; provided, further, that on Tuesday of next week, after the two leaders or their designees have been recognized under the standing order, the Senate proceed to the consideration of Calendar No. 502, the railroad deregulation bill, on which there is a time agreement.

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

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Republican leader, Mr. Baker, and the distinguished Senator from Wisconsin (Mr. Proxmire).

ORDER FOR RECOGNITION OF SENATOR SCHMITT ON TUESDAY AND WEDNESDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday, April 1, after the two leaders have been recognized under the standing order and just prior to the consideration of the railroad deregulation bill, calendar No. 502, Mr. Schmitt be recognized for not to exceed 15 minutes; that on Wednesday, after the two leaders have been recognized under the standing order, Mr. Schmitt be recognized for not to exceed 15 minutes.

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

COMMUNICATIONS OF THE CONGRESSIONAL RESEARCH SERVICE

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a Senate resolution on behalf of myself and Mr. Baker and I ask that it be stated by the clerk.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 396) determining that communications of the Congressional Research Service to the Congress are under custody and control of the Congress and authorizing Senate legal counsel representation in respect to Federal Trade Commission subpoena to the Congressional Research Service.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. ROBERT C. BYRD. Mr. President, on November 23, 1979, the oil company respondents in an FTC adjudicatory proceeding, In re Exxon Corporation, et al., Docket No. 8934, applied to an administrative law judge of the Federal Trade Commission for a sweeping subpena to the Congressional Research Service for documents which discuss the oil industry and governmental policy in relation to it. The companies applied for identical subpenas to a number of executive branch departments and the General Accounting Office. Thereafter, on February 15, 1980, the administrative law judge issued the requested subpenas, including the one to CRS.

Following the issuance of these subpenas, the Commission, on February 28, 1980, issued an order staying the return on them and inviting the Congressional Research Service, and the other subpenaed parties, to brief several issues. These include whether the Commission has the jurisdiction and authority to issue the subpenas to the parties in question, and who has custody of the subpenaed documents. The Director of the Congressional Research Service has requested the assistance of the Senate in protecting the confidentiality of communications from CRS to the Members and committees of Congress.

Title 2, United States Code, section 166 (d) provides that it is the duty of the Congressional Research Service to "advise and assist any committee of the Senate or House of Representatives and any joint committee of Congress in the analysis, appraisal, and evaluation of legislative proposals within that committee's jurisdiction. . . ." Pursuant to this mandate CRS prepares confidential memoranda to Members and committees on legislative issues before the Congress. The Congressional Research Service thereby provides a service to the Members and committees of Congress which is equivalent to that performed by the staffs of Members and committees.

The subpena power which the Congress has granted to the Federal Trade Commission does not authorize the Commission or the parties before it to inquire into the legislative process. The speech or debate clause of the Constitution, and the power of each House to protect its own papers, were not reduced when the Congress granted subpena authority to the regulatory agencies which it created.

Section 708(c) of the Ethics in Government Act of 1978, 2 U.S.C.A. section 288g(c) (Supp. 1979), provides that the Senate Legal Counsel shall perform duties consistent with the purposes and limitations of title VII of the act as the Senate may direct. Although the subpena is technically to the Director of the Congressional Research Service, the true parties in interest are the Members and committees of the Congress. The resolution which follows declares that the communications of the Congressional Research Service to the Members and committees of Congress are under the custody and control of the Congress and may only be released by the Congress, its Houses, committees, and Members in accordance with the rules and privileges of each House. The resolution would direct the Secretary of the Senate to transmit a copy of the resolution to the Secretary of the Federal Trade Commission and would direct the Senate Legal Counsel to represent the Secretary and the Director of the Congressional Research Service in this matter.

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

The resolution (S. Res. 396) was agreed to.

The preamble was agreed.

The resolution, with its preamble, reads as follows:

S. Res. 396

Whereas, on February 15, 1980, an Administrative Law Judge of the Federal Trade Commission, at the instance of the respondents in *In re Exxon Corporation, et al.*, FTC Docket No. 8934, issued a subpoena to a number of executive departments, the General Accounting Office, and the Director of the Congressional Research Service, directing each to produce various documents;

Whereas, documents which answer to the specifications of the subpoena include confidential memoranda prepared by the Congressional Research Service for committees and members of Congress;

Whereas, on February 28, 1980, the Federal Trade Commission stayed the return on these subpoenas, pending review by the Commission, and invited the Congressional Research Service, along with other subpoenaed parties, to brief several issues, including:

(1) whether the Commission has the jurisdiction and the authority to issue the subpoena to the parties in question;

(2) whether the subpoenaed parties may have custody and control over the subpoenaed documents;

(3) whether other parties may have custody and control over identical or similar materials;

Whereas, the Director of the Congressional Research Service has requested the Senate to assist the Congressional Research Service in protecting the confidentiality of its communications to the members and committees of Congress;

Whereas, the communications between the Congressional Research Service and the members and committees of the Congress are an integral part of the legislative process and privileged under the Speech or Debate Clause of the Constitution;

Whereas, memoranda of the Congressional Research Service are in the custody and under the control of the members and committees for whom they have been prepared, and the Congressional Research Service has no authority to release them to anyone outside the Congress;

Whereas, pursuant to Section 708(c) of the Ethics in Government Act of 1978, 2 U.S.C.A. § 288g(c) (Supp. 1979), the Senate Legal Counsel shall perform such duties consistent with the purposes and limitations of Title VII of the Act as the Senate may direct. Now, therefore be it

Resolved, That it is the determination of the Senate that the communications of the Congressional Research Service to the members and committees of the Congress are under the custody and control of the Congress and may be released only by the Congress, its Houses, committees and members, in accordance with the rules and privileges of each House;

SEC. 2. That the Secretary of the Senate shall transmit a copy of this resolution to the Secretary of the Federal Trade Commission;

SEC. 3. That the Senate Legal Counsel is directed to represent the Secretary of the Senate and the Director of the Congressional Research Service in this matter.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 2:33 p.m. the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 3:01 p.m., when called to order by the Presiding Officer (Mr. PRYOR).

DEPOSITORY INSTITUTIONS DEREGULATION AND MONETARY CONTROL ACT OF 1980—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order the conference report on H.R. 4986 will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 4986) to amend the Federal Reserve Act to authorize the automatic transfer of funds, to authorize negotiable order-of-withdrawal accounts at depository institutions, to authorize federally chartered savings and loan associations to establish remote service units, and to authorize federally insured credit unions to maintain share draft accounts, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of March 24, 1980.)

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the following staff persons be granted the privilege of the floor during the debate on the conference report on H.R. 4986: Ken McLean, Lindy Marinaccio, Steve Roberts, Howard Menell, Carolyn Jordan, John Quinn, Steve Rohde, Dan Wall, Tommy Brooks, John Collins, and Beth Climo.

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

Mr. PROXMIRE. Mr. President, H.R. 4986, the Depository Institutions Deregulation and Monetary Control Act of 1980, which is the conference report now before us—and I am addressing myself to that conference report—is the most significant banking legislation before the Congress since the passage of the Federal Reserve Act of 1913; in other words, the most significant banking legislation before us in 67 years, two-thirds of a century.

Why is it so significant? Well, the bill will strengthen the ability of the Federal Reserve to control the Nation's money supply by extending the Board's reserve requirements to all depository institutions; it will allow consumers to receive interest on their checking accounts in the form of NOW accounts all over the country; it paves the way for all savers to realize a market rate of return on their savings deposits by phasing out Government-imposed rate ceilings.

At the present time they are limited, of course, on commercial banks' savings deposits, to 5.5 percent. We eliminate that.

It provides new lending powers to thrift institutions in order to enhance their competitive viability, which means that savings and loans can do many things banks can do, with trust powers, consumer loan powers, and so on. It removes various State usury restrictions. One of the leaders in that is the Presiding Officer at the present time. He knows how devastating those usury restrictions were to the thrift institutions. They impede the free flow of credit and prevent the payment of a market rate of return to savers and it streamlines and simiplifies the truth-in-lending law.

I want to commend my colleagues on the conference committee in both the House and the Senate for their hard work and perseverance in shaping a truly historic piece of legislation. All the members of the conference committee had strong feelings about some parts of the bill.

There were times when our disagreements were sharp and heated. But in the end, we resolved our differences and produced a fair and reasonable compromise of conflicting viewpoints. The bill that finally emerged from the conference committee will help to guide the evolution of our banking and monetary system for the remainder of the 20th century.

This legislation is the culmination of many years of work in both bodies to modernize our financial system. We started with the report of the Hunt Commission in 1972. The House completed its FINE study in 1975 while at the same time the Senate passed the Financial Institutions Act. Subsequent efforts at financial reform faltered until the conferees agreed on H.R. 4986.

It is unfortunate that one of our former colleagues who worked long and hard on banking reform cannot be here today to enjoy the fruits of his earlier labor. I refer, of course, to Senator Tom McIntyre of New Hampshire, who guided the first bank reform bill through the Senate in 1975. Senator McIntyre has been a tireless campaigner for a more competitive banking system and especially for nationwide NOW accounts which were first introduced in his native State of New Hampshire. Our success today in bringing H.R. 4986 to the Senate is in no small measure due to the dedicated efforts of Tom McIntyre in keeping alive the cause of bank reform.

I cannot let this moment pass without also paying tribute to another of our former colleagues whose work on behalf of banking reform has been no less dedicated—Senator Ed Brooke of Massachusetts. Throughout his career, Senator Brooke worked to make our banking system responsive to the needs of the average consumer. Like Senator McIntyre, Senator Brooke was an articulate champion of nationwide NOW accounts. It is sad that Senator Brooke cannot be here today to reap the benefit of his work over the years.

Finally, Mr. President, I want to express my appreciation for the cooperation and leadership given by the minority on this legislation, especially by Senator GARN and Senator TOWER, both of whom, as we all know, are outstanding Senators, brilliant and able Senators, Senators with the strongest kinds of conviction. They often prevail in that kind of conviction. But they also, and

I thought Senator GARN particularly, who is the ranking minority member of the committee, showed remarkable statesmanship and ability to recognize the importance of compromise in working up this bill. Like most of us, I know they have strong misgivings about some features of this bill. Nonetheless, they used their misgivings not to delay or obstruct, but rather to reshape and remold so that in the end we have a bill that is more balanced and workable than the one with which we started. As is the case with all historic legislation, the work on H.R. 4986 has been truly bipartisan.

Mr. President, there are three major and interrelated themes embodied in H.R. 4986. These are competition, equality and saver equity.

On the competition theme, H.R. 4986 marks an historic turn in the direction of most banking legislation over the last 50 years. It relies more on the forces of the marketplace and less on the forces of regulation in shaping the structure of our financial system.

On equality, the legislation removes many competitive inequities between different types of financial institutions. It seeks to create a level playing field so that all institutions may compete on the same terms.

On saver equity, the legislation again marks an historic departure from past efforts to lower the cost of credit at the expense of the saver—and this is mighty important these days, because, of course, one of the principal reasons for our serious inflation is that we discourage savings in this country, not encourage them. Our savings are the lowest they have been since we started keeping statistics, the lowest of any country in the world. People who do not save money contribute to the buildup of prices and do not make savings available for investment, which builds up prices rather than hold them down for the kind of efficiency that can only come with savings and investment for improvement.

Raising the return to savers is not only a matter of equity, it is an economic necessity. At a time when we have rampant inflation, we can ill afford to penalize saving by artificially restricting the rates that can be paid on saving deposits.

Mr. President, I would now like to describe the provisions of H.R. 4986 in greater detail.

THE MONETARY CONTROL ACT OF 1980

Mr. President, title I of this legislation is to be known as The Monetary Control Act of 1980. It makes basic changes in the Federal Reserve System. These changes have become necessary because of the increase in importance of monetary policy in recent years and the need to provide equity among depository institutions. The evolution of the banking system and financial markets has indeed been dramatic during the past 40 years. Thus fundamental reforms in the Federal Reserve System are needed if it is to be a strong central bank.

The primary responsibility of the Federal Reserve today is the conduct of monetary policy, a function that was not even envisioned in 1913 when the Congress passed the Federal Reserve Act. In fact, the most important monetary policy body with the Federal Reserve, the Federal Open Market Committee, was not created until 1933.

In 1935 the Congress broadened the monetary policy role of the Federal Reserve, and recognizing that the central bank should have the authority to set reserve requirements for all banks provided that all insured banks would have to become members of the Federal Reserve System by 1941.

Unfortunately, the law was modified in 1939 so that membership remained voluntary and not a prerequisite to deposit insurance. The key to the monetary policy issue was not, and is not now, membership—but rather the ability of the central bank to set reserve requirements for all banks. Thus, reserve requirements until now continue to apply to member banks only. That is still the situation today. This legislation, the Monetary Control Act of 1980, would recognize that for monetary policy reasons, and for equity reasons as well, reserve requirements should apply to similar deposits at all depository institutions.

The innovativeness of the financial system has developed an expanded payments system that goes far beyond that of 1913, 1935, or even 1970. Our basic money supply used to be composed of only currency and coin plus demand deposits—that is, checking accounts—at commercial banks.

In recent years our means of payments have multiplied to include negotiable order of withdrawal accounts, credit union share drafts, telephone transfer and bill-payer accounts, remote service units, automatic transfer savings accounts, and others.

Just this past January the Federal Reserve announced new official definitions for the money supply to take these financial innovations into account. Growth of these new monetary aggregates form the basis for the Federal Reserve's monetary policy debate.

The Fed's plans and objectives announced to the Congress as requirements by the Full Employment and Balanced Growth Act are given in terms of growth of these monetary aggregates.

Thus, the Federal Reserve must be in a position to use its policy tools to affect the growth in the money supply components, whether they are deposits at banks, at savings and loans, at mutual savings banks, or credit unions. Reserve requirements would be extended by H.R. 4986 to transaction accounts at all of the institutions in a fair manner that I shall describe in a moment.

Mr. President, let me briefly summarize the main features of the Monetary Control Act of 1980. Following this brief run-down I shall deal with each in expanded form. The main features of the legislation are as follows:

First, the legislation will insure on a permanent basis that the Federal Reserve has the ability to control money and credit by giving the Board the authority to set reserve requirements on a universal basis for all depository institutions. Membership is not made mandatory, but reserve requirements have been extended to nonmember institutions. This will lead to better monetary control and greater competitive equity among financial institutions.

Second, since the Federal Reserve Board no longer need worry about the problem of declining membership, it will be free to make policy decisions without having to consider the implications of such decisions on membership. This is of critical importance during this present period of extraordinary economic circumstances.

Third, the reserve requirement structure will be altered to provide for a lower, more uniform and more equitable system of reserves, while at the same time providing the Federal Reserve with a large enough reserve base to provide firm control over money and credit. The new reserve requirement system will be phased-in over several years to allow a smooth adjustment to the new reserve requirements for member banks and nonmember depository institutions.

Fourth, the legislation will enhance the safety and soundness of the banking system by providing access to the Federal Reserve's discount window for nonmember depository institutions offering transaction accounts or nonpersonal time deposits.

Fifth, the legislation will improve the efficiency of the payments mechanism by requiring the Federal Reserve to establish a system of fees for its payment services. These services are now provided to member banks free of charge. In the future, access to services will be open to all depository institutions willing to pay the established fees on the same basis as members. The fee schedule and open access will increase efficiency in the clearing of payments.

Sixth, the legislation will permit the Federal Reserve to collect data on the assets and liabilities of depository institutions as may be needed to discharge its monetary policy responsibility. It is very important for the Fed to be able to accurately measure the money supply on a timely basis if it is going to be successful at controlling money and credit growth.

Seventh, many of the changes set in place by this legislation will have an effect on Federal Reserve earnings. Since most of the Fed's earnings each year are turned back to the Treasury it has been important throughout the legislative process to recognize the effect of these changes on Treasury revenues. I am pleased to say that this legislation will have little or no effect on the Treasury or the budget or the deficit.

SUMMARY OF MAIN FEATURES

TREASURY REVENUES

Mr. President, I think that it is of critical importance to recognize that the Monetary Control Act of 1980 had in its developing stages the potential for costing the Treasury hundreds of millions of dollars in lost revenues. The Treasury said it would not approve of any legislation to solve the membership issue costing more than $200 million per year. I personally sought a solution costing far less than that. The original legislation as opposed to H.R. 4986 would have cost far more. The conferees recognizing the inflation problems and the adverse effect that a decrease in Treasury revenue could have on efforts to balance the budget, came up with a solution that protects Treasury revenue, and may actually result in a slight increase in revenue during the next several years.

Mr. President, this legislation would affect the revenues of the Federal Reserve and ultimately the Treasury in a number of ways. Each year, the Federal Reserve System pays the net earnings from its operations to the U.S. Treasury. This is generally a substantial sum, it totaled over $7 billion in calendar year 1978. The Federal Reserve System functions as the Nation's chief money manager and because of these duties acquires and holds large amounts of financial assets, mostly U.S. Government securities. The return on this portfolio accounts for almost all the System's income. A significant portion of the System's investable funds comes from reserve deposits held by the Federal Reserve banks. The Monetary Control Act contains provisions that would change reserve levels and thus affect net earnings of the Federal Reserve System.

Currently, demand deposits and time and savings deposits at commercial banks that are members of the Federal Reserve System are subject to the Systems reserve requirements. Reserve requirement ranges are established by law for various classes of banks and types of deposits. Ranges are specified for demand deposits at reserve city banks, demand deposits at nonreserve city banks and nondemand deposits. While Congress established the ranges, actual reserve requirements are set by the Board of Governors of the Federal Reserve System. The Board also has the authority to determine what constitutes a reserve city bank.

The Monetary Control Act would change existing reserve requirements in a number of ways. These new requirements would not only apply to members of the Federal Reserve System, but to all depository institutions with reservable liabilities as defined by the bill. Two categories of deposits would be established against which reserves would be maintained. The first would be demand deposits and other transaction balances; the second would be nonpersonal time deposits. The reserve requirements for transaction accounts would be set at 3 percent for each bank's first $25 million of deposits and 12 percent for deposits above this amount. Each bank's nonpersonal time deposits would initially have reserves of 3 percent.

The act also contains provisions that would require the Federal Reserve System to charge the banking system for services now provided free, including an interest charge on float. These charges would begin to be effective 18 months after the bill's enactment.

Two types of cost estimates have been prepared for the Monetary Control Act of 1980. The first set of estimates covers fiscal years 1981 to 1985 and take into account first, deposit growth; second, the phase-in requirements of the legislation; third, an estimate of what the reserves at the Federal Reserve banks would have been had membership attrition and the old reserve requirements continued; fourth, revenue to be received from charging for Federal Reserve services and Federal Reserve float; and fifth, an offset for tax revenues to be gained on increased bank earnings.

Mr. President, I ask unanimous consent that a table showing these calculations be inserted at the end of my statement along with a detailed memorandum describing the methodology and assumptions used in preparing the estimates.

I am pleased to indicate that according to these estimates the enactment of the Monetary Control Act of 1980 would result in no revenue loss to the Treasury through fiscal year 1985. In fact, there would be small net revenue gains.

However, it must be recognized that these are estimates. They are technically the best that the Federal Reserve Board staff can produce, yet nevertheless, they are only estimates. In order to provide a check on them the Federal Reserve Board staff has also made one-time estimates based on year-end 1979 data. These estimates assume that the new reserve structure would be put in place immediately, that Federal Reserve services and float would produce $657 million in revenue, and that deposits and vault cash are as of December 31, 1979. Thus they represent a long-run or steady-stage approximation.

This set of calculations indicates that after taxes there may be some loss of revenue to the Treasury. In particular, the so-called steady-state loss is calculated to be $179 million after-tax. This cost is lower than the $200 million loss (on the same basis) that the Treasury has testified would be acceptable. Every effort has been made to minimize this cost, and the $179 million estimate is lower than most other formulation of this legislation considered in the Senate or the House of Representatives.

Mr. President, I think my colleagues should be aware that even if it should turn out that the Federal Reserve's cost estimates through 1985 are wrong, that if a revenue loss due to this legislation results the Federal Reserve has assured the committee and the Treasury that it is prepared during the transition years, that is the 8 years during which nonmember reserves would be phased in, to transfer to the Treasury part of its $1 billion surplus to cover any revenue loss.

This safety net may not be needed, but the Treasury and the budget would be protected by this transfer of funds should a revenue loss occur. It is, therefore, I think justifiable to say that the Treasury's revenues have been well-protected by this legislation. Future annual reports to the Banking Committee by the Federal Reserve on its budget will include reports on the costs involved in implementing this legislation.

RESERVE REQUIREMENTS

The Federal Reserve's current reserve requirement structure applies only to member banks and is very complex. There are 12 different reserve requirements with different types of graduation for size and for maturity of time deposits. This structure applies a reserves ratio to demand deposits as high as 16¼ percent, and it applies reserve ratios to savings deposits, and to all time deposits.

There is a general recognition that this situation is too complex and that some of the reserve ratios are higher than they need to be for monetary control purposes. These high reserve requirements impose a significant cost burden on member banks and create competitive inequities between member banks and nonmember banks, and between members and nonbank depository institutions. Therefore, the Monetary Control Act of 1980 has been structured so as to simplify the reserve structure, to make the reserve structure more uniform, and to have it apply to all depository institutions—member banks, nonmember banks, savings and loan associations, mutual savings banks, and credit unions.

Mr. President, at this point I ask unanimous consent to have a table summarizing the old reserve requirement structure and that of the Monetary Control Act of 1980 printed in the RECORD so that I may explain more closely the new requirements.

As I mentioned, the reserve requirements will apply to all depository institutions regardless of membership status. Depository institutions are defined in the legislation as are the two major categories of deposits that will be subject to the new requirements.

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

RESERVE REQUIREMENT STRUCTURE

Type of deposit in account	Current law (member banks only)		Monetary Control Act of 1980 (all depository institutions)	
	Range	Actual	Range	Actual
Transactions	7–22	[1] 7–16¼	8–14	12
Savings	3–10	3	0	0
Consumer time	3–10	[2] 1–6	0	0
Nonpersonal time	3–10	[2] 1–6	0–9	3

[1] Graduated, with higher requirements for successively higher deposit intervals.
[2] Depends on original maturity.

Mr. PROXMIRE. Those categories of deposits are:

First, transactions accounts which are a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers or similar items for the purpose of making payments or transfers to third persons or others. The legislation recognizes that financial innovation may result in the development of new types of transactions and gives the Federal Reserve Board authority to determine in the future whether an account or deposit is a transaction account.

Second, nonpersonal time deposits which are either a transferable time deposit or account or a time deposit or account representating funds deposited to the credit of, or in which beneficial interest is held by a depositor who is not a natural person. This category of deposit is meant to be broad enough to encompass traditional types of deposits and also managed liability that banks tend to rely on during periods of credit restraint.

I would like to emphasize that the new reserve requirement structure in the Monetary Control Act of 1980 does not apply reserve requirements to savings deposits or to consumer type time deposits. For a long time monetary experts have said that reserves on such deposits were not needed for monetary policy purposes. This was, I believe, a recommendation made by the Committee on Money and Credit in the early 1960's, by the Hunt Commission in 1973, and the FINE study in 1976. This places commercial banks on a par with nonbank thrift institutions.

Reserve requirements against transaction accounts would be significantly reduced. The Monetary Control Act of 1980 recognizes that institutions need not hold reserves to the same extent as large institutions. The act establishes a 3-percent reserve on transaction accounts below $25 million. This should permit the smaller depository institution to satisfy their reserve requirement with vault cash. The act also indexes the $25 million figure to the growth of total transaction accounts at all depository institutions annually. Above $25 million the initial reserve requirement would be 12 percent, and in recognition of the need for flexibility, the Federal Reserve is authorized to vary this reserve ratio between 8 and 14 percent. The transaction account reserve ratio will be uniform for all such accounts at all depository institutions.

Reserves against nonpersonal time deposits will initially be set at 3 percent for all depository institutions issuing such deposits. The Federal Reserve Board may vary the requirement against nonpersonal time between 0 and 9 percent. It is contemplated that during periods of monetary and credit restraint the ratio may need to go to the top of the range, and that during periods of ease the requirement may be reduced to zero. The Federal Reserve is given flexibility to set the reserve ratio according to maturity. I would just note that the Federal Reserve in its recent action of October 6 and under the authority of Credit Control Act authorized on March 14, imposed a special marginal reserve requirement on "managed liabilities" of banks—both members and nonmembers. Both of these actions covered time deposits in denominations of $100,000 or more with original maturity of less than 1 year. The 1-year or less maturity distinction could also be used by the Federal Reserve under the Monetary Control Act of 1980.

The Monetary Control Act of 1980 also recognizes that in certain circumstances the Federal Reserve may need broader reserve requirement authority than that granted by the basic provisions of the act. Two additional reserve provisions have been included.

First, upon a finding of at least five members of the Board that extraordinary circumstances require such actions, the Board may impose reserve requirements, with respect to any liability of depository institutions, outside the limitation as to ratios and as to types of liabilities for a period of up to 180 days. An exercise of this authority would have to be explained in a report to the Congress. This authority is exactly the type of authority that the Board would be expected to need and use during periods of high inflation such as the one we are faced with today.

Second, the Board may, upon a finding of five members, impose a supplemental reserve requirement on every depository institution; of not more than 4 percent of its total transaction accounts. The use of this supplemental reserve authority is envisioned to be limited to circumstances where the basic reserve provisions would not provide a large enough reserve base for the conduct of monetary policy.

Chairman Volcker requested this special standby authority as an insurance policy or safety net would be used, in his words—

> * * * only in the event experience demonstrates the need for a larger reserve base than would be produced by other provisions of the bill.

He also stated in testimony before the Senate Banking Committee that:

> The percentage of deposits to be held as supplementary deposits probably would change infrequently, if at all, over time, if the authority were used at all.

The Federal Reserve would be authorized by this act to pay interest on the supplemental reserves at a rate no more than the rate earned on the Fed's securities portfolio. I have been opposed to the interest payment on required reserves held at the Fed, and continue to oppose interest payment on the basic reserve requirements or even those reserves that might be required in extraordinary circumstances. Interest should not in my view be paid on reserves until regulation Q is abolished and the prohibition against interest payment on demand deposits is repealed.

To assure the Congress that the supplemental reserve authority will not be used lightly strict limitations have been placed on its use. The supplemental reserve requirement may be imposed only if:

First, the sole purpose of the requirement is to increase the amount of reserves maintained to levels essential for the conduct of monetary policy. The Board would have to file a report stating the basis for the determination that the additional reserves were needed for the conduct of monetary policy, and for no other reason.

Second, the supplemental reserve requirement could not be used to reduce the cost burden resulting from the basic reserve requirements. Thus, the supplemental reserve requirement is not to be viewed as a substitute for the basic reserves, but rather as a complement to those reserves. The Board could not use the supplemental as a vehicle to pay interest on reserves; they must make the case for the supplemental and establish the need for the additional reserves for monetary control purposes.

Third, the supplemental is not to be imposed for the purpose of increasing the amount of balances held at the Federal Reserve bank needed for clearing purposes. Other sections of the Monetary Control Act of 1980 and the Federal Reserve Act permit the Board to require of any depository institutions using its clearing services a balance sufficient for clearing purposes. The supplemental reserve authority may not be used to increase the balances held at the reserve banks for clearing purposes.

Fourth, the amount of basic reserves required on the date the supplemental reserve is imposed may not be less than the amount required if the initial reserve ratios (12 percent against transactions above $25 million and 3 percent for nonpersonal time deposits) were in effect. Thus, the reserve base envisioned by the bill, which is estimated to be $15.8 billion as of September 1979 and would increase over time as deposits grow, would have to be in place before the supplemental can be imposed.

The Board would have the flexibility to set the reserve ratios above or below either initial reserve ratio as long as the combination of reserve ratios that are in effect provides a reserve base at least as large as the initial ratios. The supplemental would terminate, once it is imposed, if for a period of 90 days the basic required reserves fall below the amount that would be required if the initial ratio were in effect.

The act also extends reserve requirements to foreign branches, subsidiaries, and international banking facilities of nonmember depository institutions, but only to the same extent such reserves are required of member banks.

TRANSITION ADJUSTMENTS

The reserve requirement system that I have just described makes significant changes from the system now in place. It would be difficult and unfair to have it effective immediately. The Monetary Control Act of 1980 has a delay until the first day of the sixth month after the date of enactment before the new requirements become effective. In addition, the changes in reserve requirements are to be phased in over several years to permit an orderly adjustment process.

For nonmember depository institutions the new reserve requirements would be phased-in over an 8-year period, one-eighth each year. There is one exception to this—that is, any category of deposits or accounts first authorized by Federal law after April 1, 1980 would not have the reserve requirement phased-in. Thus, NOW accounts, except in the eight States when they are now authorized, would be subject to full reserve requirements as of January 1, 1981.

If a nonmember institution decides that it wants to join the Federal Reserve System, or if a nonmember State bank becomes a national bank, such institution would be treated as any other member bank and would be subject to the statutory reserve requirements immediately.

For member banks the new reserve requirements would be phased-in over 4 years. This phase-in would also apply to any bank which was a member bank on July 1, 1979 and which subsequently withdraws from membership, for such a bank would under the Act be treated for reserve requirement purposes as if it were a member bank.

The act gives special consideration to nonmember depository institutions organized under State law, with the principal office located outside the continental limits of the United States. Those few institutions that qualify for this special consideration would be exempt from the reserve requirement for 6 years and after that would have the same 8-year phase-in as other nonmembers.

The reserve requirements may be satisfied through the maintenance of balances held in the Federal Reserve bank, through vault cash as permitted by the Board, or for nonmembers through the maintenance of reserve balances in a depository institution which maintains required reserve balances at a Federal Reserve bank in a Federal home loan bank, or in a national credit union administration central liquidity facility, provided such reserves of a nonmember institution are passed through to a Federal Reserve bank. The act also permits balances maintained for reserve requirement purposes to satisfy liquidity requirements that may be imposed under other provisions of Federal or State law.

ACCESS TO THE DISCOUNT WINDOW

Under existing law access to the Federal Reserve's discount window is limited under most circumstances to members only. Since the Monetary Control Act of 1980 would extend reserve requirements to all depository institutions on the same basis, there is no reason not to open the discount window to nonmember institutions on the same terms and conditions as members. Access to the Federal Reserve discount window will serve to enhance the safety and soundness of the entire banking system. This is especially important today with the highly inflationary conditions in the economy. Access will be granted to nonmember banks, many of which are small institutions in rural areas where the credit needs of farmers are crucial. Thrift institutions will also have access to the discount window on the same basis as members. This may be important in the coming months.

The act requires the Federal Reserve to take into consideration the special needs of savings and other depository institutions for access consistent with their long-term asset portfolios and the sensitivity of such institutions to trends in the national money markets. This may require the Federal Reserve to consider new types of lending through the discount window on a somewhat longer term basis than the regular liquidity adjustment basis which is for very short time periods. However, the Monetary Control Act does not envision the Federal Reserve discount window as a permanent source of borrowing. The act leaves to the discretion of the Board the terms and conditions for access to the discount window. Access to the discount window will become effective immediately upon enactment.

ACCESS TO FEDERAL RESERVE SERVICES

The Monetary Control Act requires the Federal Reserve to publish for public comment a set of pricing principles and a proposed schedule of fees based on those principles for Federal Reserve bank services within 6 months after the date of enactment. Those pricing principles must provide for access to those services that are priced to all nonmember depository institutions. The Federal Reserve is also required to begin to price its services within 18 months after the date of enactment.

Initially access for nonmembers will be to those services that are covered by fees, those fees are to be the same for members and nonmembers, except that nonmembers may be subject to other terms, including a requirement of balances sufficient for clearing purposes, that the Fed may determine are applicable to members. The intent is to provide access to services that are priced, as they begin to be priced.

It is not the intent of the legislation to provide access to Fed services immediately or without charge. To do so would put members at a competitive disadvantage since they are now holding reserves that are interest free, and those reserves will be gradually reduced over 4 years. Nonmember reserves will be phased in over 8 years, so the combination of that long phase-in period and the fee schedule will have to be taken into consideration. After the 8-year period there will be no differences in reserves, nor should there be differences in access to Fed services, but until then it is likely that there will be differences. The final judgment on just what those differences will be is left to the Federal Reserve Board.

EFFICIENCY OF THE PAYMENTS MECHANISM

The Federal Reserve System provides a large amount and variety of payment services to its member banks. In recognition of the non-interest-bearing reserves held by member banks, these services have historically been provided free of charge. Also, access to services has been limited to member banks only.

One of the original purposes of the establishment of the Federal Reserve System in 1913 was the need to have an efficient, nationwide payments system—one which would provide a basic level of services to the country as a whole. The Fed has been able to establish a uniform clearing system nationwide. At the same time, especially in recent years, the private sector has established both complementary and substitute systems to the Federal Reserve.

However, it is very difficult for the private sector to fully compete with the Federal Reserve when the Fed does not charge for the service it offers.

Further, since nonmember institutions will be required to hold reserves under the act it is reasonable that they should be provided access to Fed services. The Monetary Control Act seeks to create a more efficient payments mechanism by requiring the Federal Reserve to price its services at full cost and to permit access to all depository institutions on the same basis.

It is expected that open access and pricing will provide incentives for the private sector to offer services similar to those being offered by the Federal Reserve, but the private services would have to be more efficient and less costly if those private firms are to be able to attract customers from the Fed.

The act requires the Fed to publish a fee schedule based on a set of pricing principles in the act within 6 months after the date of enactment, and to begin to implement pricing within 18 months after the date of enactment. The act enumerates the services to be covered by the fee schedules and provides that any new services would also be priced. The act does not make a determination as to the types of services the Federal Reserve should offer.

The fees are to be established on the basis of all direct and indirect costs actually incurred including overhead and an allocated or imputed cost for taxes and the rate of return on capital that would have applied if such services were provided by private business firms, except where the Board determines that it is necessary to depart from this principle in order to prevent a serious and long lasting impairment of the Nation's payments system.

One of the services that the Federal Reserve provides—Federal Reserve float—arises from the clearing of checks and other paper items. The Fed is attempting to reduce the level of float by operational means and is studying possible changes in rules for clearing that may be needed to further reduce float. The legislation would require that any float remaining after such reductions be charged for at the current rate of interest applicable in the market for Federal funds.

It is possible that once pricing and open access is fully implemented and the private sector is competing with the Federal Reserve that the volume of Federal services offered would decline. The act requires that the Board shall require reductions in the operating budget of the Federal Reserve banks commensurate with any actual or projected decline in the volume of services to be provided by the Reserve banks, and that the full amount of saving so realized be paid into the U.S. Treasury.

COLLATERAL FOR FEDERAL RESERVE NOTES

The Federal Reserve is required by the Federal Reserve Act to maintain collateral for all Federal Reserve notes. This collateral consists of gold certificates, special drawing rights certificates, eligible paper and U.S. Government and agency securities. The last category is by far the largest. However, a portion of the Federal Reserve's securities portfolio of U.S. Government and agency securities represent purchases made with reserves deposited by member banks. Since the Monetary Control Act would release about $15 billion in reserves, a comparable amount of securities would need to be sold. This would reduce the amount of collateral available for Federal Reserve notes.

The Monetary Control Act changes the provision for collateralization of Federal Reserve notes in order to handle the problem created by the reduction in required reserves. The act eliminates the current requirement that collateral must be provided for Federal Reserve notes held in reserve bank vaults. The act also expands the types of Federal Reserve accounts that can be used to collateralize Federal Reserve notes. It also authorizes the Federal Reserve to purchase and sell obligations issued by foreign governments.

Under existing statutory authority, the Federal Reserve, in the course of its normal activities in the foreign exchange markets from time to time acquires balances in foreign currencies. Under present arrangements there is no convenient way in which foreign currency balances held by the Fed can be invested to earn interest.

The Monetary Control Act would amend section 14 of the Federal Reserve Act to provide a vehicle whereby such foreign currency holdings could be invested in obligations of foreign governments and thereby earn interest. This authority would be used only to purchase such obligations with foreign currency balances acquired by the Federal Reserve in the normal course of business.

CURRENCY AND COIN SERVICES

The bill requires the Federal Reserve to establish and implement a schedule of fees for currency and coin services. This provision is intended to cover services such as coin wrapping, transportation and the internal operating activities associated with the provision of these services. No charges are required for services of a governmental nature, such as the disbursement and receipt of new or fit coin and currency. Although the Federal Reserve will be required to charge for its coin and currency services, this provision will not interfere with the Federal Reserve's responsibility to provide the Nation with currency and coin of a high quality nor with the Federal Reserve's ability to expand or contract the amount of currency and coin in response to the public's demand.

Title II of this legislation seeks to deregulate insured financial intermediaries so that the full competitive benefits of the free market may be made available to the consumer.

Since 1966, the Government has imposed rate controls over the amount of interest banks, savings and loan associations and mutual savings banks are permitted to pay depositors.

Interest rate controls (or regulation Q as they are known in the marketplace) under which the maximum rate of interest that can be paid on deposits by financial institutions are fixed by regulatory agencies and were enacted in their present form in 1966 as a temporary measure. Even in 1966 these controls were recognized to operate discriminatorily against the small saver. Nevertheless, controls were authorized then to forestall disintermediation from savings and loan associations to commercial banks in order to protect the viability of thrift institutions and the flow of funds to the home mortgage market.

Unfortunately, what was enacted as a temporary measure in 1966 has become a permanent feature of the financial institutions landscape. Regulation Q has been extended 11 times since 1966. By now, however, it has become abundantly clear that rate ceilings have not been effective in shielding housing during periods of tight money. Instead they discriminate against the small savers, encouraging the flow of funds to unregulated intermediaries, discourage savings and contribute to inflation.

In 1975 legislation passed the Senate which would have comprehensively updated our financial institutions. This legislation—the Financial Institutions Act of 1975—unfortunately was not considered by the House, although in 1975 the House Banking Committee published its FINE study (financial institutions and the Nation's economy) which called for a 5-year phase out of regulation Q. Again, in the last Congress, this committee reported a bill to reform our financial institutions to the Senate. The passage of time since these actions has only reinforced the demonstrable need to update our financial system.

The present structure cannot fulfill the temporary mandate given in 1966 to regulation Q to provide an even flow of funds into housing. Regulation Q addresses only fund flows between commercial banks and thrift institutions. Market forces have made this intramural war irrelevant.

Such savings alternatives such as the so-called money market funds, which are uninsured, offer the small saver a market rate of return on savings, have grown enormously, at the expense of insured financial institutions.

Market innovators such as retailers have indicated their intent to market commercial paper in small saver denominations. It is thus clear that regulation Q and its mandate of below market rates to small savers is driving money out of the financial system, out of housing, and into noninsured intermediaries. Regulation Q's original purpose, temporary as it was, has been overrun by events in the marketplace.

Regulation Q has not prevented the housing market from bearing the brunt of every period of tight money and high interest rates in the economy since 1966. As market interest rates have risen above the regulation Q ceilings, depositors have withdrawn funds out of the depository institutions and placed them in money market instruments offering market interest rates. The most recent experience is an exception only because thrifts and commercial banks alike were authorized by the regulatory authorities to offer money market certificates paying a market rate of return on deposits of $10,000 or more.

The money market certificates succeeded in preventing an outflow of funds from insured financial institutions to uninsured intermediaries. But the price of thus maintaining regulation Q includes intolerable costs. For regulation Q now sanctions blatant discrimination against the small saver to justify its continued existence. It is grossly unfair to restrict by law an institution from paying more than 5½ percent to a small saver while at the same time offering to more affluent savers a market rate of return of over 15 percent, or 10 percent higher. Small savers should not be forced by a system of Government rate controls to subsidize borrowers. Regulation Q needs to be phased out so that all savers may be treated equitably.

Regulation Q is also out of keeping with the times because it is inflationary. Because regulation Q prevents savers from earning a fair rate of return, saving has become an unrewarding economic experience. Inflation eats away at savings and erodes savings as a store of economic value. Unfairly low returns on savings discourage savings and encourage current consumption.

It should come as no surprise to anyone that if low rates of return on savings erode the value of savings as a store of value, consumers will be encouraged to spend now, not to save. This is the wrong economic policy at a time when inflation is our number one economic problem. Regulation Q fuels inflation by encouraging spending.

It therefore should come as no surprise that the United States has one of the lowest savings rates of the industrialized world. Regulation Q discourages savings and thus discourages capital formation and increases in productivity.

In 1978, the President established an "Inter-Agency Task Force on Deposit Interest Rate Controls and Housing Credit" to examine the function and effectiveness of the system of deposit interest rate controls and to recommend changes in that system if warranted.

The members of the task force were the Department of the Treasury, the Department of Housing and Urban Affairs, the Office of the Special Assistant to the President for Consumer Affairs, the Office of Management and Budget, the Council of Economic Advisors, and the White House domestic policy staff.

The participating regulatory agencies were: The Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration and the Comptroller of the Currency.

The task force concluded in its report to the President that:

First. Regulation Q does not prevent disintermediation and the consequent curtailment of funds for housing finance;

Second. Regulation Q is unfair to small savers; and

Third. Regulation Q is responsible for inefficiencies in the marketplace.

Following the receipt of the task force recommendations, on May 22, 1979, the President asked Congress to:

First. Phase out regulation Q during a transition period during which all deposit interest rate ceilings would be permitted to rise in an orderly manner with regulatory flexibility to delay increases if economic conditions warranted or the safety and soundness of depository institutions was threatened.

Second. Provide variable rate mortgage authority to Federal savings and loan associations to improve earnings and the ability to pay depositors market rates;

Third. Permit Federal savings and loan associations to invest in consumer loans; and

Fourth. Permit all insured depository institutions, including savings and loan associations, to offer interest bearing transaction (or checking accounts) to individuals.

The Senate Banking Committee and the Senate carefully considered the need to phase out regulation Q and the need to provide thrift institutions with the powers they need to enhance their earnings and to be competitive in a market environment in which all depositors are paid a fair rate of return so that they are not discouraged from saving their money by low rates of return which do not even come close to matching inflation.

Mr. President, as I shall discuss later on in my statement this legislation gives savings and loan associations and mutual savings banks the powers they need to compete in a market environment.

The House and Senate conferees carefully considered the need to phase out regulation Q over a time span long enough to give the thrift institutions the time they need to incorporate the new competitive powers into their product lines and short enough to hold out hope to savers that the discriminatory aspects of regulation Q would be ended soon.

The conferees agreed on a phaseout of regulation Q over a maximum of a 6-year period and provided standards for insuring that savers will be paid a market rate on their savings as soon as feasible.

Title II finds that regulation Q discourages savings, creates inequities for depositors, impedes depository institutions from competing for funds, and fails to provide an even flow of funds for home mortgage lending. Title II specifically sets forth a purpose that "all depositors, and particularly those with modest savings, are entitled to receive a market rate of return on their savings as soon as it is economically feasible for depository institutions to pay such a rate."

In order to accomplish an orderly phaseout of regulation Q in 6 years the regulation establishes a "Depository Institutions Deregulation Committee" composed of the Secretary of the Treasury, the Chairman of the Federal Reserve, the Chairman of the FDIC, the Chairman of the FHLBB, and the Chairman of the NCUA. These are voting members. In addition, the Comptroller of the Currency is a nonvoting member. Actions of the Deregulation Committee can only be taken by a majority of the voting members and authority cannot be delegated.

All existing regulation Q authority is transferred from the Federal Reserve, FDIC, and FHLBB to the Deregulation Committee. At the end of 6 years all regulation Q authority expires. During the 6-year period, the Federal Reserve, the FHLBB, and the FDIC retain no independent authority to set regulation Q rates. Each of these agencies must enforce the interest rate regulations issued by the Deregulation Committee. Thus, no single regulatory agency retains the power to frustrate the fundamental purpose of this legislation which is to allow the free market to set deposit rate ceilings.

Title II of the legislation gives the Deregulation Committee complete authority over regulation Q. The Deregulation Committee is directed to provide for the orderly phaseout and ultimate elimination of interest rate controls as rapidly as economically feasible. Due consideration shall be given to the safety and soundness of depository institutions in this regard. The Deregulation Committee is given the authority to increase or decrease or establish new categories of accounts as it sees fit to accomplish its statutory purposes. But the Deregulation Committee may not increase ceilings on accounts above market rates.

In order to assist the Deregulation Committee in phasing out regulation Q as soon as feasible, title II establishes targets for increasing rates during the 6-year phaseout period. The Deregulation Committee is required to vote, not later than 18 months after date of enactment, on whether to increase savings rates one-fourth percent and to vote not later than the end of the third, fourth, fifth, and sixth years after enactment on whether to increase all rates—including on passbook accounts and all other accounts—by one-half percent in each of those years.

It should be understood that these are targets and that the Deregulation Committee may exceed the targets in its discretion or reduce rates if economic conditions so necessitate.

But let us be crystal clear on the mandate to the Deregulation Committee. This legislation has for its purpose the orderly phaseout of regulation Q in 6 years, and the Deregulation Committee should set rates during the period with that objective in mind.

Mr. President, I cannot finish this discussion on regulation Q without emphasizing that under title II the Deregulation Committee is given the power and directed to provide equity to the small saver. That is crystal clear from the history of title II in the Senate, where title II originated, and in the legislation reported by the House and Senate conference and the joint explanatory statement of the committee of conference.

The Deregulation Committee is required to meet in public session every 3 months. I can think of no higher priority for the Deregulation Committee in their public sessions than consideration of the matter of equity to the small saver.

Mr. President, this legislation also gives all insured financial institutions the authority to offer interest bearing checking accounts. These accounts are called NOW accounts (negotiable order of withdrawal accounts) at banks and thrifts and share drafts at insured credit unions.

Title III, the Consumer Checking Account Equity Act of 1980 contains these very important consumer provisions.

Federal law now prohibits payment of interest on checking accounts. Federal law also gives commercial banks a monopoly on the checking account business. With the exception of several States which have granted thrifts checking account type powers, a consumer must give his checking business to a commercial bank. Competition will be enhanced by giving all insured depository institutions checking account powers. The consumer will benefit by a wider number of institutions competing in the market. Thrifts will benefit because home mortgage borrowers will now be able to do all of their household banking business with them, including home mortgage loans and checking accounts but also consumer loans and trust services which are provided in this legislation. These new powers should serve to make thrifts a competitive force in the marketplace.

NOW accounts and share drafts also provide the consumer with the opportunity to earn interest on money deposited in checking accounts. This should provide a competitive alternative to existing checking accounts for those individuals who keep a large interest-free balance with their bank.

Title III of the legislation also provides authority for the continuance of automatic transfer services (ATS) from savings to checking at commercial banks and for the operation of remote service units (RSU) at savings and loan associations. The Senate will recall that last year the U.S. court of appeals held that the regulatory agencies had no authority to sanction ATS, RSU, and share drafts for credit unions. This legislation provides legislative sanctions to ATS, RSU, and share draft services.

Along with these checking account powers thrifts and credit unions are given the power to offer overdraft services and credit cards to their customers. This will place thrifts and credit unions on a level playing field with commercial banks. At the same time the Deregulation Committee and NCUA are expected to provide competitive equality on ATS, NOW accounts and share drafts by providing interest rate parity on these accounts.

In order to give thrift institutions the time they need to plan for and to incorporate a new product line into their marketing strategy, this legislation authorizes nationwide NOW accounts on December 31, 1980. However, ATS, RSU and share draft authority is effective upon enactment.

The bill authorizes the Federal home loan banks and the central liquidity facility to provide collection and settlement services to their members with respect to checks and other items drawn on or issued by their members. They are also granted those incidental powers that are necessary to provide such services. This authority will allow the home loan banks and the central liquidity facility to afford accounting services to facilitate the offering of transaction accounts by their members. The home loan banks and the central liquidity facility are not, however, authorized to clear items received by thrift institutions that are not drawn on other member institutions or on institutions eligible for membership. These services are to be provided upon nondiscriminatory terms.

Mr. President, title IV augments the powers of thrift—institutions—savings and loan associations and Federal mutual savings banks—so that they may better serve the consumer and remain viable in a market environment.

Thrifts are empowered to make unsecured or secured consumer loans, hold commercial paper and corporate debt securities up to an aggregate limit of 20 percent of their assets. In addition, Federal mutual savings banks are permitted to hold up to 5 percent of their assets in commercial, corporate or business loans and to accept demand deposits in connection with a commercial corporate or business loan relationship. This demand deposit power is intended to allow Federal mutual savings banks to service all of the demand deposit needs of a borrowing business customer and is not limited to demand deposits which merely service the loan. The demand deposit power is intended to permit service to the borrower who becomes a customer because of a loan relationship.

Thrifts are also given enhanced real estate lending powers by this legislation in order that they may better serve the community. The House and Senate conferees agreed to remove the first lien restriction on residential real estate loans, expands the authority of thrifts to make construction loans, substitutes a loan-to-value ratio requirement in place of dollar limits on home mortgage loans under existing law, and removes the current geographical limitation on home mortgage loans.

Mr. President, I think it important to point out that the enhanced lending powers for thrifts go hand in hand with the phasing out of regulation Q. If thrifts are going to be required to pay a market rate to savers (and they are) and if thrifts are going to have to remain viable and competitive in a free market environment (and they are) then it follows that restrictions on the asset side of the balance sheet must be removed so that they can earn a market rate as well as to pay a market rate.

One very important component in title IV is that one which increases the Federal insurance coverage over deposits at insured depository institutions from $40,000 to $100,000 effective upon the date of enactment of the legislation. Federal insurance protection has been a bulwark of stability for depository institutions since its enception in the 1930's. An increase from $40,000 to $100,000 will not only meet inflationary needs but lend a hand to stabilizing deposit flows among depository institutions and noninsured intermediaries.

In order to augment the capital of thrift institutions the House and Senate conferees have agreed to authorize thrifts to issue mutual capital certificates. Under the terms of the legislation such mutual capital certificates shall constitute part of the net worth and general reserve of the issuing thrift and provision must be made by the FHLBB for charging losses to the mutual capital certificate, reserves and other net worth accounts. The legislation also gives the FHLBB authority to set Federal insurance reserve requirements within a flexible range of 3 to 6 percent and would allow thrifts to satisfy liquidity requirements by holding shares in funds that only invest in permissible securities (in order to provide cost savings to small thrifts).

It is my hope that these actions will forestall the drive to convert community mutual institutions to the private stock ownership form. According to a General Accounting Office legal opinion, conversion from Federal mutual to Federal stock is illegal after June 30, 1976. But the FHLBB has insisted on processing conversions after June 30, 1976, principally on the ground that capital needs at converting institutions are enhanced by conversions. The provisions of this legislation should obviate this ground for conversions.

Furthermore, the House and Senate conferees agreed on a provision which would permit State stock associations to convert to Federal charter only if the State stock institution existed in State stock form for at least the 4 years preceding the date of enactment of this legislation. Since this legislation will be enacted before June 30, 1980, the 4-year period referred to will obviously be sometime before June 30, 1976. Institutions taking State stock form after June 30, 1976, obviously are not authorized to convert to Federal stock form under this legislation.

There is one provision of this legislation which must give all of us some pause—not because of what it does but because of the direction in which it wishes to take all of us. The provision to which I refer requires the administration to conduct a study of the options available through Federal agencies to assist thrifts in time of difficulty by subsidizing portfolios of low yielding mortgage loans. We must all keep an open mind on this situation. Nevertheless what appears to be sought here in the study is for a foundation to be laid to bail out some thrift institutions. Mr. President, let us give the message loud and clear: No bailouts.

This is a free and competitive economy. There is no guarantee of survival in a free economy. Managements of institutions must so manage their affairs that they will be able to survive in good times and bad. The Federal Government cannot underwrite the profitability of all institutions. The risks are too high. Can you imagine what havoc an inept or careless management could wreak on the public interest with that kind of a guarantee. No—no bailouts. We will all have to watch this one closely.

At the same time, I believe Congress should relieve unreasonable restrictions on the earning capacity of institutions. For example, credit unions are now prohibited by Federal law from charging more than 12 percent on loans. That is patently ridiculous in this economy. Therefore, the House and Senate conferees agreed on a provision which will allow credit unions to raise their loan rates up to an annual rate of 15 percent or higher for periods of 18 months in order to allow credit unions to earn a fair rate of return and to remain viable and competitive. Agent members of the NCUA central liquidity facility too are are authorized to charge their members a fair rate on CLF borrowings.

It seems to me clear that the Government must seek ways to remove competitive restrictions, not to provide a handout to institutions which are required to operate in the market on unrealistic terms.

Title V does this by preempting various usury laws while giving each State the opportunity to reestablish its usury limitations if it desires to do so. State usury limitations on first liens on home mortgage loans and on business and agricultural loans over $25,000 have distorted the economies of several States and parts of the national economy. Mortgage money has dried up completely in some States before Congress lifted the usury limit on mortgage loans temporarily in Public Law 96-161. Not only had flows of funds for loans been disrupted but deposit flows had begun to be affected before Public Law 96-161. In such circumstances it is perfectly proper for the Congress to pass legislation in the need of the national economy while providing for the States to reassert their usury limits if they see fit to do so.

Title V preempts usury limits on first liens on residential dwellings unless a State acts within 3 years to reimpose the usury limit by specific action.

I wish to reemphasize the point made initially in the Senate Banking Committee report that in exempting mortgage loans from State usury limitations, we intend to exempt only those limitations that are included in the annual percentage rate. We do not intend to exempt limitations on prepayment charges, attorneys' fees, late charges or similar limitations designed to protect borrowers.

Title V also preempts State usury limits on business and agricultural loans over $25,000 for a period of 3 years and provides that during the 3-year period a State can reimpose its usury limit by specific action. On business and agricultural loans the limit during the preemption period is the Federal Reserve discount rate (including surcharges) plus 5 percent.

Title V also contains a provision which provides parity, or competitive equality, between national banks and State chartered depository institutions on lending limits.

Under 12 U.S.C. 85, authorized to charge 1 percent over national banks are the Federal Reserve discount rate on loans. State chartered depository institutions are given the benefits of 12 U.S.C. 85 unless a State takes specific action to deny State chartered institutions that privilege.

Manufactured home financing by eligible lenders is covered by the mortgage usury preemption, as long as such financing complies with consumer protection provisions specified in regulations of the Federal Home Loan Bank Board. It is intended that in developing these regulations the Bank Board should look for guidance to regulations, handbooks and circulars of the FHA and VA regarding mobile home lending, the provisions of the standard conventional mortgage forms of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, and the provisions of the Uniform Consumer Credit Code.

The consumer protection regulations must take effect within 120 days from the date of enactment of the act. However, we concluded that because of the emergency situation which has developed, given the sharp rise in interest rates, the preemption should take effect immediately, even prior to the consumer protection regulations taking effect. However, as a condition for qualifying for the preemption, the rule of 78 would be prohibited immediately, even prior to the issuance of regulations.

The requirement that regulations must take effect within 120 days is mandatory with respect to balloon payments, prepayment penalties, late charges, deferral fees, 30 days' notice prior to instituting any action leading to repossession or foreclosure, and the prohibition against the rule of 78. In addition, the Bank Board is given authority to include such other consumer protections as the Bank Board may prescribe after a finding that additional protections are required. While the Bank Board is not required to implement such additional protections within the 120-day period, it should, nevertheless, act expeditiously.

With respect to the 30-day notice requirement, the conference report contains an exception for the case of abandonment or other extreme circumstances. The phrase "other extreme cirsumstances" is intended to provide flexibility to the Bank Board to prescribe other conditions which might necessitate some procedure other than the 30-day notice in order to reasonably protect the lender's security while at the same time providing adequate protection to the consumer.

With respect to prepayment penalties, it should be noted that such penalties are prohibited under the Uniform Consumer Credit Code. I believe therefore that in developing these consumer protection regulations, the Bank Board should consider prohibiting such penalties completely, particularly in situations involving the sale of a manufactured home.

Title VI is the Truth in Lending Simplification Act. I have worked long and hard to make truth-in-lending work. I believe truth-in-lending can be simplified so that business is relieved of unnecessary paperwork burdens while the consumer benefits by full disclosure of all he or she wants disclosed. Mr. President, I am greatly pleased that, at long last, we are on the verge of enacting a major simplification and reform of the Truth-in-Lending Act.

All too often the Congress is criticized for a perceived reluctance to exercise its oversight power and buckle down to the essential task of making the necessary improvements and modifications to legislation we have already enacted. This measure represents an excellent rebuttal to that perception. We have shown here that we can work together to sort through the various issues and make the hard decisions necessary to refine and improve a major existing law. I believe we can be justly proud of this measure as an example of how we can make Government work better.

Enacted 12 years ago, the Truth-in-Lending Act was the first credit law passed by Congress. Today, the "annual percentage rate" disclosure required by this law is the national standard for assessing the true cost of credit. Studies by the Federal Reserve Board have documented the impressive growth in consumer interest rate awareness since the enactment of this legislation. Today, the act remains one of the Nations most important consumer protection laws.

The basic premise behind the law has always been quite simple. By requiring creditors to disclose key credit terms in advance, using uniform computations, consumers should be able to compare available credit terms and utilize credit more wisely. Equally important, credit shopping should serve to increase competition among lenders.

As successful as the act has been, there has been increasing concern that the viability of truth-in-lending as a meaningful national standard was being severely undermined by the flood of technical impediments which have been heaped upon the act by waves of regulatory interpretations and conflicting court decisions.

Over the years, we have witnessed the growth of unnecessarily complicated disclosure forms, the spawning of regulations which have made it all but impossible to fully comply with the law, large numbers of creditors left open to civil liability for a myriad of technical violations and regulatory agencies which had turned their backs on millions of dollars of overcharges by creditors caught in violation of substantive truth-in-lending requirements. These deficiencies must be corrected.

The simplification and reform of truth-in-lending, now before you, represents our best effort to overcome these problems.

This bill will greatly simplify the typical disclosure statement provided to consumers by eliminating less important information and focusing upon the key credit shopping terms. We believe these important refinements will aid consumers in better understanding the actual cost of a credit transaction. In addition, these changes should bring about a substantial reduction in unnecessary paperwork.

Another important element of this legislation is the requirement that the Federal Reserve Board issue model disclosure forms. Many smaller creditors have anxiously awaited the development of model forms which would insure creditor's compliance with the act. The Board's model forms authorized by this measure will provide that protection. In addition, tolerances for certain numerical disclosures have been added to permit minute numerical errors.

Finally, as a way of preventing a stream of administrative rulings, the bill designates October 1 of each year as the effective date of new regulations. This, it seems to me, will cut creditor costs substantially.

In the area of limiting civil penalties, the bill restricts the imposition of a minimum penalty to only violations which are central to comparing a credit transaction. This should cut down on overly technical lawsuits.

Finally, the bill strengthens administrative enforcement of the act in several ways. This is an important counterpart to the easing of civil liability. For the first time, the agencies enforcing the act (the bank regulatory agencies and the FTC) will be required to order refunds to consumers in most cases where they discover that an interest rate was understated to a consumer. This will prove a potent enforcement tool and will result in a very substantial refund to consumers.

Finally, the bill authorizes the Federal Reserve Board to undertake a pilot project to determine the feasibility of publishing "shipper's guides to credit" in major cities. These publications would list the rates charged by all lenders in that area for common types of loans. A similar project now being conducted by the State of Massachusetts is producing promising initial results.

Regrettably, the Federal regulatory agencies have done precious little to promote the public's understanding and awareness of the true cost of credit. In fact, a number of States which have recognized the need to educate their citizens about the shopping tools provided consumers by truth-in-lending have been far more aggressive and innovative than the Federal Government.

We must awaken to the fact that much more must be done in the public interest to educate our people if truth-in-lending is to achieve its full potential.

This legislation is nearly identical to the simplification and reform measure initially approved by this body in May 1978 and again in May 1979. The six amendments to the bill agreed to by the conferees will have little material impact upon the operation and application of this reform measure.

I wish to thank my colleagues on the Banking Committee for their yeoman efforts in developing this legislation. In particular, I would like to commend the distinguished Senator from Michigan (Mr. RIEGLE) who presided over the subcommittee during most of the hearings on this bill. I would also like to personally thank the distinguished Senator from Utah (Mr. GARN) who has worked so hard and contributed so much to this legislation.

The truly consensus bill before you will serve to make an already effective consumer protection law in this critical area of consumer credit even more effective and less burdensome. I believe it is deserving of your support.

The various amendments in title VII are designed to update the national banking laws in several respects. Among other matters the Comptroller of the Currency is given rulemaking authority "to carry out the responsibilities of the office" except that this rulemaking power does not apply to the McFadden Act or to the Glass-Stegall Act. Since the rulemaking authority is only available to carry out the responsibilities of the office it carries with it no new authority to confer on national banks powers which they do not have under existing substantive law. To give national banks authority under this rulemaking provision which they otherwise do not possess under existing substantive law would not be carrying out the responsibilities of the Comptroller since only Congress can define those responsibilities so as to confer powers on national banks.

The provisions of title VII will permit banks to invest up to 10 percent of its capital in so-called banker's banks; and provide greater flexibility concerning the financing of one-bank holding companies. Title VII also prohibits, until October 1, 1981, the establishment, acquisition, and operation of a trust company across State lines.

Mr. President, I hope that someday we will be able to look back upon enactment of this legislation and find to our satisfaction that title VIII, the Regulation Simplification Act has proven to be a real benefit to sane regulation. One of the complaints I hear all too often from bankers is that they are being swamped by paper. I think their complaints are justified. How many times has Congress passed a short and simple provision of law only to find that the regulations are needlessly lengthy or worse yet, unintelligible. Title VIII requires regulations to be reviewed and revised to minimize paperwork and other burdens, eliminate duplication, and be written in clear and understandable English.

Finally, Mr. President, title IX of this legislation places a moratorium on foreign acquisitions of U.S. banks until July 1, 1980. This period will allow the Congress to reflect on the fact that increasingly our banks are coming under the domination of foreign persons.

In the 1970's foreign ownership of U.S. banks exploded to where now foreign ownership constitutes close to 15 percent of the U.S. banking system. In some areas, foreign banks control upwards of 30 to 40 percent of the loan business.

Foreign banks are welcome here. They potentially can increase competition. But lately foreign banks have not entered the United States by establishing de novo offices. Foreign interests now seek to purchase large established U.S. banks. Among others, this is so because the dollar is depressed as against other currencies.

Large foreign banks pose a threat to competition both in domestic markets and in world markets.

We need to ask ourselves the most serious question of whether it is desirable to have an increasing portion of our banking system coming under foreign denomination.

Will foreign interests prefer their own companies over domestic companies when credit is scarce?

Will foreign interests have the same local orientation and sense of community that our banking system has traditionally enjoyed?

Do foreign interests invest new capital in U.S. banks and are they bringing new money into the United States and if so how much?

What are the implications for a stable domestic economy and for monetary policy if our banking system comes under the control of foreign interests?

Why is it that in virtually every country in the world U.S. banks are restricted from acquiring large banks when our domestic market has been so open to foreign investment?

What are the implications for our domestic economy if a large sector of the banking system came under the control of foreigners in a country in which the government changed hands and became controlled by hostile elements?

These are some of the serious questions that must be studied between now and July 1, 1980. I sincerely hope that the time is not too short to resolve these questions. The GAO is in the process of doing a study on foreign takeovers of U.S. banks and I intend to ask the Federal Reserve to conduct a comprehensive study coordinating with other Government agencies such as the Comptroller, the FDIC and the Treasury. I can assure the Senate that such a study will receive the most thorough review in the Senate Banking Committee.

Mr. President, the legislation I have described is truly historic. It has for its purpose the updating of our financial system to better serve the public interest. Those of us who have worked directly on the legislation can assure the Senate that the steps taken in the legislation have the support of all of the diverse and important elements comprising the insured depository financial community and the support of the regulatory agencies responsible for the safety and soundness of these institutions. For myself, I believe that these are the steps that need to be taken now.

Inflation is our worst economic problem. Our savings and capital formation rate is the worst in the world among advanced industrial economies. This legislation is one significant step that we can take now to begin to find solutions to the problems we face.

Mr. President, there are certain tables and appendices which I have attached and which do explain in considerable detail this legislation, which is vital for its appropriate interpretation in the courts and elsewhere. I ask unanimous consent that they be printed at this point in the RECORD.

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

RESERVES AT FED AND CHANGES IN TREASURY REVENUE UNDER H.R. 4986, (BASE: DECEMBER 1978)

[In millions of dollars, fiscal years]

	1981	1982	1983	1984	1985
Attrition adjusted res at Fed old res structure	27,196	27,078	27,165	27,369	27,742
Member bank res at Fed new structure	21,492	17,969	14,483	12,664	12,729
Other institutions res at Fed new structure	1,031	1,702	2,316	2,888	3,523
Total reserves at Fed under new structure	22,524	19,672	16,799	15,552	16,252
Reserves released	4,672	7,407	10,366	11,817	11,490
Federal Reserve earnings loss from res released	−397	−630	−881	−1,004	−977
Interest on reserves (−)	0	0	0	0	0

	1981	1982	1983	1984	1985
Revenues from charging for Fed services (+)	194	394	546	608	644
Revenues from charging for Fed float (+)	270	376	399	423	448
Total change in gross Treasury revenues	67	141	64	26	116
Offset for tax revenues on increased bank earnings	−19	−47	−23	−12	−48
Total change in net Treasury revenues	48	94	41	15	68
Memo: Net Trea rev loss avoided by halting attrition	133	198	249	295	339

Note: The figures shown, in particular those for nonpersonal time deposits, are based on survey data and are necessarily imprecise estimates.

FEDERAL RESERVE STAFF MEMORANDUM ON FIVE-YEAR COST PROJECTIONS FOR MONETARY IMPROVEMENT LEGISLATION

This paper describes the current set of assumptions used in preparing 1980–85 cost projections of alternative legislative proposals for monetary improvement. The resulting projections are shown on the attached tables.

1. *Deposit Coverage and Growth*. Transactions accounts at commercial banks are projected by assuming that the growth of net demand deposits prevailing in the 1973–78 (historical) period continued throughout the 1980–85 projection period. Congressional authorization of nationwide NOW accounts and ATS and share drafts is assumed to be enacted this spring.

In general accord with the New England NOW experience, it is assumed that forty percent of household demand deposits will transfer to NOW and ATS accounts at commercial banks by 1985. These balances, held by individuals for transactions purposes, are assumed to account for seventy percent of all NOW and ATS accounts at commercial banks and thrift institutions. Thirty percent of all NOW and ATS balances represent transfers from savings accounts; ten percent of these balances come from commercial bank savings accounts and twenty percent are from thrift institutions savings. Overall, eighty percent of NOW and ATS balances come from and remain in commercial banks while twenty percent come from and remain in thrift institutions. Market shares for total deposits are assumed to be unaffected by nationwide NOWs, an assumption consistent with the New England NOW account experience. Total NOW and ATS accounts in 1985 are estimated to be $88.2 billion, with $70.6 billion at commercial banks and $17.6 billion at thrift institutions.

Based upon the above assumptions, the NOW and ATS calculations were as follows: First, it is estimated that in the absence of NOWs, household demand deposits would have grown at their historical rate of 6.8 percent annually from the 1978 year-end base level of $97.4 billion to total $154.4 billion at the end of 1985. Forty percent of this amount ($61.8 billion) is assumed to transfer to NOW and ATS accounts at commercial banks, reducing household demand deposits.

The $61.8 billion figure represents seventy percent of all NOW and ATS accounts at all institutions. Of the remaining thirty percent ($26.4 billion), one-third of $8.8 billion transfers from commercial bank savings accounts while two-thirds or $17.6 billion transfers from thrift institution savings.[1] Correspondingly, total commercial bank demand deposits in 1985 are reduced by $61.8 billion from what they would otherwise be, and commercial bank savings deposits are reduced by $8.8 billion. The effect is to reduce the projected annual growth of total net demand deposits at commercial banks from 3.80 percent to .286 percent annually, once NOWs and ATS accounts are removed. The growth rate of all other comercial bank deposits, which includes savings deposits, is decreased from 10.4 percent to 10.3 percent annually for the same reason. All transactions accounts at commercial banks, the sum of net demand deposits, NOWs, and ATS grow at a 3.43 percent annual rate. The average growth rate of bank vault cash is projected to be 7.7 percent annually during the period.

Twenty percent of all NOW and ATS balances in 1985 ($17.6 billion) were assumed to be held at thrift institutions. This would represent a conversion of 7.85 percent of thrift institution savings balances to NOW accounts by 1985. It is assumed that this conversion to transaction balances is the same for mutual savings banks and savings and loan associations. At mutual savings banks, this conversion to NOW accounts increases the growth rate of time and savings deposits at MSBs from 7.93 percent to 11.22 percent. The increase occurs because time accounts, growing at 18.15 percent annually, are given a greater weight in the composite time and savings growth rate than if NOWs did not reduce savings deposits. Transactions accounts at MSBs, which are primarily NOW accounts, are projected to grow at 27.71 percent annually. With the extension of NOW accounts nationwide, savings and loan associations convert 7.85 percent of their savings deposits to NOW accounts by 1985 and thereby increase the growth of their non-transactions deposits from 13.68 percent to 14.41 percent annually.

Those banks and thrift institutions which currently do not have NOW or ATS accounts but are expected to have these accounts by 1985 (with the extension of NOW accounts nationwide), required special treatment.[2] For these institutions the annual percent rate of growth of (new) NOW and ATS balances is not a constant; the growth rate increases annually in the early years after nationwide NOW accounts are permitted, reaches a maximum rate of growth by 1981, and declines annually thereafter (always remaining positive).[3]

Total nonpersonal time deposits were estimated for commercial banks by adjusting total time deposits as follows: First, three percent of total time deposits in each year were assumed to be the government component of time deposits. The remaining time deposits, 97 percent of the total, are owned by individuals, partnerships, and corporations (the IPC component). Second, it was assumed that 75 percent of all large denomination IPC time deposits (deposits of $100 thousand or more) were owned by partnerships or corporations and therefore, along with government deposits, are reservable as nonpersonal time deposits. For small denomination IPC time deposits (deposits less than $100 thousand) the nonpersonal component was assumed to be ten percent. These nonpersonal government and IPC time deposit percentages were obtained from an earlier survey of time deposit ownership at commercial banks and were applied to the total time deposit estimates for 1980–85.

While survey data exist for commercial banks, it was necessary to rely upon expert opinion for estimates of nonpersonal time deposits at thrift institutions. For savings and loan institutions it was assumed that 92 percent of large denomination time deposits over 1980–85 were nonpersonal but that no small denomination time deposits were nonpersonal. The ninety-two percent figure is four percentage points above the commercial bank ratio of nonpersonal time deposits to large denomination time deposits.

Mutual savings banks in New York State, by regulation, have no time deposits from profit-making businesses and were assumed to have no nonpersonal time accounts. For all other MSBs, it was estimated that nonpersonal time deposits were $2.9 billion in 1979, or 10.2 percent of total time deposits at non-New York State MSBs. This percentage was applied to each MSB outside of New York State over 1980–85 to obtain estimates of non-personal time deposits at these institutions.

All deposit growth and reserve requirement calculations were performed on an individual institution basis, for reasons discussed below. The growth rate figures shown here are therefore weighted averages of these individual deposit growth calculations.

Although several of the plans would apply reserve requirements to share draft accounts at credit unions, data on credit union deposits are too incomplete to be used in analyzing the effects of the legislation. Therefore, credit unions are omitted from the calculations, and cost to the Treasury of all of the plans may be slightly overestimated. Most, but not all, of credit union reserve requirements would be offset by their holdings of vault cash and thus would have little effect on Treasury revenues.

2. *The Baseline.* To project the cost of a given legislative proposal, reserves held under that plan must be compared to the "baseline" level of reserves that would be held in the absence of any action to halt attrition of member banks from the Federal Reserve. In calculating the baseline, 1977 reserve requirement ratios were applied to deposit projections obtained by applying growth rates calculated as described above to base data for December 1978. Projected vault cash for each institution was then deducted from the projected required reserves giving reserves held at the Federal Reserve. Total reserves for all member banks were then adjusted for attrition.

In the absence of legislative action, attrition was assumed to follow the pattern shown in Table 1. The pattern is based on historical data through 1979. Thereafter, for 1980, it is assumed that failure to enact legislation in 1980 prompts withdrawal of those member banks that delayed action in earlier years because legislation was pending. After 1980, attrition is assumed to exceed recent history because of continued high interest rates which raise the burden of continued membership. Attrition is assumed to stop around 1985, when most banks with deposits less than $1 billion are assumed to have already withdrawn. Attrition among the largest member banks is assumed to be low.

TABLE 1.—*Year-end coverage of commercial bank deposits by Federal Reserve requirements*

1978	71.8
1979	69.8
1980	66.0
1981	64.0
1982	62.0
1983	60.0
1984	58.5
1985	57.0
1986	57.0

(Excludes U.S. branches and agencies of foreign banks.)

3. *Adjustments for Calendar and Fiscal Years.* Reserves for both the baseline and the alternative plans are calculated based on December, 1978 data and produce December estimates for subsequent years. The calendar-year estimate of reserves is the simple average of the December figure for that year and the previous year. The estimate for each fiscal year is determined by taking the sum of one-fourth of the calendar year figure for the preceding year and three-fourths of the calendar year figure for the current year, e.g., reserves in fiscal 1980 is the sum of one-fourth of the reserves in calendar 1979 plus three-fourths of the reserve estimate for calendar 1980. Identical procedures are applied below to obtain all other fiscal-year estimates such as revenue from service charges and float.

4. *Reserves Under the Proposals.* Reserves held by all institutions covered under each of the legislative proposals are calculated by applying the reserve requirements structure under each plan to projected deposits for each year. The resulting required reserve figure is reduced by the projected vault cash held by each bank, giving the amount of reserve balances at the Fed implied by each legislative proposal. Since most plans currently allow for certain amounts of deposits to be excluded from reserve requirements[4] and because institutions of the same size often hold different proportions of vault cash, accurate results require that these calculations be applied to each institution separately, rather than applied to aggregate deposits at different classes of institutions covered by the proposed legislation.

Each plan was assumed to halt attrition during 1980, because knowing that significant reductions in the burden of membership or universal reserve requirements would be implemented soon, member banks would be unlikely to withdraw. Adjustment was made for attrition already experienced in the early months of 1980. The member bank share of total bank deposits was assumed to decline to 69 percent before attrition stopped.

5. *Phase-In of New Reserve Requirements.* The reduction in reserve requirements on member banks implied by each plan were fully phased-in four years after date of enactment, June 1980. Fifteen percent of the reduction is assumed to occur in 1980, 25 percent in each of 1981, 1982, and 1983, and the remaining 10 percent in 1984. Reserve requirement reductions thus do not become 100 percent effective until 1984.

The imposition of reserve requirements on institutions not previously having such requirements would be phased-in over a 10-year period under H.R. 7, 10 percent of the

[1] For simplicity it is assumed that all transfers to NOW and ATS accounts occur from balances already held at the bank receiving the NOW/ATS balance.

[2] If these accounts, which effectively start from a zero base, were treated using the same constant annual growth rate assumptions as above, more than 80 percent of the dollar value of new NOWs or ATS balances at these institutions would occur in the last year (1985). This would be very unrealistic and an alternative procedure was devised.

[3] Most real world phenomena exhibit growth along such a "logistic curve" as they are introduced, spread, and attain maturity. This sequence is followed here for institutions which did not have NOW or ATS balances as of December, 1978.

[4] Three plans (revised and modified S. 85 and S. 353) stipulate an exemption and leave it fixed over time. Two other plans (H.R. 7 and the Stanton version of H.R. 7) require the exemption applied to transaction balances to grow by 80 percent and 100 percent, respectively, of the growth rate of transaction balances. The plan adopted by the House-Senate Conference has a zero exemption but indexes the deposit level at which higher reserve requirements would apply at 80 percent of the growth in transactions deposits.

increase occurring in each year, so that 60 percent of the increase is effective by 1985. Under other plans the imposition of reserve requirements is phased-in using the same four-year progression used for the reduction in member bank reserve requirements in the previous paragraph.

Under the plan adopted by the House-Senate Conference, reserve requirement reductions are phased-in over four years (as above) and reserve requirement increases over eight years (12.5 percent a year). There are two exceptions to this phasing, however. First, banks which withdrew from Federal Reserve membership after July 1, 1979 would not have any phase-in and would be required to hold the full amount of required reserves when the legislation becomes effective.[5] Second, those banks and thrift institutions which do not now have any NOW or ATS balances would have no phasing of reserve requirements on any NOW or ATS balances they may hold in the future; the *full* reserve requirement would apply immediately to the NOW and ATS balances only at these institutions. This difference in phasing treatment between NOW accounts and demand deposits can affect the reserve requirement calculation, depending upon whether NOWs and ATS or demand deposits are reserved at the (lower) rate which applies to the first $25 million in transactions balances. Therefore, reserve requirements against NOW and ATS balances at these institutions always were calculated prior to determining the reserve requirements which applied to demand deposits.

6. *Pricing of Federal Reserve Services and Float.* Like the phase-in for reserve requirements for nonmember institutions, the phase-in for pricing of Federal Reserve services also differs according to the plan being considered. Under revised S. 85, pricing for services would not start until 1981, at which time only 10 percent of the total potential revenue would be raised. Under all other plans, however, pricing would start in 1981, raise 50 percent of total potential service revenues in that year, raise 80 percent in 1982, and 100 percent in 1983 and thereafter.

Like pricing for Federal Reserve services, pricing for float would begin in 1981. There would be no phase-in; all float would be priced in 1981. Float is expected to be reduced to $4 billion by December 1980 as a result of efforts currently underway to reduce float from its present level.

Revenues from pricing, neglecting the phase-in, were assumed to grow by 6 percent annually. This growth rate is the net result of inflation, which raises the annual cost of providing the priced services, and the expected drop-off in total check volume (a negative growth rate). It is expected that check volume will fall when this important service, accounting for over 60 percent of total potential service revenues, is priced. Float is assumed to grow at 6 percent annually after 1980.

The interest rate used to determine the revenues raised by pricing float is the same as that earned on the System's portfolio in 1979, 8.5 percent. This interest rate is kept constant, reflecting long-run (versus short-run) rates of return on the portfolio. When interest is paid on reserves, as under S. 353, this same interest rate (less ½ of 1 percent) is the rate assumed to be paid.

7. *Offset for Tax Revenues.* The gross cost of each legislative proposal is the sum of: (1) the gross cost of the reduction in reserve requirements on member banks; (2) gross revenues from new reserve requirements on nonmember institutions; (3) gross revenues from pricing Federal Reserve services; and (4) gross revenues from pricing float. All these gross cost/revenue effects have a partially offsetting tax effect which is opposite in sign to the gross cost/revenue change which occurs under a given plan. If the overall impact of one plan is to reduce gross Treasury revenues by some amount, that amount is itself reduced to some extent by the extra taxes raised on increased bank earnings, dividends, capital gains, etc. and vice versa for any plan which on balance increases gross Treasury revenues.

The marginal federal income tax rates used to compute the offsetting tax effect, giving the net Treasury revenues or costs of a specific plan, were as follows. Thirty-five percent of any year's gross Treasury revenue decrease was assumed to return to the Treasury through increased tax revenues in the calendar year when the change occurred. This was done for each year over 1981–85. In addition, for each of the subsequent four years an additional 2.5 percent of that initial year's gross Treasury revenue change is returned through lagged tax effects. In this manner, the tax rate in effect rises from the 35 percent initial rate up to a maximum rate of 45 percent.

8. *Memo Item: Net Treasury Revenue Loss Avoided by Halting Attrition.* The baseline, to which each legislative plan is compared, represents the level of reserves that would be held in the absence of any action to halt attrition. Consequently, the passage of legislation which halts attrition will halt the forecasted reduction in reserves and limit the Treasury revenue loss which would have otherwise occurred. The amount of Treasury revenue saved by halting attrition is determined by applying the rate of return on the System's portfolio in 1979 (8.5 percent) to the amount of reserves which are saved by halting attrition. The Treasury revenue thus saved represents the continued cost of membership by banks who without the passage of legislation would have left the Federal Reserve, enjoyed higher earnings, and incurred greater taxes. Thus, any loss in gross Treasury revenues avoided by halting attrition also has an offsetting tax effect, as described in the previous section.

[5] As noted earlier, the passage of legislation is assumed to stop attrition during 1980 and hold the member bank share of total commercial bank deposits at 69 percent. In July of 1979, this coverage ratio was 71 percent. Thus banks which withdraw from Federal Reserave membership from July 1, 1979 to the time that legislation is passed in 1980 account for 2 percentage points of total bank deposits, or 7 percent of nonmember deposits in 1980. Thus 7 percent of nonmember bank deposits are immediately subject to the new reserve requirements while 93 percent are phased-in over eight years.

Mr. PROXMIRE. Mr. President, I yield the floor.

Mr. GARN. Mr. President, as a member of the conference committee on H.R. 4986, I wish to indicate my support of the bill agreed to by the conferees and encourage my colleagues to approve the conference report.

In my opinion, the bill will provide tangible benefits to consumers, through higher deposit interest rates, the issuance of NOW and other interest bearing transaction accounts, increased deposit insurance, and simplified and more understandable truth-in-lending disclosures. In addition, the financial system will be strengthened by allowing savings and loan associations to offer a wider range of consumer financial services—without altering the basic home financing function of associations—permitting all financial institutions more flexibility in setting interest rates on loans, and eliminating civil money penalties for technical violations of the Truth in Lending Act.

H.R. 4986 and its predecessor bills have been under consideration for several years. During the past year, as interest rates have gone up and the variety of financial products offered by nondepository organizations has grown, the need to end unnecessary restrictions on the types and extent of services offered by depository institutions has become readily apparent. That present statutes needed revision is also obvious from the Federal court of appeals decision issued last April prohibiting share draft accounts, automatic transfer services, and remote service units. Having served on the Banking Committee for 5 years and recognizing the need to alter present financial institution statutes, I have supported comprehensive banking legislation, exemplified by H.R. 4986, in the Senate Banking Committee, on the Senate floor, and in the Senate-House conference committee.

While I believe that the bill will provide tangible benefits to persons involved in or affected by our financial system, I do have reservations about title I of the bill, which establishes mandatory reserve requirements for all depository institutions. Universal reserves represent a departure from the voluntary reserve system in operation since the establishment of the Federal Reserve in 1913. The voluntary reserve system has served to preserve the voluntary nature of Federal Reserve membership and the strength of our dual banking system. By requiring all institutions to hold reserves at the Federal Reserve banks raises the possibility that many banks which are not presently members of the Federal Reserve System will feel compelled to become members.

Instead of mandatory reserve requirements, I would have preferred to have included Senator TOWER's voluntary membership proposal, S. 353, in H.R. 4986. I believe S. 353 is a much better solution to the Fed's membership and monetary policy problems not only because it would have a minimal effect on the dual banking system, but also because it would provide the Fed with more than the $20 billion of reserves that the Fed has claimed are necessary for the successful implementation of monetary policy. Under the initial reserve requirements of H.R. 4986, the Fed will have approximately $15 billion in reserves. To achieve the $20 billion figure under H.R. 4986, the Fed will have to impose the supplementary reserve requirements authorized by the bill.

Although my support of the reserve requirement provisions of H.R. 4986 is provided with a great deal of reluctance, and only because I want to see the entire bill enacted, I do realize that such provisions include some of the positive features of the Tower bill. For example, interest would be paid on supplemental reserve balances and vault cash may be used to satisfy the initial reserve requirements. Thus, while I am philosophically opposed to mandatory reserve requirements, I wish to note that title I of H.R. 4986 does contain provisions which will lessen the adverse effects of such requirements.

One title of H.R. 4986 that I have no hesitation in supporting is the title containing provisions simplifying the Truth in Lending Act. I first introduced a truth-in-lending simplification bill with Senator TOWER shortly after I came to the Senate. While the act could still be substantially simplified and disclosures further reduced, H.R. 4986 is a major step toward providing consumers with understandable credit cost disclosures.

The truth-in-lending title eliminates unnecessary disclosures which have served to detract from the key credit cost disclosures that are so helpful to consumers in shopping for credit. It also provides for model forms which will be beneficial to consumers and creditors alike in highlighting the important credit data. Statutory penalties will now only attach to material disclosures and, therefore, the tremendous cost which has resulted from the thousands of technical lawsuits will be alleviated. Finally, there are reasonable provisions for reimbursing consumers for violations of the act which will compensate consumers who have relied upon erroneous annual percentage rate and finance charge disclosures.

I want to commend the Senate and particularly the Banking Committee and Senator PROXMIRE for working so long and hard on truth-in-lending simplification. I also believe special recognition should be given to Congressmen ANNUNZIO and WYLIE for leading this effort in the House. The length of time we have been working on truth in lending is evidenced by the number of staff people who I would like to thank for assisting me over the years: Pat Abshire, Phil Sampson, Beth Climo, and finally Dan Wall who helped first on my personal staff and then through his position as minority staff director to the committee. I would also like to take this opportunity to express my appreciation to Tommy Brooks, John Collins, Tony Cluffs, and again, Dan Wall for the fine support they have given me on all of the issues addressed in H.R. 4986.

Mr. President, I want to emphasize the importance of this particular piece of legislation.

When I first came to the Senate in 1975 and became exposed to Banking Committee legislation, I was impressed with the fact that we were dealing with it piecemeal, always attacking a particular problem, but so often we did not know what the side effects of that particular amendment or bill were.

Therefore, I think we continued to compound the problems of the financial institutions of this country.

Regulation Q extensions always became Christmas trees for adding other legislation that often was undesirable and simply would not have been passed if it had not been included on a regulation Q extension.

I guess I was naive in my first year in the Senate when we passed the Financial Institutions Act in the fall of 1975. I think we have done it in 1 year, but it never came up before the House. We never got to a conference. Each year thereafter, the Senate has attempted to do something in comprehensive financial reform legislation and failed because of not being able to get together with the House.

This is particularly true on the truth-in-lending simplification.

On what we have achieved, although not nearly as far as I would like to go, I believe the amendments I offered and fought for over the years could not have been passed without the help of Senator PROXMIRE and the other conferees. That was an issue we were in sharp dispute on with the House of Representatives, and had my colleagues on the Senate side not unanimously backed me with Senator PROXMIRE's leadership, we certainly would not have been able to achieve what I consider some major beneficial changes in the restitution sections of the truth in lending and also in the disclosures, so that the Federal Reserve will be able to print model forms and eliminate the civil liabilities penalties for technical violations.

I very much enjoyed my work, particularly the last year, as ranking minority member of the Banking Committee with Chairman PROXMIRE.

A lot of people would not believe this, but we agree a great deal more than we disagree. Because we have some sharp disputes on certain issues, I guess the image is built that we are constantly fighting. But if we added all the pluses and the minuses, it would surprise a lot of people to find that on most issues we probably agree 75 to 80 percent of the time.

I wish to extend my compliments to him for his help, particularly on the truth-in-lending simplification, on which I spent 5 years of work. I was beginning to wonder if we would ever see any benefits from that work.

So I do believe it is a bill that is worth passing, although if I could have written it differently, I am sure I would have. I am sure the chairman feels that way, and other members of the committee. But at least it is a big start.

I expect as we progress and see it implemented, we will probably see that necessary changes will be made in the future.

Mr. THURMOND. Mr. President, I rise in support of the conference report on H.R. 4986. Although I had reservations about this legislation when the Senate considered it last fall and voted against it, I have decided that the conference modifications represent a reasonable way to deregulate the financial industry in this country.

In recent days, I have discussed the latest version of this legislation with representatives of various segments of the financial sector, including persons associated with financial institutions in South Carolina. They are virtually unanimous in their feeling that the conference version is a reasonable compromise. I still have some concerns that this bill goes further than necessary in obliterating some of the characteristic differences among the types of financial institutions—differences that have heretofore existed because of the particular types of customers which the institutions specialize in serving. However, I certainly recognize that the financial industry needs to change with the times and am hopeful that this legislation now represents the right kind of comprehensive framework for the future of the industry and the millions of people it serves.

Mr. President, there is another important reason for my support of H.R. 4986. Unless we act favorably on this legislation, the authority for share draft accounts in Federal credit unions, NOW accounts, and other popular and convenient fund transfer services will expire at the end of this month. Share drafts are valuable services for credit union members, and prompt enactment of this bill will insure that these accounts will remain available.

Mr. PROXMIRE. Mr. President, before yielding to the distinguished Senator from Iowa, I say to my good friend from Utah what a great pleasure it is to work with him as the ranking member of the Banking Committee.

The fact is that he deserves the lion's share of credit on the truth-in-lending provision as well as many other sections in the bill.

But as to truth in lending, I was the author in 1968. I had the concept that it would be a very simple measure to provide. The consumer would be told the true annual rate and the finance charge and he would know what he was doing. He would have a very simple statement, real competition in borrowing, and I thought it would be a great advance.

Unfortunately, regulations complicated it. The Senator from Utah felt my indignation, because it hurt lenders and borrowers both. It did not do the job, and he persisted very vigorously.

As a result, we have a truth-in-lending bill that will provide for much simpler disclosure and eliminate a section of the bill which primarily was a method for lawyers to make a living at nit-picking.

Mr. President, I am happy to yield to my good friend from Iowa.

Mr. CULVER. I thank the distinguished floor manager very much for yielding to me.

I should like to address a question to the distinguished floor manager of the bill concerning the usury preemption provisions of H.R. 4986.

As the Senator from Wisconsin knows from our previous correspondence on this issue, a number of Iowa bankers have contacted my office seeking a clarification of those provisions as they apply to business and agricultural loans in excess of $25,000. Specifically, they note that the statutory language does not make clear whether interest rates higher than State usury limits can be charged only on individual loans over $25,000 or whether they are permitted when several loans to a single customer aggregate more than $25,000. The latter situation is a fairly common one in my State so the absence of clear guidance is a cause for concern and confusion there.

The Senator from Wisconsin has been good enough to write to me his judgment that use of the aggregate standard would be consistent with the intent and language of H.R. 4986. Can we make that understanding part of the discussion record on H.R. 4986 today?

Mr. PROXMIRE. I will be happy to do that.

The Senator from Iowa is correct. It would appear consistent with the statutory language if separate loans aggregating more than $25,000 which are the functional equivalent of an individual loan were deemed covered by the provisions.

Mr. CULVER. I thank the Senator very much for that clarification.

Mr. PROXMIRE. Let me add one note. Any lender or borrower should consult his own attorney for an opinion on the legality under applicable laws of any specific factual situation because of penalties which may be involved under State law.

Mr. CULVER. I appreciate the Senator's assistance.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Mr. PROXMIRE assumed the chair.)

Mr. PRYOR. 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. PRYOR. Mr. President, I take just a moment to express my very sincere thanks to the distinguished chairman of the Committee on Banking, Housing, and Urban Affairs, the Senator from Wisconsin (Mr. PROXMIRE), and the ranking minority member of that committee, the Senator from Utah (Mr. GARN).

On more than one occasion, I have come to these two very distinguished Senators and very close friends and asked for specific help for a State that has a 10-percent usury law which was placed in our 1874 Constitution. On more than one occasion during the last 12 or 14 months, these two distinguished Senators have come to the assistance of our State and other States which find themselves in a similar position.

I did not want this opportunity to go by this afternoon without expressing my sincere thanks as well as those of my colleague, Senator BUMPERS, and the other Senators who have come to their doorstep and laid their problems at their doorstep. Each time we have done so, we have been met with graciousness, understanding, and cooperation. I and other Senators in similar circumstances deeply appreciate the courtesies that have been extended to us by the Senator from Wisconsin and the Senator from Utah.

This legislation, as we all know, is far reaching. We hope that all the provisions will be digested thoroughly by the financial community of our country. It is, without question, one of the most far-reaching pieces of legislation, and it is a piece of legislative craftsmanship that will inure to the benefit of all States.

Mr. GARN. Mr. President, I thank the distinguished Senator from Arkansas for his kind remarks.

Whether or not friendship is involved, the Senator from Arkansas had an extremely serious problem that affected many people in his State, and it was easy to try to help because the need was serious.

I thank the Senator for his remarks.

(Mr. PRYOR assumed the chair.)

Mr. BAYH. Mr. President, I compliment the distinguished chairman of the Banking Committee in his management of these complex issues. I know the conference report before us represents an indescribable amount of work by the chairman, committee members, and staff.

I would like to ask the chairman a few questions regarding membership in the Federal Reserve System. The bill as written states that any depository institution which was a member of the Federal Reserve System on July 1, 1979, and withdrew from the Federal Reserve System after July 1, 1979, but prior to the enactment of this bill, would be treated as if it were a member of the Federal Reserve System for reserve purposes when this bill is enacted.

The language here is not clear to me and there are a small number of financial institutions which may be unduly penalized if restrictive interpretations are applied to this language, especially in light of recent interest rate moves. My office informs me that there are somewhere between 17 and 20 banks which would be singled out and treated differently than the other 14,000 banks in this country. Would you please explain to me the intent of Congress in using this language?

Also, is there any provision to insure that the Federal Reserve Board has the authority and direction to act to ameliorate the adverse effect of this change in reserves in specific cases where such a change in reserves would cause significant costs or losses?

Mr. PROXMIRE. The Congress and the conferees did take into account the chance that there might be certain circumstances where an immediate change in the reserve requirement would cause significant losses. In such cases, the conferees provided that the Federal Reserve Board should take into account such other matters as it deems appropriate and is to take such action as it deems necessary to ameliorate the adverse effect of this change in reserve requirements. Now, with regard to the specific language you mentioned, it was the intent of the conferees that for those depository institutions which were members of the Federal Reserve on July 1, 1979, and who had already submitted notification of withdrawal to the Federal Reserve Board prior to July 1, 1979, for purposes of setting the reserve requirements the date of withdrawal would be the date of receipt by the Federal Reserve of such notification of withdrawal. We had intended that for purposes of reserve requirements, withdrawal would occur at the time that an institution had taken all the steps in its power to withdraw from such membership.

Mr. LUGAR. May I propose a specific example to the chairman? In the case of State member banks there is a mandatory 6 months' waiting period after submitting notification to the Federal Reserve for completion of withdrawal. If a State member bank's board of directors had notified the Federal Reserve Board of its decision to withdraw prior to July 1, 1979, would it be deemed to have withdrawn for the purposes of this section?

Mr. PROXMIRE. That is correct. We certainly did not want to penalize any banks whose board of directors had notified the Federal Reserve Board of their decision to withdraw prior to July 1, 1979.

Mr. President, I think that one of the most important parts of this bill is the fact that when we override usury statutes we do it in a way that permits States to restore their usury statute if they wish.

As the Senator from Arkansas said, it was imbedded in the Constitution; and if anybody thinks that is not a complicated situation, he is mistaken. It is an extremely difficult thing to do.

At the same time, the usury statute in Arkansas, I understand, almost paralyzed much of the financial activity; and the farmers, small businessmen, and others who depended heavily on being able to borrow money were not able to do so. They could not borrow from their State banks. I think we have corrected this and have done it in an equitable way.

There is no question that the principal reason, the main initiative that lies behind this particular part of the bill, came from Arkansas. The junior Senator from Arkansas (Mr. PRYOR) did a marvelous job on this. He was ably supported and backed up by his senior colleague, Senator BUMPERS. I think this has been a great contribution.

It is very easily understood. People who want to override usury statutes always say, "What you are trying to do is to require people to pay higher rates of interest." What far too few people grasp is that there is no way you can have an interest rate that is below the inflation rate. As long as we have this inflation rate, we are going to have a high interest rate. A high interest rate is terrible and has a devastating effect on small business.

At this time, the homebuilders of this country are flat on their backs, and we will have to act one way or another to help them. The main thing we can do for them in the long run is to follow policies to get the inflation rate down so that we will have stable rates of interest. Without that, any cure will be strictly temporary and inadequate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. 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. JAVITS. Mr. President, I wish to put a couple of questions, if I may, to the distinguished chairman of the committee, the manager of the conference report, and Senator GARN, and it relates to a provision of title IX of the prospective law which deals with domestic banks with substantial U.S. shareholders that happen to be owned or controlled by a foreign person. Might they be prohibited, I ask Senator PROXMIRE, under title IX, section 902 of the legislation from taking over another domestic bank during the moratorium period provided for in this section?

Mr. PROXMIRE. The Senator is correct. Such a takeover would be prohibited by title IX unless it fell within one of the substantial exemptions, including that the bank to be acquired had deposits of less than $100 million or the takeover involved the less than 5 percent of a domestic institution.

I might say to the Senator that the moratorium applies to July 1, 1980, essentially 3 months. During this period the General Accounting Office and the Federal Reserve are expected to complete comprehensive studies. In my judgment, one specific area of inquiry should be situations like the one the Senator has described involving substantial U.S. stockholders and whether such institutions should be excepted from any contemplated extension of the moratorium.

Mr. JAVITS. It seems to me that such U.S. citizens and residents are disadvantaged by title IX because they now hold shares in domestic financial institutions which are restrained from participating in takeovers while domestic competitors of such institutions are not similarly affected.

I believe that one of the arguments in support of the moratorium was that the Federal banking authorities may encounter difficulties in obtaining from foreign owners of domestic banks adequate financial and other information about their affairs. But it is also my understanding that certain domestic banking institutions which are foreign owned and controlled comply with requirements of the Securities and Exchange Commission in providing extensive financial and other information in their registration statements and reports under the Securities Act of 1933 and the Securities Exchange Act of 1934. Some of them have a long history of doing this. It seems to me, Mr. Chairman, that with respect to such domestic institutions, the argument concerning the nonavailability of adequate information fails. Therefore, I suggest that should title IX be taken up before your committee between now and July 1, when the moratorium expires, you give consideration to exempting such domestic institutions from any takeover moratorium.

Mr. PROXMIRE. May I say to my good friend from New York that, as usual, the very intelligent, thoughtful and, I might say, almost omnipresent Senator from New York, who is so expert in so many areas and, particularly in this area—he served on the Banking Committee with me several years ago—makes a persuasive point. Certainly any institutions which were established prior to 1970 de novo by foreign persons with a substantial U.S. minority ownership interest are very deserving of grandfather privileges so that they may be treated as domestic banks for the purposes of this legislation. The ownership interests of U.S. persons should be protected.

I can assure the Senator that I would expect the Senate Banking Committee would be sympathetic to the situation he describes if and when it takes up any moratorium legislation in the future.

Mr. JAVITS. I am very grateful to the chairman—and he is always fair, and he certainly is showing it again in this case—and I thank Senator GARN, who has also been interested in this particular problem.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. 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. BUMPERS. Mr. President, the headlines of three recent articles are indicative of the plight of financial institutions across the country—"S & Ls Bemoan Squeeze on Costs," "Small Banks Discover Big City Interest Rates," and "Some Small Town Banks Have Trouble in Meeting Needs of Their Customers."

All of the problems described in these articles will not be solved by the passage of the conference report on H.R. 4986, the Depository Institutions Deregulation and Monetary Control Act of 1980. However, I commend the chairman of the Senate Banking Committee, Mr. PROXMIRE, and the conferees on H.R. 4986 for their work on this landmark legislation. It addresses many of the concerns expressed by lenders and consumers about the services provided by financial institutions. The sweeping changes in this bill will need to be monitored carefully to make certain that the efforts to deregulate provide a positive benefit for consumers and do not have an adverse impact on the financial solvency of the institutions affected by the legislation.

Mr. President, I am pleased that the conference report includes a provision permitting State-chartered insured banks, Federal- and State-chartered insured savings and loan associations, small business investment corporations, and Federal- and State-chartered insured credit unions to charge 1 percent over the Federal Reserve discount rate—or the rate permitted by State law if that is higher—on all loans, notwithstanding State usury statutes.

This provision is almost identical to legislation which Senator PRYOR and I introduced last year. It is similar to a provision found in section 85 of title 12 of the United States Code which governs the rate of interest that national banks may charge on loans. National banks have been able to charge 1 percent over the Federal discount rate on all loans since 1933. State banks and all savings and loans have been at a distinct competitive disadvantage with national banks during this period of exorbitant interest rates.

As a result, an imbalance has been created in the economy of Arkansas and other States. Funds flow from the State-chartered institutions to the national bank system, and national banks become the primary source of loans. This leads to the concentration of capital in urban areas. Although this is normally the case, the trend is worsened, and the capital-poor rural areas become poorer.

This change in the law allows competitive equity among financial institutions, and reaffirms the principle that institutions offering similar products should be subject to similar rules.

Mr. President, I ask unanimous consent that the articles I mentioned earlier in my statement be printed in the RECORD.

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

[From the Wall Street Journal, Mar. 25, 1980]

S&Ls BEMOAN SQUEEZE ON COSTS, SHIFT FUNDS INTO SHORT-TERM PAPER

(By G. Christian Hill)

There's an odd case of nostalgia among the savings and loan associations. To them, 1974 now looks like the good old days. Earnings dropped 22 percent that year, and mortgage lending went down 24 percent.

This year, almost a third of the S&Ls are losing money, industry sources say, and mortgage lending is at a standstill. If present interest-rate levels persist, S&Ls around the country stand to lose nearly $700 million for the 1980 second quarter and $3 billion or more for the whole year.

"We haven't heard this kind of news since the Depression," laments Robert O'Brien Jr., president of Carteret Savings & Loan Association in Newark, N.J. "We are on our tail."

The ailing thrifts are the victims of soaring interest rates—and of miscalculations by themselves, federal regulators and and Congress about how S&Ls and the housing market could be protected against the dislocations caused by those same sky-high rates.

The malaise becomes clear if you look at the industry's profit margins, the spread between its cost of funds and the yield on funds it lends. The spread is shrinking to the vanishing point. Industry costs have been rising by as much per week as they previously did per year. The prospect is that a few failing home lenders will quietly be merged into stronger institutions.

SYSTEM CAN HANDLE IT

Officials are quick to say that current and potential losses probably won't cause many failures and in any case won't jeopardize the savings of any depositors. The industry has huge net worth and reserves, totaling about $32 billion, to run through before many firms start to go belly up.

In addition, the thrifts can call on the Federal Home Loan Bank Board, which is authorized to lend billions of dollars to the industry. And the Federal Savings and Loan Insurance Corp., or FSLIC, has $6 billion of reserves for bailing out really troubled firms.

"We may have trouble with individual associations," says Jay Janis, chairman of the Bank Board, "but nothing we can't handle within the system."

Meanwhile, the squeeze on the industry is having significant effects. The thrifts have cut mortgage lending to the bone, pouring funds instead into higher-yielding short-term investments. That policy change is contributing to a severe housing and real-estate downturn.

A NEW SUBSIDY?

Thrifts expect the Bank Board—their main regulator—to shore them up with some new kind of subsidy, probably in the form of below-market-rate advances. The board and Congress are likely to get more interested in financial reforms benefiting the thrifts—for instance, the new type of mortgage whose interest rate is renegotiable by the lender every three to five years. This will supplant the fixed-rate mortgage as the chief way Americans finance their homes, the lenders predict.

Who would have thought, a couple of years ago, that interest rates would rise to their present levels? Not the thrifts, nor the federal regulators and Congressmen who changed the terms under which thrifts operate in an effort to help them. In previous periods of inflation and tight money, the thrifts had been plagued by "disintermediation"—savings outflows experienced when depositors took their money elsewhere to get a better return.

The thrifts had been hamstrung by congressionally imposed lids on the interest rates they could pay; they couldn't compete with money-market funds, government securities and various other investment vehicles. During the 1970s, Congress and regulators began to relax the interest limits on thrifts, however.

Home lenders also were allowed to sell a certain quantity of $100,000-plus certificates of deposit at market rates. The big change came in 1978, when the Interagency Coordinating Council, which includes the Federal Reserve Board, the Bank Board and other federal agencies, decided that savings institutions should be able to compete freely for money.

ENDING THE CYCLES

The idea was to end the boom-or-bust cycles that had plagued the industry. In May 1978, the council, through the Bank Board, gave savings banks and associations the right to issue six-month certificates of deposit at money-market rates. Stewart McKinney, then chairman of the Bank Board, said this would keep money flowing into housing until inflation peaked.

Around Christmas of that year, he figured, inflation and short-term interest rates would start to drop, and the money-market certificates would "self-destruct" before they became too expensive for lenders.

It didn't work that way. Inflation proved more virulent and persistent than anyone had thought possible. Short-term interest rates kept climbing, and the money-market certificates naturally grew in popularity with depositors.

The certificates "has been an avalanche," says George Hanna Jr., president of First Federal Savings & Loan Association in Newton, Kans. The amount of "hot money" held by thrifts in the money-market accounts has soared to $145 billion, costing them an average of about 12 percent in interest and accounting for 30 percent of all deposits.

The industry's profit margins on mortgage loans have shrunk from 1.43 percent in the last quarter of 1979 to 0.76 percent in the first quarter of 1980, and industry people say the figure is approaching zero. The thrifts now believe that money-market certificates themselves have become a major cause of continuing inflation.

They reason that the Federal Reserve raised interest rates to induce an economic turndown that would reduce inflation. But then the money-market certificates were introduced by the Fed and the Bank Board to ease the pinch on housing. The two federal moves were a "contradiction," argues Jonathan Gray, an S&L analyst for Sanford C. Bernstein & Co.

Richard A. Larson, president of West Bend Savings & Loan Association in Wisconsin, says, "If any one thing contributed to inflation, as far as financial institutions are concerned, it was the money-market certificate." By keeping money flowing into housing, officials explain, the certificates frustrated efforts by the Federal Reserve to induce an inflation-curbing recession.

There was another problem, conceded by even the regulators. It was a matter of timing. In July 1979, the Bank Board authorized limited variable-rate mortgages nationwide, and further moves are afoot to give the thrifts short-term, variable-rate options such as making consumer loans and "roll-over" mortgages whose interest rates can be renegotiated to reflect changing money-market conditions.

All of that, say thrifts, is to the good, but it began too late, after the costly money-market certificates had become entrenched. "This is not the way things should have been done," says Kenneth Biederman, former chief economist for the Bank Board and now executive vice president of City Federal Savings & Loan Association in Elizabeth, N.J.

LOCKED IN

Now the thrifts are thoroughly locked in to the certificates, and nobody knows what to do about it. Their $145 billion in short-term deposits is such a big stake that outflows—such as might be caused by federal efforts to put ceilings on their interest rates—could cause a crisis. A Bank Board economist points out that federal banks would have to make a "heroic effort" to lend S&Ls enough cash to cover even a 10 percent loss of these deposits.

But the thrifts are the victims also of their own miscalculations. Assuming that inflation would abate and that short-term interest rates would go down by the end of 1978, they used costly savings obtained at money-market rates to aggressively expand their mortgage lending.

A few thrift managers warned against this practice, saying it was imprudent to use such funds for loans of up to 30 years. They were right. Interest rates didn't go down, and many S&Ls are saddled with huge continuing costs. "It was just a bet on interest rates, and the S&Ls lost," says one financial analyst.

"This year we'll have very steep earning declines across the country and, I imagine, a fair number of S&Ls with losses for the year, unless the cost of money turns around pretty quickly," says William S. Mortenberg, president of the National Savings and Loan League.

The loss estimates vary according to assumptions about interest-rate trends. The gloomiest forecast comes from Merrill Lynch, Pierce, Fenner & Smith Inc., which expects prime rates (now at 19 percent) to peak at 20 percent around midyear and then to decline to about 17 percent by the end of the year.

THE LOSERS

That could produce losses in the range of $3 billion for the year. The losses could be offset partly by high levels of "penalty" income paid by savers prematurely withdrawing funds from time deposits to put into higher-yielding investments.

The deficits will vary widely from region to region. A new forecast by Shearson Loeb Rhoades suggests that big, publicly held S&Ls in California may suffer earnings declines of 25 percent to 35 percent, while losses are seen for the majority of mutual savings banks in the Northeast.

Individual associations within regions also may report varying results. In the worst cost bind are institutions that aggressively expanded mortgage lending with money gained from money-market certificates and $100,000-plus certificates, such as Gibraltar Financial and First Charter Financial Corp. in Los Angeles.

Less affected are concerns like Golden West Financial Corp., an Oakland, Calif. based thrift that long ago began redirecting funds into high-yielding short-term investments. That, in fact, is what most S&Ls are trying to do now, by investing in bank certificates of deposit, government securities and other investments yielding up to 18 percent.

In the process, they are abandoning the mortgage market, leading housing experts to believe 1980 may produce an 80 percent decline in mortgage lending, the sharpest drop since the end of World War II. The National Association of Home Builders is predicting starts of about one million single-family homes this year, the lowest postwar level.

"This is not a housing recession; it is a housing depression," says Herbert Sandler, chairman of Golden West Financial.

SOME SMALL-TOWN BANKS HAVE TROUBLE IN MEETING NEEDS OF THEIR CUSTOMERS

(By Chuck Jones)

Increasingly tight federal monetary policies, coupled with a 10 percent usury limit, amount to a financial "double whammy" for small-town, state-chartered banks in Arkansas—and for their customers.

Bankers in Bentonville, Crossett, Morrilton and Mountain Home, all with populations of 7,000 or less, said in separate interviews that the current situation is making it extremely difficult for them to meet the needs of their communities.

Bills to provide relief have been proposed or are under consideration for legislative action, and Arkansans will decide the state's usury issue in the November elections.

"If we don't do something, we are going to have to do something else to earn our livelihoods," Jim Wilcox, vice president of the First State Bank at Morrilton, said. "We're just getting squeezed out" of the small loan market.

While nationally chartered banks are similarly affected by the Federal Reserve System's tight money edicts, they are not bound by the 10 percent interest rate. They are able to make loans and charge 14 percent and, at the higher rate, they have more money available than do the state banks.

Despite the unfavorable lending conditions, however, the smaller state bank can stay in business indefinitely through investing its money in high-yielding accounts, perhaps out of state.

The combination of tight money and a low usury ceiling has forced many state banks to place a minimum amount on loans they will make. A $25,000 minimum is not uncommon.

"We could go on with a $25,000 minimum loan and stay in business," Jack Walsh, president of the First State Bank at Crossett, said. "The banks could go on indefinitely. The ultimate loser is the consumer."

As recent as two years ago, the smaller banks were still making personal loans of $50 to $100 to loyal customers.

Not anymore.

So, what happens to the customer needing less than $25,000?

"It's extremely difficult for us to serve that customer right now," Neil Nelson, president of People's Bank & Trust in Mountain Home, said. "We are obligated to try to serve the community. That's part of our purpose for being here. But we have to do that within the bounds of operating a safe and sound institution.

"To do that, we have to get some profit. And it doesn't take our customer long to know that he can't borrow money at 10 percent when we're paying 13 to 14 percent for it. He does understand our position, I think, but it doesn't help him. He's really hurt."

Burton Stacy, president of the Bank of Bentonville, expanded on Nelson's comments. "A lot of people have saved with us all their lives and they have kept every dime they had in our bank. We've got an obligation to meet their needs and we're going to try to meet them. But woe be it to somebody who comes in here who hasn't banked with me or has a speck on their record. But, this old, dedicated customer: I've got to have him, even though it's going to be at a loss to me."

Wilcox said it is hard for any bank to turn down a longtime customer who seeks a loan. ("His needs are as important as ours are.") But it may be coming to that.

"Consumer loans in Crossett have come almost to a complete standstill," Walsh said, adding that his bank is "hard pressed" to make any loans.

A typical automobile loan under existing conditions might see the borrower required to make a 70 percent down payment.

The smaller banks are caught in a profit squeeze, but the bankers said it is not because they are small that they are hurting.

"I think we're as solid as the big banks," Nelson said.

"We are in a profit squeeze, not because we're a small-town bank, but because of the Arkansas usury laws," Stacy said. "You give me proper usury laws where I can charge a fair return on my investment and I can outearn most city banks.

"In fact, we were one of the top five earning banks for the last five years in the state of Arkansas. That's going to drop down this year."

Sam Walton, founder of Wal-Mart Stores Inc., is the majority stockholder in the Bank of Bentonville. His consumer-oriented philosophy affects the way Stacy does business, though Stacy is quick to add that the effect is not necessarily negative.

"He (Walton) is more concerned about the small man than anybody I know and he wants the small man taken care of," Stacy said. "And I'm sure we are going to take care of him—even at a loss. But how many people at how many banks are going to be that conscientious?"

Nelson said he is confident of some sort of legislative relief. "Recently, Sen. Bumpers and Sen. Pryor asked for legislative relief for state banks and savings and loans so we can charge the same rate that a national bank can now charge on the smaller loans. And that's one point above the federal discount rate," he said. "If that is included in the legislation, we will be able to take care of our small customers' needs."

SMALL BANKS DISCOVER BIG CITY INTEREST RATES

(By James L. Rowe, Jr.)

HELENA, ARKANSAS.—Bart R. Lindsey gestured toward the sign displayed prominently near the tellers' cages in the First National Bank of Phillips County.

"Look at that sign," said the 35-year-old vice president of Helena's biggest bank. "It tells our problem."

The sign reads simply: "Our Six-Month Money Market Certificate Pays You 14.956 percent." Similar signs sit in lobbies of banks—large and small—across the United States.

"It didn't used to be that we worried much about what went on in New York. Now we do," said Lindsey.

Unlike big banks—which "buy" most of the funds they lend to their customers on the open market and adjust their business lending rates in tune with those fund-raising costs—small banks rely mainly on their own customers to supply the deposits from which they make loans to consumers, merchants, small businesses and farmers.

Bankers and their business customers are accustomed to fixed-rate loans—those based on the relatively stable cost of funds to the bank—not on the rates New York or Chicago banks must pay for their big certificates of deposit or commercial paper.

But with the advent of the consumer-size certificate of deposit—sold in minimum denominations of $10,000 with rates tied to the interest the Treasury pays each Monday when it auctions bills on the open market—small rural banks have discovered New York.

When farmers begin to come in for loans to finance their spring plantings, they will come face to face as well with New York interest rates.

"We had $2.8 million of our deposits shift to money market certificates in one week in February alone," said William H. Brandon Jr., president of the $42-million-asset bank. All of that $2.8 million came out of either passbook savings accounts which cost the bank 5.25 percent, or long-term certificates which depositors bought months or years ago at interest rates of about 6 percent or 7 percent. Brandon said that depositors are cashing in those certificates despite the heavy interest penalties federal regulations require when a certificate is redeemed prior to maturity.

He said a year ago the bank had $11 million in checking accounts (which pay no interest but cost the bank the equivalent of 4 percent), $9.5 million in 5 percent passbook accounts, and $12 million in certificates, which cost an average of about 6.5 percent.

Today, the checking accounts run about the same, but passbook savings deposits (which now pay 5.25 percent) have declined to $7 million. About $16.5 million is in "expensive, hot money," Brandon said, mainly the short-term consumer-sized certificates that have been yielding close to 15 percent in recent weeks.

The bank actually gained a temporary, if perverse, earnings boost last year because of the popularity of the new certificates. Brandon said that so many customers cashed in their old, low-interest certificates early and paid the interest penalty that the bank did not have to pay out thousands of dollars of interest as it had expected.

Of course this year "we'll be paying 15 percent on those funds compared to about 6½ percent last year," he said.

"Remembering 10 years ago when everyone was talking about how smart corporate treasurers had become in taking advantage of the earning power of their money? Well, consumers in small towns are just as savvy today. They don't leave their money at 5.25 percent when they can earn 15 percent," Lindsey said.

Federal regulators dreamed up the money market certificates so that banks and savings and loan associations would be able to compete for their depositors' money during periods of high interest rates. In earlier high-interest-rate periods, consumers often withdrew their funds from bank accounts—where interest ceilings were set by law—and used the proceeds to buy investments such as Treasury bills.

During those periods (although the interest rates then pale by comparison), big-city consumers were more prone to withdraw their funds, or disintermediate as the economists call it, then were their rural counterparts. But with the bank-offered money market certificates, depositors have to go no further than the nearest teller to triple their interest yields.

As a result, however, First National of Phillips County has money to lend its customers, especially the farmers who will need loans soon to finance their spring planting.

But that money is going to cost the farmers a lot more than it did last year.

John King, who farms about 4,000 acres in the county, found out last week that he will have to pay at least 16 percent for the $200,000 he thinks he will need to borrow between now and next fall's harvest. Last year he paid 10 percent.

"I'm happy to have the money. Price matters, but I've got to have the money," the 47-year-old farmer said. "There is no way a farmer can go without borrowing unless he goes out of business."

But King said he is being squeezed: All his costs are rising at the same time that the price he expects to get for his soybeans is down 25 percent because of the president's embargo on further grain shipments to the Soviet Union. Interest is not an inconsequential cost to King, reportedly one of the most successful independent farmers in this old Mississippi River town, about 65 miles southwest of Memphis.

Last year he paid an interest rate of about 8 percent, and this ate up 10 percent of the $700,000 he grossed, King said.

Although King will get the money he needs to finance his current harvest, bank officials told him he can just about forget borrowing any money if he wants to buy more land. King has been adding to his land holdings steadily for the last 25 years, but is resigned to buying no more in 1980.

If current customers cannot expect to have any new ventures financed by First National—there might be some limited exceptions to the general policy, Lindsey said—new customers might as well forget it, especially those who need to borrow small amounts of money.

Arkansas bankers face more strictures on the amount they can charge customers than do their counterparts in other states. The 100-year-old state constitution sets a usury ceiling of 10 percent that cannot be corrected by an act of the legislature as it has been in other states.

Nationally chartered banks such as First national use a loophole in the National Banking Act to charge one percentage point more than the Federal Reserve discount rate (now 13 percent). But state-chartered banks such as Farmers and Merchants here cannot use that loophole for loans of less than $25,000.

"We're turning down a lot of their customers," said Lindsey.

All Arkansas banks can charge up to 5 percentage points more than the discount rate on loans of more than $25,000 because Congress passed a special law to override the Arkansas constitution. That law expires at the end of the year.

"We'll have the money for our regular customers," said Brandon, who is bracing now for the big seasonal upsurge in farm lending. He expects farm loans to balloon from about $3.7 million to $8 million in the summer.

"Right now, we've got a loan-to-deposit ratio of 61 percent. We'll go close to 80 percent this summer. But we'll fight loans as much as we can. We're going to shoot for liquidity. We're a little scared," Brandon said.

That is just what the Federal Reserve wants the banking system as a whole to do: lend less money in order to restrain spending and fight inflation. But bankers such as Brandon say that rural banks do not make the speculative types of loans that fuel inflation.

Instead, he said, the loans his banks make go mainly from local depositors to local borrowers (usually the same people) who use the money to grow crops, buy necessities and finance inventories.

Indeed, Phillips County is fighting for its economic life. Agriculture, the backbone of its economy, has mechanized over the years, throwing thousands on the unemployment and welfare rolls and convincing many to leave for good. The county's population has shrunk in half in the last 30 years. More than 30 percent of its 35,000 citizens are on welfare, and its unemployment rate runs close to 13 percent, according to John Gatling, head of the newly organized Economic Development Council.

One victim of high interest rates and scarce money in Phillips County is Al Willinger, who heads a new barge building company that so far has put 50 Phillips County residents to work. Willinger needs $500,000 to finance steel and salaries for the $2.4 million worth of barges he has on order. His life is further complicated because Brandon is on his board of directors and First National could not make him a loan even if it were possible otherwise because of the interlock in directors.

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

The PRESIDING OFFICER. The clerk will call the roll.

The asistant legislative clerk proceeded to call the roll.

Mr. TSONGAS. 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. TSONGAS. Mr. President, there are two issues that I would like to address, both involving the flexibility given to federally chartered mutual savings banks.

It is my strong feeling that if these institutions are going to remain viable, they have to be given some flexibility.

The amendment that I introduced with Senator HEINZ in the Senate would permit Federal savings banks to invest up to 20 percent of their assets in commercial, corporate business loans or investments. That authority was reduced to 5 percent in conference. I would hope, given the mandated review in 2 years, that down the road we see the need for these expanded powers and raise these powers back up to the 20-percent level.

I am concerned about the viability of these institutions, it is imperative that they, and all thrift institutions recognize the necessity of expanding their operations beyond housing investments.

Mr. PROXMIRE. Will the Senator yield on that?

Mr. TSONGAS. I yield.

Mr. PROXMIRE. That was an excellent amendment and I was happy to accept it. In conference, the only reason we agreed to do it at 5 percent for 2 years was because, as the Senator submitted his amendment, as I recall, it would have started out the first 2 years at 5 percent and gone to 20 percent over the years.

I intend to do everything I can, with the Senator from Massachusetts, to see that the full 20 percent is provided. But the only way we could compromise this with the House was to do it in stages rather than do the whole thing and say we were definitely going to have 20 percent later on.

But we have exactly the same during the first 2 years as the Senator's amendment originally provided.

Mr. TSONGAS. Mr. President, I am aware of the difficulty that my chairman had in the conference. I very much appreciate his willingness to go to bat for me on this particular provision.

And I would appreciate his support as it comes up in the future.

I have one other issue. The floor discussion, hopefully, will make it clear that the authority provided for the mutual savings bank to accept corporate demand deposits in connection with a commercial corporate or business loan relationship is in no way limited by the dollar amount of loans outstanding at any given time.

Mr. PROXMIRE. I wholeheartedly agree with that. In fact let me just read what I have in my full statement.

Referring precisely to the Senator's amendment, I said:

This demand deposit power is intended to allow Federal mutual savings banks to service all of the demand deposit needs of a borrowing business customer and is not limited to demand deposits which merely service the loan. The demand deposit power is intended to permit service to the borrower who becomes a custômer because of a loan relationship.

Mr. TSONGAS. Mr. President, I appreciate the chairman's thoughts. I wish I was as persuasive in so many other issues that we deal with as I have been on this one.

I thank the chairman.

(Mr. TSONGAS assumed the chair.)

Mr. STEWART. Mr. President, today the Senate is considering the omnibus financial institution legislation which has had its various components debated in the halls of Congress for a number of years.

The Depository Institutions Deregulation and Monetary Control Act of 1980 is one of the most complex and least understood pieces of legislation that I have ever seen come before a legislative body. It has been referred to as everything from a Christmas tree to a forest primeval, the latter probably being the more appropriate phrase.

H.R. 4986 now finds itself nearing the end of the legislative process. I have no doubts that the bill will pass and probably by an overwhelming margin. Each individual component of the bill has the strong and very vocal support of some particular segment of the financial community. Through the combined efforts of all parties with a real interest in seeing the bill approved, it should glide through with very little effort.

Before it does find its way out of this Chamber, however, I would like to take a few minutes of the Senate's time to outline some of the concerns I have about several of the bill's provisions.

This legislation will fundamentally reshape the structure of the Nations financial institutions and alter their relationship with the Federal Government.

In order to create what has been called a more level playing field on which all financial institutions can more evenly compete, we are reshaping the role of the savings and loan industry. Savings and loans will now be able to offer interest bearing checking accounts, they will have broadened authority to invest a larger portion of there assets into areas other than housing, and they will now have to compete with banks in regards to the interest rate they will have to pay on savings accounts. These are just some of the major changes, the list gets very long and detailed.

This may well be a great boon to the industry by creating a higher level of savings than this country has seen for a long period of time, thus providing more funds for housing at the same time it gives the small saver a chance to earn a market rate of interest on his or her savings. The bill, in fact, is being supported by most of the savings and loan trade associations.

I just hope it works out this way, because frankly, I do not want to find myself on the floor of the U.S. Senate a few years down the road urging my colleagues to establish a new type of institution which would provide the necessary funds for housing, something similar to the present savings and loan system.

As I have indicated, the bulk of the legislation has been debated very carefully and thoroughly, both in the Banking Committee and on the floor of the Senate. The monetary control section which this bill has was never the subject of extensive debate on the Senate floor, at least during this session and, in fact, was never even the subject of a final markup in the Senate Banking Committee. The Federal Reserve legislation was written in the conference committee stemming from a House-passed version of the bill which was extremely different from the final product we now have before us.

As a freshman Member of this body, I am frankly concerned that legislation with such far-reaching consequences would be passed in such a manner.

It is not only the procedure in which it was considered, but the substance of the final bill—which I do not think many Members of this body recognize what that is—and the impact it will have on the financial community in the States that are represented by Members of this body which concerns me, which I think is unknown to a large number of the Members of this body and, very frankly, to a large number of the members of the financial community which they represent.

Under this section, every financial institution in the country will become a dues-paying, honorary member of the Federal Reserve System. The existing voluntary approach to Fed membership will become a thing of the past and the dual banking system, which has served this country for a number of years, though certainly imperfect, will, for all practical purposes, be eliminated.

Very frankly, I am concerned about the further concentration and centralization of power and influence in this country, and this reason alone causes me great concern about the effect that this legislation will have in regards to increasing that concentration.

Having closely watched the Federal Reserve in action now for the past several months does very little to ease my concerns.

Certainly we are in a difficult economic period at the moment, and our troubles are not likely to disappear rapidly just as they did not come about over night. I am also well aware that the excessive growth of the money supply was a contributing factor in the inflationary spiral we now find ourselves in. But the Federal Reserves tight money policies are having the effect of crippling the most productive and innovative sector of the economy—which is the small business sector of our economy—while doing very little to seriously reduce the availability of credit to those in our society who have very little trouble affording the present high interest rates.

In spite of my opinions on the Federal Reserve issue I still intend to offer my support for the passage of this legislation. It contains too many other provisions which are of immediate and vital importance to a great many of our Nation's financial institutions which compel my support. But I also want the record to show that if separated from the rest of the package, I would oppose the reserve legislation, not only because of its makeup, but because of the manner in which it was drafted, because it did not receive the proper scrutiny, either by the Banking Committee or by the Members of this body.

I think the issues it addresses should be the subject of careful Senate scrutiny, and I intend to focus the Senate's attention on those issues in the future. I think we will have ample opportunity to do so.

Mr. PROXMIRE. Mr. President, may I respond to my good friend from Alabama, who is a very valuable member of our Banking Committee?

The Senator makes the point—and he is absolutely correct—that this was not debated in any length on the floor of the Senate.

May I say to the Senator, however, that there are several considerations here. Number one, we had 17 days of hearings before our committee. I do not know of any issue that has been explored as thoroughly as this one was in our hearings.

We had three chairmen of the Federal Reserve—Chairman Burns, Chairman Miller, and Chairman Volcker—all of whom supported this.

Mr. STEWART. Mr. President, that may be the problem I have with the legislation.

Mr. PROXMIRE. Mr. President, may I say it was also sponsored by all of the institutions and institution groups, by the ABA, by the independent bankers—they did not oppose it, at least.

It was supported by the U.S. League, by the National Savings and Loan League, by the credit unions.

The Senator is correct. The situation was this: That the House went into great detail in consideration, discussing, and debating this. We did not have a chance to do so on the floor.

On the other hand, the House did not have a chance to discuss our phasing out regulation Q, which was an equally important action. We debated that, as the Senator knows, at great length for several days here on the floor of the Senate, as well as in the committee.

So we had a situation where, on the one hand, the House gave far more consideration on the floor to the membership issue. We had extensive hearings on it. We did not debate it on the floor.

But it seems to me that the combined record of the House and Senate is pretty clear on this issue. As I said, we did have all of the interested groups testifying. To the best of my knowledge, only the Conference of State Banking Supervisors opposed it. The great bulk of the testimony was overwhelmingly in favor of it.

May I say one more thing to my good friend, because we could not act on this legislation under the circumstances. But there is an economic situation which I think the Senator appreciates, which the Federal Reserve argued fervently that they were losing membership, that their ability to control monetary policy was subject to crucial attrition, and that, at a time when it was especially important to restrain inflation, they were losing their ability to do so, and that this legislation was essential in order for them to have the full power they felt they needed.

Mr. STEWART. Mr. President, if the Senator will yield, I assume I have the floor.

Mr. President, I will say that my disagreement with this sweeping change that we have made in this legislation is also caused by the fact that we did not consider it here in this body, nor did we consider it in what I felt, with all due respect to the chairman, was the proper approach in the Banking Committee.

I say that with respect and understanding for the constraints the chairman was under with regard to the economic situation. I am going to have some more to say about that. There are some people who would have loved to have testified about the Federal Reserve policy. I am sure they will be up here not only to see this Senator from Alabama but also the distinguished chairman of the Banking Committee.

Recent policies have impacted not only on the financial community but they have also impacted on some very productive sectors of our economy. There is a concentration here of even greater powers which will be of concern to them.

I will also say to the Senator that if we give them total control of the financial institutions which they now have control over and the allocation of credit, I do not think the Federal Reserve will have the capability to control the monetary policies of this country fully for a lot of reasons. We will be discussing that subject as we go along.

I would say that I hope in the future we will have the opportunity to fully consider these matters which are far-reaching changes we are making in the system. It is important not only to financial institutions but also to other citizens that we represent.

If we make these changes after we have had an opportunity to have input both at the committee level and on the floor in debate, that is the way the system ought to work. That is my only concern about it.

Mr. PROXMIRE. Mr. President, I am happy to yield to my good friend from California, who is also a valued member of our committee and was invaluable in our conference.

Mr. CRANSTON. I thank the Senator very much.

Mr. President, 1980 is appropriate for the start of a new decade for regulated financial institutions. We are ending the debate on whether or not to homogenize various elements of the financial system. Mr. President, this is landmark legislation.

Over the past 20 years, we have had the commission on money and credit, the Heller report, the Hunt Commission, the fine discussion, among others, all of which sought to address the problems caused when market interest rates rose above interest ceilings on deposits in cyclical periods of inflation. Today, we are to consider the Senate-House conference report on H.R. 4986, the culmination of arduous work on the future structure of the financial industry that began with the Hunt Commission in 1971.

This is a historic piece of legislation that is designed to move the Nations financial institutions into an evolving competitive environment and to address some of the issues of consumers needs in the financial market place of the future.

H.R. 4986 will provide for an orderly 6-year transition period during which all deposit interest rates will be permitted to rise to market levels as fast as possible. It is clear that the present system of deposit rate ceilings is manifestly unfair to small depositors and that such controls have fostered the development of new institutions and markets ready to meet the demands of the customer for high yields.

The transition to market interest rates requires the balancing of multiple interest. Depositors prefer the expeditious removal of the ceilings particularly when interest rates are high. Yet it is just at that time that the impact on banks and savings institutions of any change is most severe. In order to balance the interest of housing finance, depository institutions and depositors, the conference agreed to a 6-year timetable for the phasing out of regulation Q as promptly as possible and consistent with the safety and soundeness of depository institutions.

The movement toward market rates

on the liability side of the S. & L. ledger will prove beneficial to the consumer. However, this gives rise to the need for flexibility on the asset side of the ledger. The action of the Federal Home Loan Bank Board in proposing a rollover mortgage is a step in the right direction toward alleviating the pressures on the surety of the savings and loan industry to finance housing. It must be made clear that thrifts cannot pay market rates as mandated by this bill unless their earnings in the form of a more flexible mortgage instrument responds to market rates.

I would urge that the Federal Home Loan Bank Board approve a new mortgage instrument that is sensitive to market interest rate fluctuations in an expeditious manner.

In this bill, new investment opportunities are permitted thrift institutions so that they can be more competitive for funds for housing. These include: NOW accounts or interest bearing transaction accounts, authorized nationwide for individuals and nonprofit organizations. This will give to savings institutions throughout the country an important new tool in expanding the range of their services to consumers. This step will add some coordination to a world of bewildering array of interest bearing transaction and near transaction accounts being offered by various kinds of institutions.

In addition, savings and loans associations will be permitted to invest up to 20 percent of their assets in consumer loans, commercial loans, commercial paper, corporate debt securities, construction and leasehold loans. The bill also allows S. & L.'s to invest in open-end investment companies, to make second mortgage loans, to make residential loans up to 90 percent loan-to-value ratio. They will also be permitted fiduciary and credit card activity.

Federal savings and loans are authorized to issue mutual capital certificates and deposit insurance will be increased from $40,000 to $100,000.

These increased powers and other benefits will afford institutions the opportunity to increase the yields on their assets to help defray the higher cost of deposits and to offer consumers a broader range of services in order to maintain their deposit base.

The bill authorizes a lower range of reserves on depository institutions that are members of the Federal Reserve System and mandatory reserves on interest bearing transaction accounts held by all depository institutions. The disadvantage that arises because of the differences in reserve requirements between member and nonmember banks as the cost of doing business has caused an exodus of member banks from the Federal Reserve System, thereby hindering the ability of the Federal Reserve to conduct monetary policy. The disadvantage to members stems from the fact that member commercial banks must hold required reserves against their deposits liabilites in the form of non-interest-earning assets.

Nonmember commercial banks reserve requirements, however, can be met by both interest earning asset and by working cash balances. The introduction of NOW accounts and requiring increased reserves was expected to increase pressures on bank earnings and tend to encourage further attrition in Federal Reserve membership with consequent erosion of the effectiveness of the Federal Reserve System. This bill provides for mandatory reserves on NOW accounts on all depository institutions and for interest bearing reserves in certain circumstances. This section of the bill is a fine compromise between the Senate and House proposals and will lend itself to a more efficient national monetary policy.

One of the most important provisions of this bill is the usury override. The deregulation of interest rate controls on the liability side of thrift institution portfolios argues for similar action on usury laws that restrict the ability of depository institutions to earn a market rate on funds that are used for mortgage lending. It is well recognized by lending authorities that usury ceilings restrict the ability of financial institutions to make loans to those who can afford them and thereby distort the flow of funds by encouraging out-of-State investment of funds. Additionally, such laws restrict the ability of thrifts to earn a market rate of return on funds.

There are some State usury laws that prohibit not only lending at a usurious rate but also prohibit a consumer from knowingly receiving such a rate. These kinds of laws would interfere with the increased interest rates that consumers will be entitled to receive under the regulation Q phaseout section of the bill, when usury ceilings are below regulation Q ceilings. In addressing this problem this bill exempts deposit accounts from State usury laws so savers may receive a fair return on their deposits. While the usury override in the final bill is much broader than residential mortgages and deposits, clearly this is one of the most important provisions affecting the thrift industry's future. In order to give recognition to the States' interest in the usury laws, States are permitted 3 years to opt out of the provision exempting residential home mortgages from the usury laws.

This legislation encompasses an ending and beginning of a new decade for depository institutions. The Congress has been mulling over issues on the needed improvements in the structure of financial institutions to make them more competitive in the financial markets since the Hunt report in 1971. This bill is historic in that it is the first comprehensive step taken since the Banking Act of 1933 by the Congress to establish order and rationality by charting a course of the evolutionary process to change our financial industry. This will make the financial industry more responsive to consumer needs and economic reality.

I commend the chairman and the House-Senate Conference Committee on the fine job they have done.

I am proud to say that this bill had its beginnings in the Financial Institutions Subcommittee which I chair. I would also like to commend the chairman of the full committee, Senator PROXMIRE, and of the House-Senate Conference Committee for the fine job that has been done in bringing this legislation to resolution.

Additionally, I would like to thank the Senate Banking Committee staff persons who have worked on this bill over the years: Kenneth McLean, Lindy Marinaccio, Steve Roberts, and last but not least, my own staff Carolyn Jordan, counsel to the Senate Banking Committee.

Mr. STEWART. Mr. President, on Tuesday, March 18, the Senate Banking Committee heard testimony from Federal Reserve Board Chairman Paul Volcker in regard to the administration's recent credit tightening moves.

In a press release which accompanied the Chairman's statement, I noticed a sentence which read as follows:

> The Board also expects that banks, as appropriate and possible, will adjust lending rates and other terms to take account of the special needs of small business and other.

Now, this is a very interesting statement, but after hearing Chairman Volcker's testimony I am not convinced at all that it has much validity.

In attempting to slow the growth of the money supply, the Federal Reserve's present policy has the unfortunate effect of disproportionately reducing the availability of credit to the Nation's small business community. The effect this policy has on the housing industry is particularly devastating.

Just a few months ago, we were concerned about the 500,000 jobs that would be lost if Chrysler went under. Well, if we destroy the housing industry, then you can count on more than three times that many people put out of work. How in the world will that kind of unemployment stabilize our economy? I think that is a question that needs to be asked not only of Chairman Volcker but of all members of the Federal Reserve Board.

If we are going to get serious about tackling inflation, then we had better begin to look at the performance of the entire economy and tackle some of the root causes of this disease.

Declining productivity and innovation rates in this country are two of the most important reasons for our economy's poor performance on the inflation front. Whereas the United States used to lead the world in the development and use of new technology, we are now suffering a national slowdown in this area. Today, we rank seventh in productivity, capital investment, and economic growth behind Japan, West Germany, Italy, France, Canada, and the United Kingdom. I daresay we will slip even further if we drive the most innovative and productive segment of our free enterprise system—the small business sector—out of business.

Mr. President, last week I had the opportunity to meet with some 275 farmers from my State who were up here attending an Alabama farm bureau conference. These hard-working people are facing serious financial trouble this year. In fact, farmers in Alabama and across the Nation are having to decide whether they can even afford to continue farming in the face of the current high interest rates. Yet, Chairman Volcker proposes we escalate that rate even further. I would like Chairman Volcker to explain to me and to the people of my State just how his new policy is going to help the economy by driving our food growers out of business. What does the Federal Reserve Board think is going to happen to the price of food in this country if we devastate the family farmer?

Moreover, the family farmers are only one of a whole host of small business groups that will suffer unduly from the high interest rates. What about the homebuilders who are struggling to remain in business and ride out this current high interest rate period, and not having a great deal of success at it? Unfortunately, disrupting the housing industry in the short run entails serious long-term consequences as well. As we enter the 1980's, we are likely to experience a significant increase in housing demand as children from the postwar baby boom enter the home-buying market. It seems fairly clear that if we reduce the production capability at the same time the housing demand is escalating, we will have inflation in the housing market built into our economy for a long time to come.

What do we tell the potential homebuyer who has scrimped and saved for years to afford the downpayment on a home of his own? With mortgage interest rates as high as 17 percent fewer than 5 percent of the American population can afford to purchase the median-priced home today. What has happened to that old, often forgotten idea known as the "American dream," where a family could look forward to owning a home, a stake in the community? We are all aware of the sense of stability brought about by homeownership. I for one am not willing to abandon that idea and stand idle while the housing industry and all related industries are destroyed by the current monetary policies.

I understand the attempts of the Fed to restrain the growth of the Nation's money supply and I am sensitive to the effect that excessive money growth has upon the rate of inflation by devastating the most productive and efficient sector of our society—the small business community.

The Federal Reserve's monetary policies have succeeded in insuring that credit is available for investment if you can afford the price. But who can afford it when the prime rate is at 19 percent? That figure is higher than the farmer's, the homebuilder's, and the small businessman's average profit margin.

So the Federal Reserve's grand policy has the effect of crippling the most productive, and traditionally the most innovative sector of our economy—small business, while doing little to slow the speculative activity of those in our society who are immune from high interest rates. It is my understanding that during the first quarter of this year, while homebuilders and others in my State were going out of business, merger and acquisition activity in this country by the large-sized corporations skyrocketed. In fact, this activity was up over 40 percent from the first quarter of last year. While credit dried up for small- and medium-size businesses, large-size concerns, which could afford the expensive money, were paying the high price and still profiting.

Now, do not misunderstand me—I am not opposed to big business per se. What I am concerned with is that we maintain a healthy economic mix in our country comprised of small-, medium-, and large-size concerns. I am afraid, frankly, that the current policies of the Federal Reserve Board will strike a severe blow to that mixture by applying most harshly to the small- and medium-size businesses.

Something is clearly wrong with the present policy when it allows these kinds of inequities to exist.

The Federal Reserve has taken the initial step of recognizing the adverse impact of their policies on the small business sector of our economy. Chairman Volcker acknowledged this problem at last week's hearings. I want to suggest, however, that simply acknowledging the problem is not enough. I want to see some concrete proposals and guidelines issued by the Fed which will encourage banks to understand the special plight of the small businessperson, the farmers, the homebuilders, and the home buyers, and to adjust their lending policies accordingly. Without some strong guidance from the Fed, I fear that our Nation's financial institutions will simply find it inconvenient to carefully evaluate the needs of these special segments of our society.

● Mr. JACKSON. Mr. President, I would like to join in commending the distinguished chairman of the Banking Committee for his outstanding work in the management of this complex, essential piece of legislation, and for his clarifying the questions raised by the two Senators from Indiana. This colloquy assures that the relatively few financial institutions in question here will be treated equitably and not suffer the severe financial impacts that would have occurred in the absence of our discussion.●

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a concurrent resolution, on behalf of myself, Senator BAKER, and Senator PELL, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The assistant legislative clerk read as follows:

S. CON. RES. 84

Resolved by the Senate (the House of Representatives concurring), That a Joint Congressional Committee on Inaugural Ceremonies consisting of three Senators and three Representatives, to be appointed by the President of the Senate and the Speaker of the House of Representatives, respectively, is authorized to make the necessary arrangements for the inauguration of the President-elect and Vice President-elect of the United States on the 20th day of January 1981.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the resolution.

The question is on agreeing to the resolution.

The resolution was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Mr. President, noting for the RECORD that I once had more interest in this resolution than I now have, I move to table the motion to reconsider. [Laughter.]

The motion to lay on the table was agreed to.

MARCH GOLDEN FLEECE TO NATIONAL INSTITUTE FOR MENTAL HEALTH

Mr. PROXMIRE. Mr. President, I am giving my Golden Fleece of the Month Award for March to the National Institute for Mental Health for funding a study of why bowlers, hockey fans, and pedestrians smile.

In my opinion, the American taxpayers will say, with a puckish grin, that they are not bowled over by this pedestrian study.

The study was entitled "Social and Emotional Messages of Smiling: An Ethological Approach." It was part of a $75,000 grant to examine verbal and nonverbal cues in detecting deception.

Here is the abstract of the smiling study in the authors' own words:

> Did smiling evolve as an expression of happiness, friendliness, or both? Naturalistic observation at a bowling alley (N=1,793 balls) shows that bowlers often smile when socially engaged, looking at and talking to others, but not necessarily after scoring a spare or a strike. In a second study, bowlers (N=166 balls) rarely smiled while facing the pins but often smiled when facing their friends. At a hockey game, fans (N=3,726 faces) smiled both when they were socially involved and after events favorable to their team. Pedestrians (N=663) were much more likely to smile when talking but only slightly more likely to smile in response to nice weather than to unpleasant weather. These four studies suggest a strong and robust association of smiling with a social motivation and an erratic association with emotional experience.[1]

The researchers studied the smiles of bowlers by both openly videotaping some rolls of the bowling ball and by also secretly watching from near the pinsetting machine. According to the study:

> An observer knelt on a platform among the pin setting equipment at the end of the bowling alley behind the bowling pins and

[1] *Journal of Personality and Social Psychology*, Vol. 37, Number 9, September, 1979, p. 1939.

watched bowlers through binoculars as they finished their roll. The observer was 19.2 meters from the bowlers and observed through a narrow slit in the facade of the pin setting equipment.[2]

SMILES OF HOCKEY FANS STUDIED

The smiles of hockey fans were studied from photographs taken through a telephoto lens during a college hockey game.

The pedestrian smiles were observed along several sidewalks in a small city in both good and bad weather.

And what did it cost to observe people's smiling and unsmiling behavior? There is a controversy about that. The National Institute of Mental Health reported that only $1,325 was spent directly for salaries and expenses during the smiling study. However, that small figure does not include the cost of the equipment used in the study which was purchased under the grant for all aspects of the project on nonverbal cues. The taxpayers also paid for the video cassette tape recorder, two video cameras, two zoom camera lenses, two tripods, three 9-inch television monitors, one camera handler and special effects generator, two microphones, 50 video cassettes and other miscellaneous supplies and equipment. Clearly the real cost to the taxpayer is at least several thousand dollars more than the $1,325 suggested to my staff by the Institute.

STUDY NEVER SPECIFICALLY MENTIONED

In addition, it is interesting to note that this particular study of smiling is never specifically mentioned in the elaborate grant proposal approved by the National Institute of Mental Health. In response to my staff's questions as to where this particular study fit into the research that was approved, the Institute replied:

> The basic purpose of this grant was to study the accuracy of interpersonal perceptions and how deception is communicated and detected. The purpose of the study of smiling is to assess whether people smile as popularly assumed to indicate an underlying emotion such as joy or for some other social reason.

They also concluded that:

> The study provided strong evidence that social involvement rather than emotional state was the major cause of smiling.

While the rest of the project may well be of value, does the smiling study really go beyond Herman Melville's century old observation "A smile is the chosen vehicle for all ambiguities?" Does it substantially add to the original contribution to knowledge made by Charles Darwin in The Expression of Emotions in Man and Animals which he published 108 years ago in 1872?

QUESTION OF PRIORITIES

While I have no objections to a study of smiling as such, involved here is a question of priorities. In this period of double-digit, galloping inflation, should the hard-pressed taxpayer be asked to pay for an academic version of Bowling for Dollars?

It is my view that, like Darwin's, such studies might better be done under private auspices. I therefore smilingly award my Golden Fleece of the Month for March to the National Institute for Mental Health. I leave it to NIMH to determine whether my smile is a deception, an emotional state, or a sign of friendliness.

[2] *Ibid.* p. 1546.

THE SPIRIT OF LOWENSTEIN AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, when a man dies, it is the deeds of his life which we ought to remember and not the fact of his death. Just over a week ago, Al Lowenstein, an outspoken humanitarian and civil rights activist, was tragically murdered. We should remember his fighting spirit and relentless struggle for justice.

David Broder wrote a poignant article which recently appeared in the Washington Post. Lowenstein began his public career over 30 years ago as the activist President of the National Student Association. From the start, the breadth of his concerns was apparent. Broder tells us that Lowenstein was concerned not only with the protection of student rights but also the struggle for racial and economic justice in this Nation and in the world. The rest of his life was testimony of his devotion to these ideals.

David Broder's article portrays what he calls "vintage" Lowenstein. "Vintage" Lowenstein was a man who campaigned for his causes with "passionate conviction" and fought for them with "demonic intensity." His "tireless enthusiasm," "24 hour a day purposefulness," and his rare capacity for "perpetual rejuvenation" gave him an irresistible appeal. Above all, it seems that "vintage" Lowenstein refers to a man who insisted that our actions should be based on broad moral principles and not narrow self-interest.

David Broder pays the highest tribute which one can bestow on an activist such as Lowenstein. Men like Lowenstein may die, but their spirit and the causes for which they lived do not die with them. One such cause which we must consider is the Genocide Convention which continues to languish before the Senate. If Lowenstein left any legacy it would be his appeal that we act on a matter of such overwhelming concern to all men such as the Genocide Convention.

I urge my colleagues to immediately ratify the Genocide Convention.

UPCOMING VISIT OF BEGIN AND SADAT

Mr. EAGLETON. Mr. President, as the world knows, Prime Minister Begin and President Sadat will be meeting separately with President Carter at the White House early next month. Such talks, of course, should be of enormous significance at any time, but take on an intensely heightened importance by reason of the United States affirmative vote in the United Nations on Resolution No. 465 on March 1, 1980.

I want to discuss that resolution in the context of American Middle East foreign policy and the future role of President Carter and his administration in the Middle East peace process.

Mr. President, I have read and re-read the March 1 U.N. resolution half a dozen times. In essence, the resolution is a castigation of Israel and by our affirmative vote we became a participating castigator.

The resolution's repeated references to Jerusalem leave the impression that there will be a time when Jerusalem once again will be jurisdictionally divided, which we all know will not and should not occur. My own first visit to Jerusalem with Mayor Teddy Kollek as my guide dramatically etched on my mind that Jerusalem never again should be divided either by barriers or by separate governmental authorities.

The resolution called for the dismantling of existing settlements which was not, is not, and should not be the policy of the United States. Whether existing settlements are at some time in the future to be dismantled is a matter to be decided in subsequent negotiations. It should be noted that in the Sinai, five settlements have been dismantled, but three in the South remain.

The resolution called upon Israel to forgo the creation of new settlements in the West Bank and Gaza. This is part of the American foreign policy posture. It was part of American foreign policy, under Presidents Nixon and Ford as well. The Rabin government (1974–77) was very cautious in the creation of new settlements, restricting them to military installations bearing a distinct security consequence. The Begin government has been far more expansive in the creation of new settlements and this policy shift has caused considerable division of opinion within Israel as a whole and strenuous disagreement within the Begin government itself. It should be noted that the Supreme Court of Israel has ruled that Israel does not have an unfettered right of settlement in the West Bank. For myself, I concur with our policy and with that body of opinion within Israel that the creation of new settlements in the West Bank does constitute an impediment to the successful conclusion of the Middle East peace process.

This brings me to the vote in the United Nations on March 1. It was a colossal blunder, a blunder not susceptible to instant erasure by the President's subsequent disavowal.

The March 1 vote seriously compromised the President's role as trusted mediator within the Camp David process. President Carter had established a high degree of credibility in both Israel and Egypt as a result of his personal, herculean efforts at the Camp David summit of September 5–17, 1978. For a mediator to succeed in his difficult role, he must be perceived by both sides as being fair. The March 1 U.N. vote was so patently wrong, so obviously unfair to Israel as to damage seriously the President's mediating capacity.

Considering the vital and delicate American mediating role in the Middle East peace process, I seriously question whether the United States should be an affirmative voting participant in future U.N. resolutions even if the subject matter of some future resolution be limited solely to the creation of new settlements.

Israel well knows our views thereon. They have been expressed privately and publicly time and time again. Can the United States both mediate and castigate simultaneously? Should the United States join the throng or should we not remember that we, as no other nation on Earth, have a special relationship with Israel and a special role to play in the Middle East peace process?

We must never be afraid to join with Israel in working for peace. At the same time, we must beware of overly intense pressure which could lead to an insecure peace. The United States cannot and should not dictate a settlement. A dictated peace is an unworkable peace. A dictated peace is no peace at all.

Thus, in my opinion, the upcoming talks in April between President Carter and Prime Minister Begin and President Sadat take on a significance of enormous proportions even transcending the immediate negotiations between Israel and Egypt. President Carter has to do more than try to bring Israel and Egypt closer together in the immediate negotiations. He has the even larger burden of restoring his and his administration's credibility in the overall peace process, a burden every bit as awesome as the one he successfully carried at the 1978 Camp David summit.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

REORGANIZATION PLAN NO. 1 OF 1980—MESSAGE FROM THE PRESIDENT—PM 189

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

I am submitting herewith to the Congress Reorganization Plan No. 1 of 1980, under authority vested in me by the Reorganization Act of 1977 (Chapter 9 of Title 5 of the United States Code). The Plan is designed to strengthen management of the Nuclear Regulatory Commission in order to foster safety in all of the agency's activities.

The need for more effective management of the Nuclear Regulatory Commission has been amply demonstrated over the past year. The accident at Three Mile Island one year ago revealed serious shortcomings in the agency's ability to respond effectively during a crisis. The lessons learned from that accident go beyond crisis management, however. They provide the impetus for improving the effectiveness of all aspects of the government regulation of nuclear energy.

In my statement of December 7, 1979, I responded to the recommendations of my Commission on the Accident at Three Mile Island and set forth steps now being taken to address those recommendations. I stated that I would send to Congress a Reorganization Plan to strengthen the Nuclear Regulatory Commission's ability to regulate nuclear safety. I am submitting that Plan today.

The Plan clarifies the duties of the Chairman as principal executive officer. In addition to directing the day-to-day operations of the agency, the Chairman would take charge of the Commission's response to nuclear emergencies and, as principal executive officer, would be guided by Commission policy and subject to Commission oversight.

MANAGEMENT PROBLEMS

Intensive investigations undertaken since the Three Mile Island accident have revealed management problems at the Nuclear Regulatory Commission. These problems must be rectified if the Commission is to be a strong and effective safety regulator.

—My Commission, called the Kemeny Commission after its Chairman, Dr. John Kemeny, concluded that the underlying problem at Three Mile Island stemmed not from deficient equipment but rather from compounded human failures. This included the inability of the Nuclear Regulatory Commission to pursue its safety mission effectively in view of its existing management policies and practices. The Kemeny Commission reported a lack of "closure" in the system to ensure that safety issues are raised, analyzed and resolved. Kemeny Commission members also concluded that the Nuclear Regulatory Commission relies too heavily on licensing, and pays insufficient attention to ensuring the safety of plants once they are in operation.

—During the course of its investigation, the Kemeny Commission found serious managerial problems at the top of the Nuclear Regulatory Commission. It noted that the Commissioners and the Chairman are unclear as to their respective roles. Uncertain, diffuse leadership of this kind leads to highly compartmentalized offices that operate with little or no effective guidance and little coordination.

—A recently completed independent study authorized and funded by the Nuclear Regulatory Commission itself also found serious fault with the Commission's management and called for a major organizational overhaul. The report states that there is no authoritative manager but, instead, five equally responsible Commissioners who deal individually with office directors who, in turn, head their own "independent fiefdoms."

—Likewise, a recent report of the General Accounting Office notes the failure of the Nuclear Regulatory Commission to define either the authority of the Chairman or that of the Executive Director for Operations. The staff lacks policy guidance and top management leadership to set priorities and resolve safety issues. There are unreasonable delays in developing policies to guide the licensing and enforcement activities of the agency.

The central theme in all three of these studies is the failure of the Nuclear Regulatory Commission to provide unified leadership and consistent direction of the agency's activities. The present statutes contain conflicting and ambiguous provisions for managing the agency. Important corrective actions cannot or will not be taken by the Commission until the laws are changed. Failure to do so constitutes a continuing nuclear safety hazard.

The present Reorganization Plan would improve the effectiveness of the Nuclear Regulatory Commission by giving the Chairman the powers he needs to ensure efficient and coherent management in a manner that preserves, in fact enhances, the commission form of organization.

COMMISSION

Under the proposed Plan, the Commission would continue to be responsible for policy formulation, rulemaking and adjudication as functions which should have collegial deliberation. In addition, the Commission would review and approve proposals by the Chairman concerning key management actions such as personnel decisions affecting top positions which directly support Commission functions, the annual budget, and major staff reorganizations. In carrying out its role, the Commission would have the direct assistance of several Commission-level offices as well as the licensing board, the appeal panel, and the Advisory Committee on Reactor Safeguards. The Plan would not alter the present arrangement whereby the Commission, acting on majority vote, represents the ultimate authority of the Nuclear Regulatory Commission and sets the framework within which the Chairman is to operate.

CHAIRMAN

Under the Plan, the Chairman would act as the principal executive officer and spokesman for the Commission. To accomplish this, those functions of the Nuclear Regulatory Commission not retained by the Commission would be vested in the Chairman, who is currently coequal with the Commissioners in all decisions and actions. The Chairman would be authorized to make appointments, on his own authority, to all positions not specified for Commission approval and would be responsible to the Commission for assuring staff support by the operating offices in meeting the needs of the Commission. The Executive Director for Operations would report directly to and receive his authority from the Chairman. Heads of operating offices would also report to the Chairman or, by delegation, to the Executive Director for Operations. Office heads would also be authorized to communicate directly with members of the Commission whenever an office head believed critical safety issues were not being addressed.

EMERGENCY MANAGEMENT

The Nuclear Regulatory Commission's ability to respond decisively and responsibly to any nuclear emergency must be fully ensured in advance. Experience has shown that the Commission as a whole cannot deal expeditiously with emergencies or communicate in a clear, unified voice to civil authorities or to the public. But present law prevents the

Commission from delegating its emergency authority to one of its members. The Plan would correct this situation by specifically authorizing the Chairman to act for the Commission in an emergency. In order to ensure flexibility, the Chairman would be permitted to delegate his authority to deal with a particular emergency to any other Commissioner. Plans for dealing with various contingencies would be approved by the Commission in advance. The Commission would also receive a report from the Chairman or his designee describing the management of the emergency once it was over.

ACTIONS NOT INCLUDED IN THIS PLAN

Not included in this Plan are two actions that I support in principle but that need not or cannot be accomplished by means of a Reorganization Plan. First the Commission, as part of its implementation of this reorganization, can and should establish an internal entity to help oversee the performance of the agency as it operates under the Chairman's direction. This action does not require a Reorganization Plan. Second, I have consistently favored funding assistance to intervenors in regulatory proceedings. This is particularly important in the case of nuclear safety regulation. I therefore encourage the Commission to include consideration of intervenor funding as part of its review and upgrading of the licensing process, as called for by the Kemeny Commission. I have also requested Congress to appropriate funds for this purpose. This activity cannot be authorized by a Reorganization Plan.

NO ADDED COSTS

This proposed realignment and clarification of responsibilities would not result in an increase or decrease of expenditures. But placing management responsibilities in the Chairman would result in greater attention to developing and implementing nuclear safety policies and to strict enforcement of the terms of licenses granted by the Commission.

Each of the provisions of this proposed reorganization would also accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No statutory functions would be abolished by the Plan; rather they would be consolidated or reassigned in order to improve management, delivery of services, execution of the law, and overall operational efficiency and effectiveness of the Commission.

By Executive Order No. 12202, dated March 18, 1980, I established a Nuclear Safety Oversight Committee to advise me of progress being made by the Nuclear Regulatory Commission, the nuclear industry, and others in improving nuclear safety. I am confident that the present Reorganization Plan, together with the other steps that have been or are being taken by this Administration and by others, will greatly advance the goal of nuclear safety. It would permit the Commission and the American people to hold one individual—the Chairman—accountable for implementation of the Commission's policies through effective management of the Commission staff. Freed of management and administrative details, the Commission could then concentrate on the purpose for which that collegial body was created—to deliberate on the formulation of policy and rules to govern nuclear safety and to decide or oversee disposition of individual cases.

JIMMY CARTER.

THE WHITE HOUSE, *March 27, 1980.*

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 9:36 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its enrolling clerks, announced that the Speaker has signed the following enrolled bill:

S. 1515. An act to authorize the striking of Bicentennial medals.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. ROBERT C. BYRD).

ENROLLED BILL SIGNED

At 1:35 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the Speaker has signed the following enrolled bill:

H.R. 3919. An act to impose a windfall profit tax on domestic crude oil, and for other purposes.

At 2:47 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 3236) to amend title II of the Social Security Act to provide better work incentives and improved accountability in the disability insurance program, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ULLMAN, Mr. CORMAN, Mr. PICKLE, Mr. JACOBS, Mr. COTTER, Mr. RANGEL, Mr. CONABLE, Mr. ARCHER, and Mr. DUNCAN of Tennessee were appointed as managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4612) to amend title XVI of the Social Security Act to maintain for an additional 3 years the curent program of preventive services, referral, and case management for disabled children receiving SSI benefits; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ULLMAN, Mr. CORMAN, Mr. RANGEL, Mr. BRODHEAD, Mr. CONABLE, and Mr. ROUSSELOT were appointed as managers of the conference on the part of the House.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4986) to amend the Federal Reserve Act to authorize the automatic transfer of funds, to authorize negotiable order-of-withdrawal accounts at depository institutions, to authorize federally chartered savings and loan associations to establish remote service units, and to authorize federally insured credit unions to maintain share draft accounts, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 309. A concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of the bill (H.R. 4986).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, March 27, 1980, he presented to the President of the United States the following enrolled bill:

S. 1515. An act to authorize the striking of Bicentennial medals.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

Mr. STENNIS. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the following nominations: in the Regular Army, there are 48 appointments (24 temporary appointments to the grade of major general; 24 appointments to the grade of brigadier general) (list beginning with Charles J. Fiala); Brig. Gen. Cornelius Ottway Baker, Army National Guard, Adjutant General's Corps, to be brigadier general of the line; Vice Adm. William J. Crowe, Jr., U.S. Navy, to be admiral; Rear Adm. Earl B. Fowler, Jr., U.S. Navy, to be vice admiral; Brig. Gen. Kenneth W. Weir, of the Marine Corps Reserve for temporary appointment to the grade of major general; and in the Marine Corps Reserve, there are three appointments to the grade of brigadier general (list beginning with John J. Krasovich). I ask that these names be placed on the Executive Calendar.

The PRESIDING OFFICER. The nominations will be placed on the Executive Calendar.

Mr. STENNIS. In addition, Mr. President, in the Regular Army, there are 1,886 appointments to the grade of second lieutenant (list beginning with Dan F. Abahazy); in the Reserve of the Army and Army National Guard there are 1,024 promotions to the grade of colonel and lieutenant colonel (list beginning with Fred A. Abernethy); in the Navy, there are 2,536 temporary and permanent promotions to the grade of lieutenant (list beginning with Phillip M. Abbott); Maj. John R. Bourgeois, U.S. Marine Corps, for appointment to the grade of lieutenant colonel; and in the Marine Corps, there are 30 permanent appointments to the grade of second lieutenant (list beginning with Chester A. Arnold, Jr.). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk appeared in the RECORD on February 26, 1980, at the end of the Senate proceedings.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HEFLIN:

S. 2483. A bill to amend title 28 of the United States Code to require the Chief Justice of the United States to give an annual address to the Congress on the state of the judiciary; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 2484. A bill providing that certain foreign losses which were economically incurred before December 31, 1975, will not be subject to the loss recapture rules of the Tax Reform Act of 1976; to the Committee on Finance.

By Mr. LONG:

S. 2485. A bill to amend chapter 42 of the Internal Revenue Code of 1954 with respect to the determination of second tier taxes; to the Committee on Finance.

By Mr. CULVER (for himself, Mr. McGOVERN, and Mr. BAUCUS):

S. 2486. A bill to amend the Internal Revenue Code of 1954 to exclude from taxation interest earned on obligations substantially all of the proceeds of which are used to provide financing for railroad rehabilitation; to the Committee on Finance.

By Mr. BELLMON:

S. 2487. A bill to amend the Internal Revenue Code of 1954 to provide more equitable treatment of independent oil producers, including royalty owners, under the crude oil windfall profit tax; to the Committee on Finance.

By Mr. CHURCH (for himself, Mr. CULVER, and Mr. MAGNUSON):

S. 2488. A bill to establish a national soil conservation program; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CANNON (for himself and Mr. MAGNUSON) (by request):

S. 2489. A bill to authorize appropriations for the Coast Guard for fiscal years 1981 and 1982, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. METZENBAUM (for himself, Mr. BAUCUS, and Mr. LEAHY):

S. 2490. A bill to provide certain requirements for infant formula, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PROXMIRE (for himself, Mr. GARN, Mr. WILLIAMS, and Mr. LUGAR):

S. 2491. A bill to provide for the monitoring of restrictions on Soviet trade; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. INOUYE (for himself, Mr. CANNON, Mr. HOLLINGS, Mr. MAGNUSON, Mr. MATHIAS, Mr. MATSUNAGA, Mr. PACKWOOD, Mr. SARBANES, and Mr. STEVENS):

S. 2492. A bill to regulate commerce, promote energy self-sufficiency, and protect the environment, by establishing procedures for the location, construction, and operation of ocean thermal energy conversion facilities and plantships to produce electricity and energy-intensive products off the coasts of the United States; to amend the Merchant Marine Act, 1936, to make available certain financial assistance for construction and operation of such facilities and plantships, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. JAVITS (for himself, Mr. BAUCUS, Mr. CRANSTON, Mr. DECONCINI, Mr. DOLE, Mr. HATCH, Mr. MATHIAS, Mr. PELL, Mr. RANDOLPH, Mr. RIEGLE, Mr. STAFFORD, and Mr. WILLIAMS):

S.J. Res. 155. A joint resolution providing for the designation of the week beginning April 13, 1980 and ending April 19, 1980, as "National Dance Week"; which was considered and passed.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEFLIN:

S. 2483. A bill to amend title 28 of the United States Code to require the Chief Justice of the United States to give an annual address to the Congress on the state of the judiciary; to the Committee on the Judiciary.

Mr. HEFLIN. Mr. President, today I am introducing a bill which would request the Chief Justice of the U.S. Supreme Court to address on a periodic basis, at such times as are mutually agreed upon by the Chief Justice and the leadership of Congress, a joint session of Congress on the state of the U.S. judiciary.

Mr. President, under the Constitution of the United States the responsibilities for governing this Nation are divided among three coequal branches: the legislative branch, the executive branch, and the judicial branch. All of us here in the legislative branch are, of course, familiar with intricacies and the workings and the problems which face us as legislators because of our attention to business of Congress. Moreover, we are informed through various means and through numerous contacts with the executive branch of the many-faceted activities of that branch and specifically, we are given the Chief Executive's plan of action on an annual basis by means of a state of the Union address given by the President before a joint session of Congress.

Mr. President, in my judgment, we have for many years been giving scant attention to the third coequal branch of Government, the U.S. judiciary. Although there are numerous points of contact at the committee and subcommittee level with the judicial system, largely the Congress as a whole has ignored the third branch until some crisis situation demands that we provide additional Federal judges or implement some reorganization so that the judicial branch may accomplish its constitutional mandate without being overwhelmed with important, but time-consuming work.

At least a partial remedy to this situation, Mr. President, would be for the leadership of the Congress to periodically invite the Chief Justice of the United States to appear before a joint session of Congress to inform the entire Congress as to the "State of the Judiciary." Such an address by the Chief Justice would not eliminate the need for congressional hearings and oversight, but such address by the Chief Justice would focus attention of the Congress and the Nation on the many problems which face our judiciary and would allow us to set priorities and provide impetus to programs which require congressional action. Although there are some who would advocate an annual address by the Chief Justice, it is my judgment that an annual appearance by the Chief Justice, while desirable, is not absolutely necessary, and that flexibility should be built into the procedure so that during years when the congressional leadership and the Chief Justice feel that it is appropriate for him to appear in person he could do so, and in other years, the Chief Justice could transmit a written state of the judiciary message to the Congress which would be placed in the RECORD and made available to each Member of Congress.

A periodic address or annual written report by the Chief Justice would be proper and meaningful in a number of ways.

First, it would be an appropriate and dignified method for the head of one coequal branch of Government to coordinate and communicate its activities and desires for legislation to another coequal branch of Government.

Next, it would bring to public attention many of the problems which face the judiciary and which need to be remedied but for which there is only a small constituency because of a lack of public information. Further, it would force the justices and judges to face the shortcomings of the judiciary system and to come forward with solutions and recommendations for the Congress to act upon.

Finally, it would provide a forum and an opportunity to demonstrate the necessity for strengthening our Federal court system and would highlight the important role that an independent judiciary plays in protecting the rights and freedoms which are so much enjoyed by the people of this Nation.

It is my understanding, Mr. President, that legislation similar to this has been advocated since as far back as 1953 by our former Secretary of State and Attorney General Mr. William P. Rogers and moreover, it has the support of the American Bar Association. I might add incidentally, that the Chief Justice already delivers to the American Bar Association an annual state of the judiciary message; thus we could not be imposing a burdensome new requirement on the Chief Justice, since the machinery has already in hand for the preparation of such a report.

Mr. President, I would like to insert at this point in the RECORD the annual report on the state of the judiciary delivered by Chief Justice Warren E. Burger at the midyear meeting of the American Bar Association in Chicago, Ill., on February 3, 1980. It is my hope that my colleagues on both sides of the Capitol will take the time to read this report and I certainly hope that in the years to come, the Chief Justice will be afforded an opportunity to come before the Congress in person to deliver this message when he deems it in the interests of justice to do so, and that in other years we will receive the thoughts and recommendations of the Chief Justice in formal written reports to the Congress.

Mr. President, I encourage the Congress to take speedy action on this measure so that, hopefully, we will be able to invite the Chief Justice for his first state of the judiciary address at the beginning of the next session of Congress in early 1981.

I ask unanimous consent that my proposed bill be printed at this point in the RECORD and that immediately following such bill that the annual report on the state of the judiciary, dated February 3, 1980, be likewise printed in the RECORD.

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

S. 2483

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 28 of the United States Code is amended by inserting after section 6 the following new section:

"§ 7. State of the judiciary address

"The Chief Justice shall at such times as may be mutually agreed by the Chief Justice, the majority leader of the Senate, and the Speaker of the House of Representatives, address in person the Senate and the House of Representatives meeting in joint session. Each such address shall include information on the state of the judiciary and recommendations for the enactment of such measures as the Chief Justice deems are necessary and expedient. During any calendar year in which the Chief Justice does not appear personally to make such an address, a copy of such address shall be transmitted to Congress not later than March 15 of each such year.".

SEC. 2. The table of chapters for chapter 1 of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 6 the following new item: "7. State of the judiciary address.".

SEC. 3. The amendments made by this Act shall take effect with respect to the first full calendar year occurring after the date of the enactment of this Act.

ANNUAL REPORT ON THE STATE OF THE JUDICIARY

(Remarks of Warren E. Burger, Chief Justice of the United States, at the Midyear Meeting, American Bar Association, Chicago, Ill., February 3, 1980)

Ten years ago as we entered the 1970's, and each year since, you have invited me to make a report on what you have called the state of the judiciary. Now we are at the turn of another decade, and it is useful to "take stock" of what has been going on and try to look ahead.

In the administration of justice, the 1970's were characterized by two significant factors. The first was an enormous increase in cases filed in both the Federal and the State courts. The second was the response in the form of changes in judicial administration and in facilities to deal with the onslaught of cases and the management of judicial business. The responses can be summarized briefly:

(1) Statistical information on the work of our courts, both State and Federal, has been improved, especially at State levels.

(2) The use of modern business methods and modern technology in the courts has been greatly increased.

(3) The use of trained court administrators or court managers has multiplied enormously in the 1970's. Today there are fifty times as many trained court administrators as a decade ago.

(4) The postgraduate or continuing training of judges has been greatly expanded. Ninety percent of all Federal judges now serving have taken part in one or more training programs of the Federal Judicial Center and more than 1500 State judges receive advanced training at the National Judicial College each year.

I regret not having been able to attend the National Conference on the Role of the Lawyer in the 1980's last week, sponsored by the General Practice Session and the Young Lawyers Division. I share your concerns about new problems facing the practicing profession and strongly endorse the effort to think about what our society will be asking of lawyers in the years ahead—and how lawyers can meet those demands at costs people can afford.

The focus you place on legal education and standards for admission to the bar, the regulation of the bar, and the relationship of these factors to the independence of the bar is very important. The legal profession exercises a monopoly and monopolies must be subject to regulation. It is particularly important, however, that a profession regulate itself. The choice is whether the bar will regulate itself and do it adequately in the public interest or whether it will be regulated by external authority.

DISCIPLINE OF THE BAR

It is now nearly eight years since the report on discipline of the bar was made by this association's committee chaired by my former colleague, the late Justice Tom Clark. That committee concluded that discipline of the bar, in the real sense, was virtually nonexistent. There has been some improvement since that time, chiefly under the stimulation of this association, but we have a long way to go.

Instruction in professional ethics should permeate the entire educational experience beginning with the first hour of the first day in law school. A token course on ethics might be worse than none for it may create an illusion pregnant with mischief. It is always a dangerous business to train people in the use of weapons—whether of the lethal kind or the legal kind—without inculcating ethical standards and sensitivity to guide their proper use. The function of legal education must be more than simply producing highly-skilled legal mechanics.

The association has begun a reexamination of the standards of professional conduct, but more important is what we do with those standards once we restate them. How we make them understood and how we enforce them is the test.

EDUCATION IN LAWYERING

Over the past five or six years, there has been an enlarged focus on the problems relating to the making of a lawyer. After a mild flurry over the dimensions of the problem of the quality of trial advocacy, a broad consensus was reached by judges, practicing lawyers and the academic community. There is no longer any doubt but that we have a "serious problem" in terms of the quality of some lawyers' performance in the trial courts. But the profession has now recognized its obligation to do whatever is necessary to make sure that the consumers of lawyers' services receive their money's worth.

CRAMTON REPORT

The law schools have responded by expanding existing programs of training and creating new ones where none existed. The report of the task force which you created in 1978, chaired by Dean Roger Cramton of Cornell, will, in years to come, be seen as a very important milestone in the continuing development of legal education.

TRIAL LAWYERS IN LAW SCHOOLS

For me, the two highlights of that report are first, acceptance of the idea that training in practical aspects of lawyering should begin in law school and should be available to every student who wants it; and, second, that experienced trial lawyers and trial judges must be drawn into the teaching process, working with the faculties. A particularly encouraging sign is that the Harvard Law School, long a pioneer in this area, has established a two and one-half million dollar program for training in trial advocacy jointly with Northeastern Law School. More than half of the law schools now have useful programs on advocacy.

ADMISSION TO FEDERAL COURTS

In a related matter, the committee created by the judicial conference of the United States to study trial court advocacy and to consider the need for standards for admission to practice in the Federal courts reported last September. Its report was unanimously accepted by the judicial conference. An implementation committee has been created to develop pilot projects in half a dozen or more Federal districts so that both the need and the value of special admission standards can be tested.

LAWYERS' FEES

There is a rising concern with legal costs. This affects both the public and the profession, and you have shown your concern with this problem. Lawyers, like all others, must contend with inflation, but in the past fifteen years or more, legal fees have increased more rapidly than the inflated cost of living.

We should make no mistake about it; there is a risk that lawyers may be "pricing themselves out of the market." This must be met by the profession, or it may well be dealt with by external forces. The seeds may be planted that will change the private practice of law as we have known it. I doubt whether that would be good for the public or the profession.

Fortunately, this association has been alert to the problem and during the past dozen years there have been some important developments: As late as 1965 only five percent of the poor were able to receive needed legal services. That year the Federal Government and this association joined forces to initiate the first federally-funded program for legal aid to the poor. The next step was creation of the Legal Services Corporation in 1973, with this association again giving leadership. Currently that body has 5,000 lawyers who reach more than ¾ of the nation's poor. Its current annual budget is in excess of 300 million dollars.

In the private sector, the expanded use of well-trained assistants, sometimes called "paralegals," has been an important development. Today there are 300 schools—double the number of law schools—for training paralegals; 49 of those schools are accredited by the A.B.A. The advent of the paralegal enables law offices to perform high quality legal service at a lower cost. I suspect we have only scratched the surface on this development. This is not new. Generations ago, lawyers here, as in England, made use of highly trained "clerks" for limited kinds of legal work that did not call for a full-fledged lawyer.

POUND CONFERENCE

Two other important projects which grew out of the 1976 Pound Conference in St. Paul, will, in time, prove very important. One is the experimentation with expanded use of arbitration for large claims; the other is finding alternative methods of resolving minor disputes of the kind which we had once hoped would be taken care of in small claims courts—without lawyers.

Our colleague Griffin Bell, who was an active member of the Pound Conference and chairman of the Association's follow-up and implementation committee, carried these programs with him when he became attorney general. The pilot programs he launched should be carefully studied.

MISUSE OF JUDICIAL PROCESS

We must not let the situation develop to the point where only the more affluent individuals and large business enterprises can afford the services of private practitioners.

One factor which contributes to the high cost of legal services is the misuse and abuse of pretrial judicial processes. Yet we must not be too critical of lawyers for using the mechanisms permitted by statute or court rules. Roscoe Pound pointed out, nearly three-quarters of a century ago, that the very nature of our adversary system invites abuses. The responsibility for control rests on both judges and lawyers. Where existing rules and statutes permit abuse, they must be changed. Where the power lies with judges to prevent or correct abuse and misuse of the system, judges must act.

Litigation does not manage itself. Within reason, trial judges must take a more active role in the management of litigation by enforcing schedules and limiting freewheeling pretrial activities. Sanctions must be used to prevent or penalize abuses and judges are making greater use of this kind of control.

EXCESS COSTS ON APPEALS

The Judicial Conference Committee on Appellate Rules is reexamining the whole subject of the Appellate process. A good many experienced lawyers believe—and this belief is shared by many Appellate judges—that we have "gone overboard" on the matter of printing records on appeal. There is not universal agreement on this subject. Some believe that an appellate court must have at least three printed copies of the record. Others believe that the original record is sufficient in the vast majority of cases.

The Fifth Circuit conducted a twenty-month experiment, relying primarily on the original record supplemented by a limited printed appendix covering critical material. This eliminated more than three and one-half million pages[1] of printed records in 20 months. In this one experiment, the savings to the litigants amounted to more than one million dollars in printing costs. It reduced fees for assembling the material. It is not unimportant that it also saved 1500 linear feet of shelf space in the court.

This is the type of imaginative experimentation by judges and lawyers which we should encourage and on which we have the cooperation of the bar. Chief Judge Brown of the fifth circuit, his successor Chief Judge Coleman, and their colleagues are to be congratulated for their initiative.

INCREASED FILINGS

A striking change in the work of the courts in recent years is the tremendous increase in cases filed along with the novelty and complexity of questions presented. In 1970, there were 317 cases for each district judge. In 1980, we estimate that the figure will be approximately 400 cases. Filings in the courts of appeals have doubled in the past ten years. We can see that measured by the case filings per judgeship, the impact of 152 new Federal judges in the omnibus bill last year will soon be wiped out.

The quality of the performance of the courts is bound to suffer with this overload. The time has come to find some new method of providing judges for the Federal system when they are needed—not eight, nine or ten years later depending upon whether the same political party is in control of the White House and the Congress.

[1] I am reliably informed this is the equivalent of 450 pulpwood trees.

DELAY IN PROVIDING JUDGES

We must devise a method for making an annual evaluation and projection of the need for additional judges. Congress should promptly consider authorizing the judicial conference to evaluate the need for additional judgeships and, subject to congressional veto, establish new judgeships as the needs require.

Plainly it is easier to define the problem than to spell out the details of a corrective statutory scheme. We must preserve the important constitutional checks and balances, and yet meet the needs of the public. People seeking justice in the Federal courts should not have to wait upon the winds and tides of the political processes to find a judge to hear a case.

As caseloads increased in the 1970's, the judicial machinery and judicial methods demanded greater attention. The antiquated methods used in the first half of this century were not adequate for the second half. Roscoe Pound's prophecies went unheeded for many decades but the voices of men like Chief Justice Vanderbilt, Judge John J. Parker and Justice Tom Clark began to get a greater audience in the fifties and sixties, and some important progress has been made.

CIRCUIT EXECUTIVES

Nine years ago, court administrators were authorized for Federal courts for the first time in our history. Congress, however, granted only one for each of the eleven circuits. The circuit executives have demonstrated the value of trained personnel to assist chief judges and circuit councils in the management of the business of the courts. In the current budget requests, we are asking Congress to provide a counterpart of the circuit executives for each of the 15 largest metropolitan district courts. Although I am confident Congress will provide this necessary assistance, I urge the association to lend its efforts in support of this budget request.

STATE-FEDERAL COUNCILS

A related development is that more than 40 States now have State-Federal councils which provide a clearinghouse for the two systems. This can eliminate conflicts in court calendars and jury calls, and coordinate litigation where both Federal and State courts have cases arising out of a single event, such as an airplane crash.

NATIONAL CENTER FOR STATE COURTS

Ten years ago, there was no national or central mechanism for improving the administration of justice in the State courts. Some of the States, under strong leadership by their judges, had made great strides within their own borders. Since 1971 we have had the National Center for State Courts. It has a splendid headquarters at Williamsburg, Virginia with a staff of specialists to aid the State courts. It has brought 20th century management and technology into State court operations.

METROPOLITAN CHIEFS CONFERENCE

Another useful development has been the conference of metropolitan chief judges, which now includes the chiefs of the 30 largest metropolitan Federal districts. The chiefs of these important courts meet and exchange information on procedures and practices to speed up the work of the courts on subjects ranging from jury utilization to calendar methods and pretrial proceedings.

INCREASED PRODUCTIVITY

The accumulated results of these new methods, and others too numerous to mention—and harder work by the judges and court personnel—have increased the productivity of Federal judges by more than one third. Year end reports indicate a general decline in industrial productivity in the U.S., and this makes the performance record of Federal judges stand out as nothing less than remarkable.

CREATING A NEW PROFESSION

At no time in history did the need for changes in methods and procedures come into such sharp focus as in the past dozen years when the caseloads in both Federal and State courts mounted. But in the 1970's, the unique American management genius and use of technology finally found its way into the judicial systems of the country.

At the 1969 annual meeting at Dallas, we took note that the United States had more astronauts qualified for space exploration than qualified court administrators. This association took the leadership in bringing the institute for court management into being. For ten years the institute has conducted a full-time, six-month training course and has certified 328 individuals as court administrators. It has also developed shorter courses, seminars and workshops for advanced training of court clerks, deputy clerks and judges. Several thousand individuals have participated in the training programs of the institute. This has brought about a revolution in court administration. Today there are more than 500 trained court administrators operating in the State and Federal systems compared with perhaps 20 in 1969. Without the help and support of this association the institute could not have been developed and we would not have seen the creation of the new profession of court managers.

JUROR TIME WASTED

In one important area of court administration which affects a great many Americans, there has been some, but not enough, improvement. We deal far too casually with the time of citizens called for jury duty. This is reflected in a stream of letters to editors and to judges, and in articles in legal publications reciting the complaints of citizens whose time and patience are abused.

Recently a biting editorial in the New York Journal of Commerce echoed the complaint that too many citizens have several weeks of their lives wasted while waiting in the jurors' lounge for a call that may never come. The constant complaint is that time is spent in varying stages of boredom watching daytime television, reading outdated magazines or playing checkers with others whose time is being similarly wasted. All too many citizens who respond to the jury call, initially with a sense of performing a civic duty, are disillusioned by the lack of an adequately organized system or method to make reasonable use of their time.

We know that there cannot be total utilization of the time of every citizen called for jury duty. Some may serve in one case or two. Some are held for several weeks with no service at all. In the name of citizenship we ask them to accept far less than their normal earnings and sometimes make sacrifices in their family life.

Judges and court managers must minimize the waste of citizens' time. There are now tools at our disposal to improve the methods of screening, selecting, qualifying, summoning and assigning jurors. There are more accurate ways to identify the number of jurors needed and likely to be used. The important civic duty of jury service should not be embittered by frustration and disappointment.

I would like to be able to report great progress in the administration of our criminal justice system. In all candor, I cannot do so. Crime rates remain extremely high. The rate of violent crimes remains very high. The reasons are complex. There is no simple solution. But there are some things we can do and should do to avoid the fear that still infects many parts of our great cities.

NEED FOR DETERRENCE

The deterrent function of the criminal justice system has not been realized. The system must restore at least some degree of deterrence. The message we have failed to send—the message society must send—is that the consequences of criminal conduct are swift and certain. No such message is getting through today. The criminal process should not extend over a span of three, five or seven years, with repeated appeals and repeated collateral attacks on convictions. At some point there must be finality. Without finality deterrence is a myth.

A system of justice that provides the greatest protections for accused persons must not fail in the basic function of a civilized society—protection of all its members. When people came out of the trees and caves and banded together, they did so for mutual protection. They gave up the right to self help. Our criminal justice system has not given the kind of protection contemplated by this exchange. People should not be forced to resort to self help to protect themselves and their homes and property. Constitutional guarantees for the protection of accused persons must be enforced, but society has an obligation to protect not just some, but all its people.

There is a special category of criminal conduct that has increased significantly in recent years which might be called "bail crime". Recently Judge Harold Greene, now a United States District Judge in Washington, but then the Chief Judge of the Superior Court, wrote a provocative article.[2]

He deplored the brutal murder of a woman as she left a night school class in the heart of downtown Washington and went on: "Even more troubling was the fact that two of the men charged with the murder had been free on bail . . . awaiting trial for rape." One of these men at the time of his arrest for rape was on probation following an assault conviction.

He urged that stern measures be taken against those who violate terms of bail release and those who commit crimes while on probation or parole.

Recently an East Side New York priest wrote on the op-ed page of the New York Times deploring the lack of protection for the people in his parish. Similar articles, editorials and letters to the editor can be found in newspapers from coast to coast.

The priest wrote:

"I do not call for martial law. But I do call for a new marshaling of law to protect the liberties of all people and especially the first civil liberty—our lives and the security of our persons. Without these there is no freedom."

The problem is simply not one of overlenient judges. To a large extent it is the result of statutes relating to the standards for release on bail.

These are not exceptional cases. They occur time and time again in every part of the country. This association and its component state and local associations should conduct a study to determine precisely the extent to which criminal conduct persists by defendants on bail awaiting trial for serious crimes.

In the long run, confinement for punishment alone, however severe, will not solve the problems that disturbed Judge Harold Greene and Monsignor Byrne. Truly effective correction systems have not yet been developed in this country. It is folly to establish a system of justice allowing each criminal defendant the most elaborate due process, free counsel, and the most expensive trials known anywhere, and then cast the guilty into nineteenth century penal institutions. It is wrong. It is expensive. It is stupid.

We must develop educational and vocational programs so that prisoners will leave correctional institutions, at the very least, trained in some marketable skill. I repeat what I said to you 11 years ago in Dallas, that we must design a correctional program that will in a very literal sense encourage prisoners to "learn their way out of confinement". And then we must encourage employers not to reject indiscriminately the employment of all persons with criminal convictions.

This will cost more in the short run. But in the long run to put people behind walls and bars and do little or nothing to change them is to win a battle and lose a war.

In the past ten years, the lot of judges has not been easy. Although burdens became heavier and costs of living increased dramatically, Congress failed to provide needed judgeship and fell far short of maintaining a level of compensation called for by inflation as was done with virtually all other personnel of the Federal establishment.

The Judicial Conference of the United States is concerned about the need to attract and keep able lawyers as judges and has authorized the creation of a Committee on the Judicial branch to examine all aspects of Federal judicial service. That committee has been appointed and is chaired by the chief judge of the second circuit, Judge Irving Kaufman.

More judges alone will not solve our problems; more technology alone will not solve our problems; improved procedures, alone, will not solve our problems. To accomplish this will require a combination of these factors, plus the most important single ingredient—the service of dedicated judges and supported personnel in the courts. To achieve this we must attract to the bench the ablest practitioners at the bar. The standard for the appointment should be that the person is exceptionally well qualified by virtue of character, training, experience and temperament, to perform the high duties of a Federal judge.

Beyond the selection of exceptionally well qualified judges, we must continue to expand the use of trained court administrators, modern technology and modern business methods. Judges should be able to concentrate on the central task of adjudication. The management of the machinery should be in the hands of trained personnel, always subject, of course, to the control and guidance of the judges themselves.

This association has contributed more to improvements in the administration of justice than any single entity in the country, and whether we agree or disagree on particular details, I know that the courts will continue to have the support of the association in the years ahead.

[2] "Criminals on our Streets," The Washington Post, November 25, 1979.

By Mr. LONG:

S. 2485. A bill to amend chapter 42 of the Internal Revenue Code of 1954 with respect to the determination of second-tier taxes; to the Committee on Finance.

● Mr. LONG. Mr. President, this bill corrects a deficiency in the structure of the excise tax system that is designed to insure the compliance of private foundations, pension trusts, and black lung benefit trusts with certain provisions of the Internal Revenue Code. In each of these areas, a two-tier tax system was enacted to make sure that certain prohibited acts were corrected.

In three recent Tax Court cases, the Tax Court held that the court lacked the authority to uphold a second-tier tax on a private foundation. The court found that since the second-tier tax is not "imposed" until after its decision is final, it did not have jurisdiction to redetermine a deficiency of the second-level tax.

The bill corrects this deficiency of present law by imposing the second-tier tax at the time the Internal Revenue Service mails a notice of deficiency to the taxpayer with respect to that tax. However, the second-tier tax would be abated if the prohibited act is corrected by the end of the "correction period." This would give the Tax Court jurisdiction to redetermine the second-tier tax while at the same time prohibiting collection of the tax during the period provided for court review and correction of the transaction.

This bill simply corrects a procedural defect in the provisions relating to private foundations, pension trusts, and black lung benefit trusts, in order to give the courts jurisdiction over these taxes. The bill in no way increases the taxes already imposed by these provisions.●

By Mr. CULVER (for himself, Mr. McGOVERN, and Mr. BAUCUS):

S. 2486. A bill to amend the Internal Revenue Code of 1954 to exclude from taxation interest earned on obligations substantially all of the proceeds of which are used to provide financing for railroad rehabilitation; to the Committee on Finance.

RAILROAD REHABILITATION BONDING ACT OF 1980

● Mr. CULVER. Mr. President, today I am introducing legislation to enable States to develop a financial mechanism to rehabilitate essential railroad main lines and branch lines. This legislation, "the Railroad Rehabilitation Act of 1980" allows States to offer tax exempt industrial development bonds (IDB's) to repair and upgrade essential lines.

The bankruptcies of the Milwaukee and Rock Island Railroads are symptomatic of the general decline of midwestern railroads in recent years. For the last decade, farmers and shippers have been plagued by car shortages, deteriorating track, abandonments, embargoes, and steadily worsening service. For the last year, many Iowans have gone to bed at night wondering if they would still have rail service when they awoke the next morning. This decline must be reversed.

The railroad industry is critically short of investment capital to maintain track and equipment. The Department of Transportation (DOT estimates the industry faces a potential capital shortfall of $16 billion by 1985. If some of this deficit cannot be made up, the industry faces more "deferred maintenance," abandonments, bankruptcies, and service suspensions. The continued decline of the industry—especially at a time when America must develop more energy-efficient modes of transportation—is not in the public interest.

Both public and private sectors—the railroad industry, as well as the Federal, State, and local government—must undertake a greater commitment to provide the resources needed to rehabilitate a national rail system. To provide more Federal funds for this effort, Senator McGOVERN and I coauthored the amendment to the Senate version of the windfall profit tax bill to reserve $1 billion in revenues for rail rehabilitation. The conference report retains the concept of using windfall profit revenues for this purpose by establishing a $34 billion energy and transportation fund which can be used for railroad rehabilitation and other projects.

State governments must also be able to contribute greater revenues for this effort. One method that has been considered by several States, including Iowa, is the establishment of State authority to issue industrial development bonds, the proceeds of which could be loaned to railroads for specific projects. In the case of Iowa, for example, such authority could raise revenues to accelerate the State branch line assistance program, by which the Government, the railroad, and local shippers all contribute funds to the State and shippers are reimbursed out of the additional revenues generated over the rehabilitated track. Under the State branch line assistance program, Iowa has successfully rehabilitated over 800 miles of essential branch lines since 1972.

States are permitted to issue industrial revenues bonds under section 103 of the U.S. Internal Revenue Code. Normally, the interest earned on these bonds is subject to Federal income taxation. However, IDB's issued for the construction of facilities that have a public purpose—such as airports, docks, mass commuting facilities, and air water pollution control facilities—have been granted a tax exempt status under section 103 of the Code. Currently, Federal tax law does not allow bonds issued under this provision for railroad rehabilitation to be treated as tax-exempt bonds. This will limit their ability as a mechanism for raising the funds necessary to promote railroad rehabilitation at the State level.

The legislation I am introducing today amends section 103 of the Code in order to make industrial development bonds issued by States for the purpose of railroad rehabilitation tax exempt. Specifically, it amends title 26, section 103(b) (4) of the United States Code by adding to the list of tax-exempt facilities those obligations issued to finance certain railroad improvement projects, including the construction, repair, and upgrading of railbeds, trackage, depots, and switching and signaling equipment. It would not, however, provide a tax exemption for the purchase of rolling stock.

I believe this change in the Tax Code will provide States with a needed mechanism for raising revenue that can be put to good use to upgrade their most important trackage. The Iowa House of Representatives has already passed a resolution calling for the establishment of tax-exempt bonding authorities for railroad rehabilitation. I believe the potential revenue loss to the Federal Treasury will be more than offset by the benefits derived from well-maintained, efficient rail systems.

In conclusion, Mr. President, I believe that this change in the Federal tax code to add railroad improvements to the list of tax-exempt industrial development bonds is a prudent measure to encourage States to accelerate the rehabilitation of their essential rail lines that are so vital for the future economic health of the Midwest and the Nation. I recommend "the Railroad Rehabilitation Bonding Act" to my colleagues and urge its prompt enactment.

I ask unanimous consent that both Iowa House Concurrent Resolution 110 and a copy of the legislation be printed in the RECORD.

There being no objection, the bill and concurrent resolution were ordered to be printed in the RECORD, as follows:

S. 2486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of section 103 of the Internal Revenue Code of 1954 (relating to industrial development bonds) is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

"(9) RAILROAD REHABILITATION.—Paragraph (1) shall not apply to any obligation which is part of an issue substantially all of the proceeds of which are used to provide financing for—

"(A) railroad rehabilitation, including the acquisition, construction, reconstruction, or erection of any roadbed, track, trestle, depot, switching and signaling equipment, or any related equipment, but not including rolling stock, or

"(B) acquisition of land or rights-of-way in connection with railroad rehabilitation.".

(b) Paragraph (10) of section 103(b) of such Code (relating to exceptions), as redesignated by subsection (a), is amended by striking out "and (7)" and inserting in lieu thereof "(7), and (9)".

SEC. 2. The amendments made by the first section of this Act shall apply to obligations issued after September 30, 1980.

HOUSE CONCURRENT RESOLUTION NO. 110

Whereas, section 103 of the United States Internal Revenue Code provides for the issuance of industrial revenue bonds by a political unit for the construction of private or public facilities; and

Whereas, the majority of these tax-exempt bonds are limited to ten million dollars in any one instance; and

Whereas, certain facilities have been deemed to have a public purpose and are therefore not subject to the ten million tax exempt limit; and

Whereas, these exempt facilities include airports, docks, wharves, mass commuting, parking, and other transportation facilities; and

Whereas, the construction, repair, and upgrading of railbeds, trackage, and appurtenances, but not rolling stock, are also deemed to have a public purpose;

Now therefore, be it resolved by the House of Representatives, the Senate concurring, That the Iowa General Assembly urges the Congress of the United States to amend the United States Internal Revenue Code, section 103, to provide for unlimited exemptions on obligations issued to finance certain railroad improvement projects; and

Be it further resolved, That copies of this resolution be forwarded to members of the Iowa Congressional Delegation, the Speaker of the United States House of Representatives, the President of the United States Senate, and the chairpersons of the Ways and Means Committees of the United States House of Representatives and Senate.●

By Mr. BELLMON:

S. 2487. A bill to amend the Internal Revenue Code of 1954 to provide more equitable treatment of independent oil producers, including royalty owners, under the crude oil windfall profit tax; to the Committee on Finance.

● Mr. BELLMON. Mr. President, moments ago, the Senate passed and sent to the President for his signature the largest single revenue measure enacted by Congress over the 204 year history of our Nation. This act, labeled the windfall profit tax, but more aptly designated the Domestic Crude Oil Excise Tax Act of 1980, is estimated to raise $227 billion over the next decade by placing an excise tax on every category of oil produced in this country. This is a tax mind you, in addition to the 46 percent corporate income tax rate which also applies to every category of oil produced in the continental United States. Producers and royalty owners also pay revenue taxes as well as State and Federal personal income tax.

Mr. President, as we all know, this legislation was originally proposed in response to the President's decision to decontrol crude oil prices as well as to respond to reports of what some considered as inordinate profits by the major international oil companies. The irony in all this, Mr. President, is that the measure just passed does not really impact the international oil companies as originally envisioned. However, one segment of the petroleum industry that this tax measure will impact is the independent producer and royalty owner.

Mr. President, when H.R. 3919 was before the Senate for consideration last fall, the Senate attempted and succeeded in shaping a bill that struck a balance between our taxation and energy policy. By providing a 1,000 barrel per day exemption from the windfall profit tax to the independent producer, the Senate bill recognized the productive capacity of the independent producer to find and produce oil and gas in this country. It specifically recognized the undisputed fact that the independents have a documented history of plowing back over 100 percent of their profits into new exploration and development.

The amendment by Senators BENTSEN and BOREN to provide a 1,000 b/d independent exemption was agreed to in the Senate by a vote of 53 to 42. In so doing, the Senate took a firm position in assuring the proper incentives for the most productive segment of the petroleum industry so that they might continue to explore and find additional oil supplies for this Nation. In this context Mr. President, the Senate was recommending a balanced policy which included taxing those entities most able to absorb the windfall profit tax while at the same time enabling the independent producers to retain adequate capital to assure continued exploration and development.

Unfortunately, Mr. President, when H.R. 3919 returned to the Senate from the joint conference committee, the Senate's balanced approach had been undone. The 1,000 b/d independent exemption from the windfall tax was dropped. While many thought the conference committee would arrive at a compromise as to the number of barrels of independent production that should be exempted from the tax, this did not occur. Instead, the Senate conferees brought back a bill that completely ignored the Senate position of attempting to encourage additional production from that segment of the oil industry that has demonstrated its ability to produce oil and gas. As a result Mr. President, H.R. 3919 became a revenue raising measure rather than a balanced approach to our energy and taxation policies as evidenced by the Senate bill.

In view of our now misguided policy, Mr. President, I am introducing today a bill which reflects a position concerning this tax that the Senate has already expressed its will upon. Very simply, this bill would provide a 1,000 b/d exemption from the windfall profit tax for independent producers and all royalty owners. I feel that it is important that we keep this issue before the Senate and the Congress so that the Senate will be in a position to act on a moment's notice once the opportunity presents itself.

Additionally, the bill I am introducing, if enacted in a timely fashion, will prevent any arguments that such a measure will rob the Treasury of needed revenues. In fact, it is my hope that this legislation can be enacted this year before we get hooked on these additional revenues from the windfall profit tax. Actually, an independent and royalty owner exemption will have little effect upon anticipated revenues. While it is estimated that the windfall profit tax will raise $227 billion over the next decade, this figure will look pale compared to the actual receipts. This $227 billion figure is based upon oil selling at $30 per barrel—we all know the world price of oil is closer to $40 per barrel. Using a $40 price, the tax will raise approximately $380 billion under the conference report just passed.

During Senate consideration of H.R. 3919, it was estimated the independent exemption would result in lost revenues of around $24 billion. If all royalty owners—both those leasing to independents and majors—were provided an exemption as my bill proposes, the effect on revenues would be $34 billion. So to provide such exemptions will not affect or in any way reduce the $227 billion to be raised by this tax so long as we all agree that the tax will raise in excess of $227 billion—actually closer to $380 billion. Consequently Mr. President, this bill will have minimal effect upon the actual revenues from the windfall profit tax.

As I have stated, the Senate has previously indicated its support for such an exemption. There is no rational basis for penalizing the independent producer and royalty owner who have done more to solve this Nation's energy dilemma than any other single group. If we are serious about producing more oil in this country, we must realize that it costs incredible amounts of capital to explore and drill for oil. To take this capital away from the independent producer and thereby severely limit their ability to find and produce new supplies of crude oil is sheer folly. The Senate must stand fast in its position of providing a balanced policy. We must strive to bring some reason into our energy production efforts. To do otherwise would be unforgivable.

Therefore, Mr. President, I urge the Senate to act favorably on the legislation I am introducing at this time so that we can get on with the task of solving our Nation's energy woes with as little delay as possible.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2487

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INDEPENDENT PRODUCER EXEMPTION.

(a) IN GENERAL.—

(1) REMOVAL FROM TAX.—Subsection (b) of section 4987 of the Internal Revenue Code of 1954 (relating to applicable percentage) is amended by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) EXEMPTION PROVIDED.—Subsection (b) of section 4991 of such Code (relating to exempt oil) is amended—

(A) by striking out "and" at the end of paragraph (3),

(B) by striking out the period at the end of paragraph (4) and inserting in lieu thereof a comma and the word "and", and

(C) by adding at the end thereof the following new paragraph:

"(5) any independent producer oil.".

(b) QUALIFIED PRODUCTION.—Subsection (d) of section 4992 of such Code (defining qualified production of oil) is amended to read as follows:

"(d) QUALIFIED PRODUCTION OF OIL DEFINED.—For purposes of this section—

"(1) QUALIFIED PRODUCTION.—An independent producer's qualified production of oil for any quarter is the number of barrels of crude oil—

"(A) which are removed from the property during that quarter, and

"(B) with respect to which the taxpayer would be liable for the tax imposed by section 4986 if it were not for this section and section 4991(b)(5).

"(2) ROYALTY OWNERS.—In the case of the holder of any royalty or similar interest, the qualified production of an independent producer from each property shall be equal to an amount which bears the same ratio to the amount of the total number of barrels of production of such producer from such property (determined without regard to this subsection) as

"(A) the working interests held by all independent producers. bears to

"(B) the working interest held by all producers.

"(3) TRANSFERRED PRODUCTION.—An independent producer's qualified production does not include production from a property to the extent that the independent producer's interest in such property was held by an integrated oil company on October 24, 1979. For purposes of this paragraph, the term 'integrated oil company' means a person to whom section 613A(c) applies by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners of section 613A(d).".

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall apply to periods after February 29, 1980.●

By Mr. CHURCH (for himself, Mr. CULVER, and Mr. MAGNUSON):

S. 2488. A bill to establish a national soil conservation program; to the Committee on Agriculture, Nutrition, and Forestry.

SPECIAL AREA SOIL CONSERVATION ACT OF 1980

● Mr. CHURCH. Mr. President, I am pleased to introduce legislation, entitled "The Special Areas Soil Conservation Act of 1980," which is designed to address and provide a solution for those areas of our land which suffer from severe and chronic soil erosion problems. This legislation is meant to be a companion bill to H.R. 6732, which has been introduced in the House by the Honorable ED JONES of Tennessee.

Our Nation has been blessed with an abundance of productive, fertile cropland. Yet we all understand that the soil will last only as long as we provide for the care it needs. That is why we long ago established a nationwide program providing soil conservation assistance to every farmer in every county. This effort has been important to retaining the productivity we sometimes take for granted. But there are areas of our land which face unique, special erosion difficulties which need to be targeted for special, long-term treatment. The legislation I am introducing today provides a mechanism, modeled on the successful Great Plains conservation program, to begin to make progress in these special problem areas.

In general terms, the activities of logging, mining, grazing, and tilling the soil create increased erosion. The resulting degradation of our cropland leads to increased efforts to retain productivity by using expensive fertilizers and creates pollution problems due to sediment particles and the runoff of fertilizers and pesticides.

Mr. President, the extent of this problem has been the subject of studies by the Department of Agriculture and the Soil Conservation Service. These studies show that 4.8 tons of soil, on the average, are eroded annually from each acre of cropland. This figure, alarming as it is, conceals the fact that special problem areas experience much higher loss figures. About 2 billion tons of soil is lost annually from our Nation's cropland. That is valuable, irreplaceable soil that is gone forever.

Mr. President, both the Senate and the House Agriculture Committees have been working hard to develop a comprehensive approach to resolving the heavy erosion problems being experienced in certain areas of our land. This bill is meant to bring to the Senate a starting framework to build a final national program. This bill commences by designating those areas that already have been identified by the Secretary of Agriculture as special problem areas. This list is open to further review and discussion. One of the previously identified problem areas is the Palouse Plains, which cover a large portion of northern Idaho and eastern Washington.

The Palouse Plains are representative of the problems faced by areas experiencing critical levels of erosion. During the past 40 years, these plains have lost a stunning total of 360 tons per average acre. Fully 10 percent of the cropland in this area has lost all of its topsoil. Erosion losses running between 20 and 30 tons per acre per year are common. Almost 60 percent of the cropland in this region has lost between 25 to 75 percent of its topsoil.

This bill designates five other areas as eligible for the special treatment offered by this bill. Once an area is designated as a special area, cost-sharing and technical assistance would become available to the landowners and operators. This assistance would be provided under the terms of a long-term contract between the Department of Agriculture and local land owners or operators after the formation of a conservation plan.

Mr. President, our soil resources are important if we are to continue to have an abundance of low-cost food for the future. All of my colleagues realize the importance of trimming Federal spending to be certain that Federal programs are prudent and necessary. This legislation is meant to provide a sound investment in soil conservation, on a cost-sharing basis. Each project would require the approval of Congress, giving us the opportunity to be sure that any projects which flow from this legislation will be needed and well organized. I ask my colleagues to join with me in sponsoring this bill and encourage the Committee on Agriculture, Nutrition, and Forestry to give this proposal serious consideration as it continues its work to fashion a national program for our severe erosion areas.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 2488

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Special Areas Soil Conservation Act of 1980".

SEC. 2. The Congress finds that—

(a) studies by the United States Department of Agriculture indicate that four billion tons of soil are lost annually from non-Federal lands in the United States, with approximately two billion tons lost from cropland. Nearly one-half of the four hundred and thirteen million acres of cropland in 1977 were comprised of soils with moderate, high, or very high risk of damage by sheet and rill erosion;

(b) geographic areas tend to vary widely in the severity of soil, water, and related resource problems. Soils, land, slopes, climate, agricultural practices, and other related factors combine to make certain areas of the Nation highly productive yet subject to severe and longstanding soil erosion and water management problems;

(c) solutions to chronic soil and water resource problems must be tailored to address the local social, economic, and natural resource conditions that exist within the area of concern, and that goals and policies at the Federal level must be integrated with the concerns of the local community.

(d) some special areas of the country which have such critical problems are—

(1) Aroostook County, Maine;

(2) East bank of the mid-Mississippi River, including Crockett, Dyer, Gibson, Lake, Obion, Weakley, Carroll, Benton, Chester, Haywood, Henderson, Henry, Lauderdale, Madison, McNairy, Shelby, Fayette, Hardeman, and Tipton Counties in Tennessee; Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman, and Fulton Counties in Kentucky; DeSoto, Marshall, Benton, and Tate Counties in Mississippi;

(3) East central Georgia, including Bleckley, Bulloch, Burke, Candler, Dodge, Emanuel, Evans, Jefferson, Jenkins, Johnson, Laurens, Montgomery, Richmond, Screven, Tattnall, Telfair, Toombs, Treutlen, Twiggs, Washington, Wheeler, and Wilkinson Counties;

(4) Green Hills area of Missouri, including Caldwell, Davies, Grundy, Harrison, Linn, Livingston, Mercer, Putnam, and Sullivan Counties;

(5) Loess Hills of southwestern Iowa, including Woodbury, Ida, Monona, Crawford, Carroll, Harrison, Shelby, Audubon, Pottawattamie, Cass, Mills, Montgomery, Fremont, Taylor, Adams, and Page Counties;

(6) Washington-Idaho Palouse area, including Lincoln, Spokane, Whitman, Garfield, Asotin, Columbia and Walla Walla Counties in the State of Washington; Benewah, Latah, Kootenai, Clearwater, Idaho and Nez Perce Counties in Idaho;

(7) Wiregrass area of southeastern Alabama, including the counties of Coffee, Covington, Crenshaw, Barbour, Dale, Geneva, Henry, Houston, and Pike.

SEC. 3. (a) The Secretary of Agriculture is authorized and directed to formulate and implement a program for the conservation of soil, water, and related resources in special areas designated pursuant to this Act by providing technical and financial assistance to owners and operators of non-Federal agricultural land. Assistance on State, county, and other non-Federal public land will be limited to those lands that are an integral part of a private farm operating unit and under the control of the private landowners or operators.

(b) To carry out the program authorized by this section, the Secretary is authorized, notwithstanding any other provision of law, to enter into contracts with owners and operators of non-Federal agricultural land in a designated special area having such control over the land as the Secretary deems necessary: *Provided, however,* That such contracts may be entered into with respect to lands, other than agricultural lands, where soil, water, or related resources conservation problems are so serious as to make such contracts necessary for the protection of the agricultural lands. Such contracts shall be designed to provide assistance to the owners or operators to make changes in their cropping systems or land uses which are needed to conserve, protect, or properly utilize the soil, water, and related resources of their agricultural and other lands; and to install the soil and water conservation treatment needed under such systems and uses.

(c) Conservation plans of landowners and operators shall form the basis for contracts. The landowners or operators shall furnish to the Secretary a plan of conservation operations and land use developed in cooperation with and approved by the soil and water conservation district in which the lands are situated. The plan shall incorporate such soil, water, and related resources conservation treatment as may be determined by the owner or operator to be practicable to protect such land from erosion and deterioration and which outlines a schedule of proposed changes in cropping systems or land use and of conservation treatment which is to be carried out on agricultural or other lands during the contract period. Such plan should be designed to fit the local social, economic conditions and the soil, water, and related resources problems of the designated area and may allow for varying levels of conservation application as is appropriate to address the problems. The plan may be developed to cover all or part of a farm, ranch, or other lands as determined to be necessary to solve the conservation problems. Such plan may also include conservation treatment for enhancing fish and wildlife and recreating resources and for reducing or controlling agricultural related pollution.

(d) The landowners or operators shall agree—

(1) to effectuate the plan for their agricultural or other lands substantially in accordance with the schedule outlines therein unless any requirement thereof is waived or modified by the Secretary pursuant to paragraph (f) of this subsection;

(2) to forfeit all rights to further payments or grants under contract and refund to the United States all payments or grants received thereunder including interest upon their violation of the contract at any stage during the time they have control of the land if the Secretary, after considering the recommendations of the soil and water conservation district board, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds, including interest, or accept such payment adjustments as the Secretary may deem appropriate upon determination that the violation by the owner or operator does not warrant termination of the contract;

(3) upon transfer of their right and interest in the agricultural or other lands during the contract period to forfeit all rights to further payments or grants under the contract period and refund to the United States all payments or grants received thereunder including interest unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

(4) not to adopt any practices specified by the Secretary in the contract as a practice which would tend to defeat the purposes of the contract;

(5) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of the program or to facilitate the practical administration of the program;

(6) to such modifications as are determined by the Secretary to be necessary to accommodate adjustments in crop production.

(e) In return for such agreement by the landowners or operators, the Secretary shall agree to share the cost of carrying out conservation treatment set forth in the contract for which the Secretary determines that cost sharing is appropriate and in the public interest. The portion of the costs to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the installation and, if applicable, the maintenance of the conservation treatment under the contract, including the cost of labor. The Secretary shall determine the amount of the shared costs to be borne by the Federal Government, taking into consideration the social and economic conditions unique to each designated geographic area and the degree of conservation to be achieved. The Secretary shall determine the maximum amount of cost-share assistance that may be provided to any single recipient. Where adjustments in land use from crops to permanent vegetative cover or changes in crop varities are undertaken as conservation treatment, financial assistance may be provided with regard to the income lost as a result of such land use or crop adjustments.

(f) The Secretary may terminate any contract with landowners or operators by mutual agreement with the owners or operators if the Secretary determines that such termination would be in the public interest and may agree to such modification of contracts previously entered into as the Secretary may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other similar conservation, land use, or commodity programs administered by the Secretary.

(g) In addition, the Secretary is authorized to enter into contracts with landowners or operators for the purpose of maintaining conservation treatment which was established under the program authorized by this Act or conservation treatment otherwise adequately established, and to provide such assistance as is necessary to retain the treatment on the land. The provisions and administration of such contracts will be in accordance with the requirements set forth in subsections (b) through (f).

SEC. 4. The program authorized by this Act is to be directed toward identifying and correcting specific soil, water, and related resource problems which are prevalent within each special area designed pursuant to this Act. The Secretary is authorized to provide assistance to those special areas described in section 2 and to such additional special areas as he designates as having chronic soil, water, and related resources conservation problems. For each designated special area, the Secretary will develop and implement a plan setting forth an assessment of the problems, objectives, priorities, and a schedule of implementation of conservation treatment to address the problems of the designated special area. In development of the plan, the Secretary shall take into consideration programs of Federal, State, and local agencies, including soil conservation districts having for their purposes the objectives of soil and water conservation, pollution abatement, and the improvement and protection of forest land.

SEC. 5. Special areas may be designated pursuant to section 4 during the period of ten years following the passage of this Act. Contracts authorized by subsections (b) and (g) of section 3 may be entered into during a period of ten years following the designation of the special area to which they relate. Such contracts may not exceed ten years in duration, and shall not exceed the amounts of appropriations as may be provided therefore.

SEC. 6. The Secretary shall submit two copies of the special area plans developed pursuant to section 4 of this Act to the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture of the House of Representatives. The Secretary shall enter into contracts with owners and operators of non-Federal agricultural land pursuant to section 3 only after the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives shall pass resolutions approving the designated special areas described in the plans.

SEC. 7. In carrying out the provisions of this Act, the Secretary may utilize the services of local, county, and State committees established under section 8 of the Soil Conservation and Domestic Allotment Act (49 Stat. 1149, as amended; 16 U.S.C. 590h) and the technical services of the Department, soil and water conservation districts, and other State or local agencies. The Secretary is authorized to utilize the services and facilities of the Commodity Credit Corporation in discharging departmental functions and responsibilities under this Act.

SEC. 8. The Secretary is authorized to expend funds directly or through grants for such research as is needed to assist in developing new technology for controlling soil, water, and related resource problems in the designated areas. Such research is to be coordinated with and related to specific conservation needs of the designated area to accomplish the objectives of the program authorized in section 3.

SEC. 9. The Secretary may provide grants to States with designated areas to conduct evaluation and analysis of the local and State tax structures, rules, and regulations and their impact on the acceptance, installation, and maintenance of conservation treatment or other pertinent items that may be needed for an effective program.

SEC. 10. There are hereby authorized to be appropriated, to be available until expended, such annual sums as may be necessary to carry out the program authorized by this Act.

SEC. 11. The Secretary shall prescribe such regulations as determined necessary to carry out the provision of this Act.

SEC. 12. The Secretary shall submit an evaluation report to the Congress annually for the first five years of operation concerning activities and results pursuant to this Act. Recommendations for additional legislative action necessary to apply related research findings or more effectively solve identified soil, water, and related resources problems of the authorized areas are to be included along with progress, effectiveness, impacts, findings, and other pertinent matters.

SEC. 13. The Secretary shall provide for protection of program participants from indirect or direct disqualifications, discrimination, forfeiture or reduction of eligibility, or penalty under other agricultural programs for participating in the program authorized by this Act.●

Mr. CULVER. Mr. President, I am pleased to join with the senior Senator from Idaho in introducing the Special Areas Soil Conservation Act of 1980. The legislation is designated to put much needed special effort into controlling soil and water degradation in areas of the country with severe soil erosion and other resource problems.

Uppermost in people's minds today are energy and the economy. The severe economic stresses we face will require governments, businesses and consumers to reassess their priorities. For the Federal Government, this reassessment naturally focuses largely on the Federal budget and the programs in place to deal with the multitude of needs and objectives that we as a nation are seeking to meet.

Among the most crucial of those needs and objectives is the protection and preservation of our vital soil and water resources. Soil erosion undermines the productivity of the land. It increases production costs to offset the loss of soil fertility and leads to higher energy use through the resulting additional fertilizer required to maintain yields. Much of the eroded soil becomes sediment in our waterways. This sediment and the chemicals and nutrients that accompany it represent the largest single source of water pollution in the Nation today.

I have long maintained that soil conservation has been among our most underrated national priorities. Soil conservation has, for several decades, received appropriations inadequate to even maintain the commitment that was once made to this effort. In the past decade alone the value of the funds provided for the agricultural conservation program has declined by over 50 percent. After inflation and budget cuts, the Federal soil and water conservation research effort is down 60 percent from 10 years ago.

The strength of the dollar depends on the strength of the land. Agricultural exports are critically important in offsetting our huge energy import bill. The unprecedented balance-of-payments deficits of 1977 and 1978, and the consequent dollar devaluations and inflation, would have been far worse had American farmers not been able to set record export levels.

The U.S. Department of Agriculture estimates that we lose every year 4 billion tons of topsoil. The national average rate of soil loss continues to exceed the rate at which that soil can be replenished. In the Loess Hills of southwest Iowa, one of the critical erosion areas addressed by this legislation, average per acre soil losses exceed 30 tons per acre annually.

In addition to the Loess Hills of southwestern Iowa, the bill identifies six other critically eroding areas in which the Secretary of Agriculture is authorized to carry out an intensive program of cost-sharing and technical assistance with farmers. These areas were identified by the Department of Agriculture as the most seriously eroding areas in the country. They include: Aroostook County, Maine; the east bank of the mid-Mississippi River which includes counties in western Kentucky, Tennessee, and Mississippi; central Georgia; the Green Hills area of Missouri; the Washington-Idaho Palouse area and the wiregrass area of southeastern Alabama.

The special areas Soil Conservation Act specifies these areas for treatment but other areas could be brought in as they are identified.

The basic elements of the program established by this act are:

First, cost-sharing and technical assistance to landowners and operators in a designated area.

Second, long-term contracts between the USDA and the farmer based on the conservation plans developed for the farm.

Third, owners and operators would agree to implement their plans in accordance with a firm implementation schedule and forfeit further rights if they violate the contract.

Fourth, the Secretary of Agriculture would determine the percent of allowable cost sharing.

Fifth, all projects would require the approval of the House and Senate Agriculture Committees.

The Special Areas Conservation Act was first introduced in the House of Representatives on March 6, 1980, by Congressman ED JONES of Tennessee. It represents a sound and responsible approach to enhancing our soil conservation efforts in this time of tight budgets and limited resources.

If the land is depleted, every bushel of corn, every gallon of milk and every bale of cotton produced next year will cost more than it did this year, either in the price we pay in the market or in terms of vital resources forever lost. This rising cost will continue each year that we allow the land to be stripped of its productivity.

We can try to maintain crop yields by pouring fertilizer, irrigation or diesel fuel into the land each year but this approach will only forestall the inevitable.

Conservation programs are the best tool we have to stop the productivity decline that threatens American agriculture. This country has, and needs to maintain, an underlying base program of conservation assistance available in every county to every farmer. But, in addition, for those critically eroding areas of the country, the targeted approach of the Special Areas Soil Conservation Act provides a much needed mechanism to address our most pressing soil erosion problems.

By Mr. CANNON (for himself and Mr. MAGNUSON) (by request):

S. 2489. A bill to authorize appropriations for the Coast Guard for fiscal years 1981 and 1982, and for other purposes; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, today I am introducing legislation at the request of the administration to authorize appropriations for the Coast Guard for fiscal years 1981 and 1982.

The proposed bill contains the Coast Guard's request for authorization of appropriations, personnel strengths, and "student loads" (section 1–3). It would entitle the Coast Guard to make advance payments for leases in certain foreign countries (section 4), remove a limitation on capitalization of the Coast Guard Supply Fund (section 5), and remove a financial disincentive against certain Coast Guard members accepting promotions to warrant or commissioned officer status (section 6). The bill would also authorize the Coast Guard to pay its military members to move their own personal and household effects when transferred instead of only paying commercial movers (section 7). Finally, the bill would change the period which the President may proclaim "National Safe Boating Week," from the week that includes July 4 to the 7-day period that begins June 1 (section 8).

The Committee on Commerce, Science, and Transportation has received numerous indications that the appropriations levels authorized by this bill are not sufficient to permit the Coast Guard to perform adequately its many responsibilities. The General Accounting Office will soon be completing a report for the committee which concludes that the Coast Guard is suffering from severe resource shortages which have resulted in an insufficient number of vessels, serious personnel shortages and retention problems, and inadequate shore facilities. The administration's proposal not only would not begin to address these difficulties, it would aggravate them. The Coast Guard's budget request of roughly $2.1 billion was reduced by over one-fourth in the administration's request. Over three-fourths of this reduction came in the Coast Guard's acquisition, construction, and improvements budget, where the long-term welfare of the Coast Guard is determined.

An even more urgent example of the Coast Guard's resource shortages is its current dilemma brought on by the more than doubling of fuel costs in recent months. As a result of this increase, the Coast Guard has projected a funding shortfall of $27.9 million for the duration of fiscal year 1980. While the Department of Transportation has submitted a request for a second supplemental appropriations for this amount to the Office of Management and Budget, it is uncertain when or if that request will be forwarded to the Congress in the current budgetary climate. (The administration has sent up a first supplemental request for $13.5 million to cover a 31 percent fuel cost increase which occurred prior to this most recent doubling.) In fact, it is my understanding that the Budget Committee has not considered the need for this second supplemental in its current consideration of the budget ceiling for this fiscal year.

In the expectation that it will not receive funds to make up this shortfall, the Coast Guard has been forced to consider immediately reducing its enforcement activities (including 200-mile limit fisheries enforcement) by up to 75 percent and its marine environmental protection and port safety activities by up to 100 percent. While I am a strong supporter of those who believe it is necessary to reduce Federal expenditures and achieve a balanced budget for fiscal year 1981, I believe it is imperative that we recognize the specific consequences of those reductions and that we balance the need for a specific reduction against the need for the activities which will thereby be eliminated. Therefore, in considering the administration's fiscal year 1981 authorization request, the Commerce Committee will closely examine the administration's reductions from the Coast Guard's requests.

I ask unanimous consent that the bill, a section-by-section analysis, and Secretary Goldschmidt's letter of transmittal be printed in the RECORD.

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

S. 2489

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds are hereby authorized to be appropriated for necessary expenses of the Coast Guard for the fiscal years 1981 and 1982, as follows:

(1) for the operation and maintenance of the Coast Guard including expenses related to the Capehart housing debt reduction—for fiscal year 1981—$1,182,112,000 and such additional sums as may be necessary to meet unforeseen circumstances; for fiscal year 1982—such sums as may be necessary.

(2) for the acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto: for fiscal year 1981—$324,392,000, to remain available until expended; for fiscal year 1982—such sums as may be necessary.

(3) for the alteration or removal of bridges over navigable waters of the United States, constituting obstructions to navigation: for fiscal year 1981—$16,200,000, to remain available until expended; for fiscal year 1982—such sums as may be necessary.

(4) for research, development, testing, and evaluation: for fiscal year 1981—$25,000,000, to remain available until expended; for fiscal year 1982—such sums as may be necessary.

SEC. 2. For fiscal year 1981, the Coast Guard is authorized an end of year strength for active duty personnel of 39,487: *Provided,* That the ceiling shall not include members of the Ready Reserve called to active duty under the authority of section 764 of title 14, United States Code.

SEC. 3. For fiscal year 1981, average military training student loads for the Coast Guard are authorized as follows:

(1) Recruit and special training: 4175 student-years.

(2) Flight training: 117 student-years.

(3) Professional training in military and civilian institutions: 595 student-years.

(4) Officer acquisition: 925 student-years.

SEC. 4. Subsection 475(a) of title 14, United States Code, is amended by adding "and, in accordance with local custom and practice, advance payment may be made for the lease." at the end of the second sentence, so that the second sentence reads as follows:

"When any such lease involves housing facilities in a foreign country, the lease may be made on a multi-year basis for a period not to exceed five years, and, in accordance with local custom and practice, advance payment may be made for the lease."

SEC. 5. Subsection 650(a) of title 14, United States Code, is amended by adding after the phrase, "whenever the fund is extended to include items not previously stocked," in the third sentence, the following language: "or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked," so that the third sentence reads as follows:

"In such regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts."

SEC. 6. Subsection 214(d) of title 14, United States Code, is amended by amending the last sentence to read as follows:

". . . A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive the increases in pay and allowances authorized for that grade."

SEC. 7. Chapter 13 of title 14, United States Code, is amended by adding a new section 512 as follows:

"Section 512. Monetary allowance for transportation of household effects"

"The transportation and reimbursement authorized by subsection (b) of section 406 of title 37, United States Code, shall be available hereafter to pay a member who, under regulations prescribed by the Secretary, participates in a program designated by the Secretary in which his baggage and household effects are moved by privately owned or rental vehicle. Such allowance shall not be limited to reimbursement for actual expenses and may be paid in advance of the transportation of said baggage and household effects. However, the monetary allowance shall be in an amount which will provide savings to the government when the total cost of such movement is compared with the cost which otherwise would have been incurred under subsection (b) of section 406 of title 37, United States Code."

SEC. 8. Public Law 85–445 (72 Stat. 179) is amended by striking "week which includes July 4" and inserting in lieu thereof "seven day period beginning June 1."

SECTION-BY-SECTION ANALYSIS

Section 1 authorizes $1,182,112,000 for FY 1981 Coast Guard operating expenses, an increase of $139,527,000 over the amount appropriated by Congress for FY 1980. An authorization for additional money to meet unforeseen circumstances is included in order to preclude the need for a supplemental authorization bill. The section also includes a $324,392,000 authorization for acquisition, construction, and rebuilding of aircraft, vessels, shore facilities and aids to navigation in FY 1981, an increase of $38,381,000 over the amount appropriated by Congress for FY 1980; $16,200,000 for removal or alteration of bridges, an $8,550,000 increase over the amount appropriated by Congress for FY 1980, and $25,000,000 for research and development, a $3,000,000 increase over the amount appropriated by Congress in FY 1980.

Section 2 authorizes an active duty personnel level of 39,487 for FY 1981. This is a decrease of 91 persons from the level authorized by Congress for FY 1980.

Section 3 of the proposed bill authorizes the student-year levels for recruit and special training (FY 1981–4175); flight training (FY 1981–117); professional training (FY 1981–595); and officer acquisition (FY 1981–925). In all categories, student-years are used as the unit of measure. A student-year is defined as the product of the number of students scheduled to attend each course in the category multiplied by the course length expressed in a fraction of a year (e.g., course length in weeks divided by 52 weeks per year).

All levels except officer acquisition represent increases over FY 80 levels. The lower officer acquisition figure, which includes Officer Candidate School and Academy training, is attributable to the Coast Guard's heavier reliance on officer candidate school (whose training is of much shorter duration than an Academy graduate's) to fill its officer needs. The increases are primarily attributable to the current retention problem as well as increased and expanded Coast Guard missions which necessitate more formal, specialized training as opposed to relying on informal on-the-job training.

Over half of the increase in the "professional training in military and civilian institutions" category is not an increase but attributable to reporting an existing program not heretofore reported. The training consists of experience tours at industry facilities so Coast Guard personnel who regulate aspects of maritime related industries understand the industry. This program was not previously reported since it did not neatly fit any of the four categories required by section 604 of Public Law 92–436.

However, since it also does not fit neatly into the category of unit or crew training which is specifically exempted by Section 604, the Coast Guard has determined it appropriate to request authorization for this training.

Section 4 of the proposed bill amends subsection 475(a) of title 14, United States Code, by authorizing the advance payment of leases in foreign countries where custom and practice require advance payment to obtain a lease. 31 U.S.C. 529 prohibits the making of advance payments of public money not specifically authorized by law. Several agencies, including the U.S. Customs Service (31 U.S.C. 529b) and the Departments of Defense (31 U.S.C. 5291) and Agriculture (7 U.S.C. 2231), already have authority to make advance payments in foreign countries.

The Coast Guard needs similar authority in order to lease housing for its marine inspectors stationed in countries, like Japan, where advance rental payments of up to six months rent are sometimes required by local custom. Presently, the Coast Guard must ask one of the other armed forces to lease housing for it on a reimbursable basis. This is not a satisfactory solution in that other armed forces' personnel may not be available where Coast Guard housing is needed and, of course, Coast Guard requirements would have lower priority. There are no cost implications in this proposal.

Section 5 of the proposed bill eases the 14 U.S.C. 650(a) restriction on the Secretary of Transportation's discretion to permit the Coast Guard Supply Fund to accept transfers of items already stocked in the Supply Fund. This section authorizes the Supply Fund to accept transfers of spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft.

The Coast Guard Supply Fund is a revolving fund which finances the procurement and maintenance of inventories of spare parts, uniform clothing, commissary provisions, fuel, and operating and maintenance materials with repetitive issue demand to meet the support requirements of Coast Guard operating units. Presently, the Secretary can increase the capitalization of the Supply Fund by the value of items transferred to it only if those items were not previously stocked in the Supply Fund. He is not authorized to do so if the transfer involves an additional quantity of items previously stocked in the Fund.

Removing the limitation on donations of spare parts included in major items whose funds were specifically appropriated by Congress, such as the construction of additional 41 foot boats, Coast Guard cutters, or aircraft, would enable the capital of the Supply Fund to be increased by the value of these spare parts. Elimination of this restriction will enable the Coast Guard to more efficiently provide spare parts to expanded programs of major procurement items through the Supply Fund.

Sec. 6. Section 6 of the proposed bill amends section 214(d) of title 14, United States Code, to ensure that Coast Guard members who accept appointments to temporary commissioned or warrant grade do not receive any less pay or allowances as a result. 14 U.S.C. 214(d) currently provides a measure of protection against temporary pay reductions, to which some senior enlisted personnel would otherwise be subject if they accepted promotion to junior officer status, by providing that the level of their pay cannot actually be less than what they were receiving at the moment they accepted promotion.

A financial disincentive still remains, however, inasmuch as their pay remains fixed at that level, until their officer's pay equals or exceeds it, while the pay of former counterparts in the lower grade continues to increase with longevity and annual pay increases. This proposed amendment will index this save-pay provision to the pay and allowances increases a temporary commissioned or warrant officer would have received had he remained in his former grade.

Sec. 7. Section 7 of the proposed bill amends title 14, United States Code, to grant the Secretary of Transportation authority to pay Coast Guard personnel a monetary allowance in lieu of furnishing transportation of household effects in kind. The Department of Defense presently has similar authority under section 747 of Public Law 94–212, (90 Stat. 176).

This program will allow an individual Coast Guard member to arrange for rental of necessary moving vehicles and tools and then move himself to his new duty station using his own labor. Department of Defense experience has shown this to be more than 50 percent cheaper than arranging for a mover to do the packing and moving. Under current guidelines, the Do-It-Yourself (DITY) program reportedly results in a 25 percent savings in costs to the Department of Defense. It also allows the individual service member to profit by keeping the difference between the cash payment received from the Government (75 percent of commercial van line costs) and the actual DITY cost (approximately 50 percent of commercial van line costs).

The Department of Defense experience indicates the following advantages to the DITY program: the member has greater flexibility in scheduling his move; the household goods arrive simultaneously with the member; there is a marked reduction in claims for damaged household goods; and the Government experiences a 25 percent savings. Given these advantages, it is in the interest of the Coast Guard to have the authority to implement similar programs.

Section 8 of the proposed bill amends Public Law 85–445, 72 Stat. 179 (36 U.S.C. 161) by authorizing a change in the date of the "National Safe Boating Week" for the week that includes July 4 to the seven day period that begins June 1, as proclaimed annually by Presidential proclamation. "National Safe Boating Week" is intended to bring to the attention of the American boating public the importance of safe boating practices.

Experience has shown that the proclamation of "National Safe Boating Week" during the week of July 4 is not as effective as it could be if proclaimed earlier in the boating season because a large percentage of the boating public has already been boating for several weeks before that date. By drawing national attention to the need for safe boating practices earlier in the season, many accidents could be avoided.

Although Coast Guard and leading boating safety interests have been concentrating their boating safety education activities into the first week in June for the past few years, their efforts would be far more effective if the President were authorized to shift the prestige of the official National Safe Boating Week Proclamation to this earlier period.

SECRETARY OF TRANSPORTATION,
Washington, D.C.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: This letter transmits proposed legislation, "To authorize appropriations for the Coast Guard for fiscal years 1981 and 1982 and for other purposes".

The proposed bill contains the Coast Guard's request for authorization of appropriations, personnel strengths, and "student loads" (Section 1–3). It would entitle the Coast Guard to make advance payments for leases in certain foreign countries (Section 4), remove a limitation on capitalization of the Coast Guard Supply Fund (Section 5), and remove a financial disincentive against certain Coast Guard members accepting promotions to warrant or commissioned officer status (Section 6).

The bill would also authorize the Coast Guard to pay its military members to move their own personal and household effects when transferred instead of only paying commercial movers (Section 7). Finally, the bill would change the period which the President may proclaim "National Safe Boating Week," from the week that includes July 4 to the seven day period that begins June 1 (Section 8).

Sections 1 through 3 of the legislative proposal are responsive to Section 5 of P.L. 94–406 which requires authorization before funds may be appropriated to or for the use of the Coast Guard for operational expenditures, capital acquisition and construction, bridge alterations, and research and development.

For reasons of simplicity, individual items within each of the above categories have not been listed. However, the appropriate committees will be furnished detailed information identifying items for which authorization of appropriations is requested. Furthermore, the Department will be prepared to supply any other information requested by the Congress.

Sections 1 through 3 of the bill also respond to Subsections 6(a) and 6(b) of P.L. 94–406 which require authorization of the Coast Guard's "end strength" and "average military training load" respectively.

It would be appreciated if you would lay this proposal before the Senate. A similar proposal has been submitted to the Speaker of the House of Representatives.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely,

NEIL GOLDSCHMIDT.●

By Mr. METZENBAUM (for himself, Mr. BAUCUS, and Mr. LEAHY):

S. 2490. A bill to provide certain requirements for infant formula, and for other purposes; to the Committee on Labor and Human Resources.

INFANT FORMULA ACT OF 1980

• Mr. METZENBAUM. Mr. President, Senators BAUCUS and LEAHY join me today in introducing "The Infant Formula Act of 1980" a bill designed to set minimum requirements and guidelines for the marketing of infant formula.

It does not please me to proposed legislation that would establish more Government regulation. However, the events of the past few months regarding adulterated or misbranded infant formula have convinced me that without such legislation neither the industry nor the FDA will take the firm action that is needed in order to prevent illness in infants due to adulteration or misuse of these products.

Recently we have seen not one, but four formula products recalled—"Neo-Mull-Soy", "Cho-Free" and "Soylac" because of the lack of an essential nutrient, chloride, and "S.M.A." because of poor processing.

In addition, we have seen that the FDA was slow in ordering a recall and was so lax in following up the manufacturer's efforts that 2 months after the recall, "Neo-Mull-Soy" was still on some pharmacy shelves.

The failure of a recall in and of itself is reason enough for concern; but the failure to recall a product that provides, in many cases, the sole source of food for new-born infants during the all-important and formative first 6 months of life is, to my mind, inexcuseable.

This failure is even more infuriating in the case of "Neo-Mull-Soy" since adulteration could easily have been prevented by requiring that minimum nutritional standards be met before the product could be marketed. Currently, FDA has no such requirements.

The bill that we are introducing today is designed to rectify this situation by directing the Secretary of HEW to establish minimum nutritional requirements for marketing infant formula. This would prevent the sale of formula products that do not contain sufficient nutrients for the healthy growth of newborns.

In addition, this bill would direct the FDA to establish and enforce good manufacturing procedures for infant formula and to detain formula found to be misbranded or adulterated upon inspection. I believe these provisions will improve significantly the quality of infant formula on grocers' and pharmacists' shelves.

Looking beyond the events of the past few weeks, I believe there are even more ways to improve the health and nutrition of infants in our country. This bill addresses itself, also, to the issues of product information for the consumer and product promotion by the manufacturer of infant formula.

The American Academy of Pediatrics has adopted a resolution stating that breast feeding of infants provides better nutrition than infant formula. In addition, human milk provides immunities to certain illnesses that infant formula cannot.

Parents have a right to know which foods are better for their infants and I believe that every can of infant formula should provide that information.

There are other problems in the labeling of infant formula. There have, for example, been documented reports of parents feeding undiluted formula concentrate to their infants, thinking it was ready to feed. As a result, the infants suffered serious side effects from a medical condition known as hypernatremia.

These and other mishaps have resulted from confusing labeling in some cases and from literacy or language difficulties in others. This bill would require that manufacturers provide clear written and pictorial instructions for safe use as well as a clear statement of the risks associated with improper use of the product or improper handling.

These problems are not new to the FDA. Last October I signed a letter along with Senators BAUCUS and LEAHY to the Commissioner of the FDA asking that labeling requirements be mandated through regulation that would alleviate this situation. To date, the FDA has not acted upon our recommendations.

In our letter we pointed out that Borden puppy formula already has a warning on it. Why not for children? The label on Borden's "Esbilac" puppy formula reads as follows:

> Feeding new-born mammals a milk formula always entails some risk, and your veterinarian should be consulted for advice on feeding "Esbilac" and on sound management practices. All puppies should receive their dame's milk for at least two days if possible. The colostrum milk gives extra nutrition and temporary immunity against some diseases.

Clearly, if we can take such precautions with puppies we can require the same precaution for our children.

Finally, the bill would explicitly prohibit the export of infant formula that does not meet U.S. levels of identity and quality. It was disturbing to hear that one company was even considering exporting a recalled product to some poorer, Third World nations. The problem of adequate infant nutrition in the developing countries does not need to be exacerbated by deficient formula products.

Mr. President, this bill is not meant to unduly regulate industry. Rather, it will provide parents with necessary and accurate information about infant feeding and insure the safety and quality of formula products that can be bought on store shelves.

Mr. President, I ask unanimous consent that our letter to the FDA, their response, the text of the bill, and a section-by-section analysis be printed in the RECORD.

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

S. 2490

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Infant Formula Act of 1980".

SEC. 2. (a) Section 201 is amended by adding the following new subsection at the end thereof:

"(aa) For purposes of this section, the term 'infant formula' means a food that purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.".

(b) Section 301 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new subsections:

"(s) The violation of any requirement provided under section 412 with respect to infant formula, including the failure to meet the standards required pursuant to section 412(a), the failure to submit reports or test results in accordance with section 412(b), the failure to make any notification required by section 412(c), and the failure to make or retain records or make reports in accordance with section 412(d).

"(t) The movement of food in violation of an order under section 412(e) or the removal or alteration of any mark or label required by such order to identify the food as detained.".

(c) Section 301(e) of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by striking out "section 703" and inserting in lieu thereof "section 412(d) or 703"; and

(2) by striking out "section 505" and inserting in lieu thereof "section 412(d), 505".

(d) Section 402 of the Federal Food, Drug, and Cosmetic Act is amended by adding the following new paragraph at the end thereof:

"(f) If it purports to be or is represented to be an infant formula unless it complies with the regulations promulgated by the Secretary relating to required standards of identity and quality including required levels of nutrients pursuant to section 412(a).".

(e) Section 403 of the Federal Food, Drug, and Cosmetic Act is amended by inserting the following new paragraph at the end thereof:

"(q) If it purports to be or is represented to be an infant formula unless the package or other container in which such infant formula is contained is labeled in accordance with section 412(h).".

(f) Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding the following new section at the end thereof:

"REQUIREMENTS REGARDING INFANT FORMULA

"SEC. 412. (a) (1) The Secretary shall promulgate regulations fixing and establishing for infant formula a reasonable definition and standards of identity and quality, including the required nutrients at minimum and maximum levels.

"(2) The Secretary may by regulation exempt from the requireemnts of this subsection any infant formula that is for use by—

"(A) any infant diagnosed by a physician or other appropriate health professional as having certain inborn errors of metabolism; or

"(B) any infant having unusual medical or dietary problems.

"(b) (1) Not later than the date 180 days after the date of the enactment of this section and annually thereafter, each processor of an infant formula shall submit to the Secretary reports or test results that show satisfactorily that the infant formula processed by such processor meets the requirements prescribed by the Secretary pursuant to subsection (a).

"(2) (A) Not later than the date 90 days before the date of the first processing for commercial purposes of an infant formula, the processor shall submit to the Secretary reports or test results that show satisfactorily that such infant formula meets the requirements prescribed pursuant to subsection (a).

"(B) For purposes of this paragraph, if the formulation or processing of an infant formula is changed, the date of the first renewed processing of such infant formula following such change shall be considered to be within the meaning of the term 'the date of the first processing for commercial purposes of an infant formula'.

"(c)(1) If a processor acquires information indicating that any infant formula processed by such processor may be adulterated within the meaning of section 402(f), or misbranded within the meaning of section 403(g), and that such infant formula is no longer located at an establishment subject to the control of such processor, and such processor has not promptly determined, after a reasonable opportunity to investigate the information, that such information is incorrect, such processor shall promptly notify the Secretary, in such form and manner as may be prescribed by the Secretary, of such information.

"(2) If a processor institutes a recall of an infant formula processed by such processor because such processor has reason to believe the infant formula may be adulterated within the meaning of section 402(f), or misbranded within the meaning of section 403(q), and such infant formula is no longer located at an establishment subject to the control of such processor, such processor shall notify the Secretary immediately, in such form and manner as may be prescribed by the Secretary, of such recall.

"(3) Information required to be contained in a notification provided to the Secretary pursuant to paragraph (1) may not be introduced as evidence in any proceeding against such person under section 303 with regard to a violation of section 301(s) or (t).

"(d)(1) Each processor of an infant formula shall—

"(A) make and retain such records respecting the distribution of the infant formula at any establishment owned or operated by such processor as may be necessary, as determined by the Secretary, to effect and monitor recalls of the formula and to otherwise trace the distribution of the formula; and

"(B) make such records available to the Secretary (or to a duly authorized representative of the Secretary) for examination and copying on or off the premises of such processor.

No processor shall be required under this subsection to retain any record respecting the distribution of an infant formula for a period of longer than two years from the date the record was made.

"(2) Each manufacturer of an infant formula shall maintain such records respecting the manufacturing of the infant formula and shall make such reports as the Secretary may reasonably require to assure compliance with the requirements of subsection (a).

"(e)(1) If during an inspection conducted under section 704 of a facility or a vehicle, an infant formula that the officer or employee making the inspection has reason to believe is adulterated or misbranded is found in such facility or vehicle, such officer or employee may order the infant formula detained (in accordance with regulations prescribed by the Secretary) for a reasonable period not to exceed 20 days unless the Secretary determines that a period of detention greater than 20 days is required to institute an action under section 302 or section 304 (a) of this Act, in which case the Secretary may authorize a detention period of not to exceed 30 days. A detention order under this paragraph may require the labeling or marking of an infant formula during the period of such detention for the purpose of identifying the product as detained. Any person entitled to claim such infant formula if it was seized under section 304 (a) of this Act may appeal to the Secretary a detention of such formula under this paragraph. Within 5 days of the date an appeal of a detention is filed with the Secretary (or within such other period as may be mutually agreed upon by the Secretary and the person bringing the appeal), the Secretary shall, after affording opportunity for an informal hearing, by order confirm or revoke the detention.

"(2)(A) Except as authorized by subparagraph (B), an infant formula subject to a detention order issued under paragraph (1) shall not be moved by any person from the place at which it is ordered detained until—

"(i) such formula is released by the Secretary, or

"(ii) the detention period applicable to such order has expired, whichever occurs first.

"(B) An infant formula subject to a detention order under paragraph (1) may be moved in accordance with regulations prescribed by the Secretary.

"(f) An officer or employee making an inspection under section 704 for purposes of enforcing the requirements of this section shall be permited, at all reasonable times, to have access to and to copy and verify any records (other than records of financial data, sales data other than shipment data, pricing data, and personnel data other than information as to the qualifications and responsibilities of technical, professional, and supervisory personnel performing functions relating to infant formulas subject to this section)—

"(1) regarding whether the infant formula processed or held in the facility inspected meets the requirements of subsection (a); or

"(2) required to be maintained under subsection (e).

"(g)(1) Each processor of infant formula shall prepare, in compliance with paragraph (2), information labeling for users respecting such product. Each such processor shall distribute such labeling to accompany the product.

"(2) Information labeling of infant formula shall contain—

"(A) a summary of the benefits and risks associated with the use of such product including an endorsement of breast feeding as the method of first choice unless otherwise advised by a physician;

"(B) adequate directions for use, including—

"(i) the purposes or indications for which the product is intended.

"(ii) the proper method of administration of the product including—

"(I) labels distinguished by color to indicate ready-to-feed, concentrate, or powder mix, and

"(II) clear written and pictorial instructions for proper use,

"(iii) precautions to be taken during the use of the product, and side effects and adverse reactions that may result from the improper use of the product, as well as instruction for recognizing, treating, or obtaining treatment for side effects and adverse reactions, and

"(iv) warnings against unsafe use of the product; and

"(C) information concerning the proper storage and handling of the product.

"(3) Any word, statement, or other information required under this subsection to appear on any labeling of infant formula shall be prominently and conspicuously placed on the labeling (compared with other words, statements, designs, or graphic matter in the labeling) and shall be in terms that render such information likely to be read and understood by the ordinary individual who would reasonably be expected to see the labeling.

"(h) With respect to an infant formula, the processor shall prepare information labeling for practitioners whenever such product is provided to practitioners or health care facilities for use or dispensing, and shall distribute such labeling to accompany the product. Information labeling for practitioners shall contain adequate directions for and other information concerning use of the product, including information regarding the risks and benefits of breast feeding, indications, administration, contraindications to use, warnings, precautions, and side effects, so as to permit the dispensing or administration of the product in a manner that promotes the safe use of the product.

"(i) No provision of this section which relates to labeling shall be construed to alter the provisions of existing law governing the tort liability of any person.

"(j) A formula product for infants may not be exported unless—

"(1) such product is not adulterated within the meaning of section 402(f);

"(2) the labeling of such product meets the requirements of subsection (g) in the language specified by the foreign purchaser; and

"(3) such product is not in conflict with the laws of the country to which it is intended for export.".

(g) Subsection (a) of section 412 of the Federal Food, Drug, and Cosmetic Act shall apply with respect to infant formulas introduced or delivered for introduction into interstate commerce on or after the date 90 days after the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS: INFANT FORMULA ACT OF 1980

Sec. 1. Short title.

Sec. 2. Subparagraph (A) of this section amends section 201 of the Food, Drug, and Cosmetic Act and defines for purposes of this bill "infant formula."

Subparagraph (B) of this section amends section 301 of the Food, Drug, and Cosmetic Act, prohibited acts, so that violation of any provision of the proposed bill would be subject to penalties imposed for any other prohibited actions.

Subparagraph (C) of this section amends section 301 of the Food, Drug, and Cosmetic Act, prohibited acts, so that failure to maintain records or refusal to permit the FDA access to records for copying would be a prohibited act.

Subparagraph (D) of this section amends section 402 of the Food, Drug, and Cosmetic Act, adulterated foods, so that adulteration is defined for infant formulas.

Subparagraph (E) of this section amends section 403 of the Food, Drug, and Cosmetic Act, misbranded foods, so that misbranding is defined by failure to comply with the standards set forth in the proposed bill.

Subparagraph (F) amends chapter IV of the Food, Drug, and Cosmetic Act, the section entitled "food" by adding new requirements (section 412) for the marketing of infant formula. These requirements are the main substantive provisions of the bill.

Sec. 412(A). Nutritional content. This section directs the Secretary to establish minimum nutritional requirements for infant formula as a condition for marketing. Discretion is left to the Secretary to determine the optimum levels of nutrient content by regulation since future scientific evidence may reveal new information about important nutritional concerns. However, failure to meet the standards set by the Secretary would subject the processor to penalties under section 301. Special formulas are exempted under this provision.

Sec. 412(B). Pretesting. This section would require that all formula products be tested for nutrient content before being marketed.

Sec. 412(C). Notification. This section requires that the processor notify the FDA if the processor finds that a product is adulterated or misbranded. Failure to notify the FDA will result in penalties.

Sec. 412(D). Maintaining records. This section requires that processors make and retain records with respect to the distribution of infant formula.

Sec. 412(E). Administrative detention. This section gives the Secretary authority to inspect, at the manufacturing site, a sample of formula products to determine if the product is adulterated or misbranded. Adulteration or misbranding may be the result of contamination, poor processing, or failure to meet the nutritional requirements.

This section of the bill is based on language that already exists in law for medical devices. The application of this provision to infant formula would give authority to the FDA to prevent shipment of adulterated or misbranded products.

Sec. 412(F). Records access. This section would permit the FDA to have access to and to copy and verify any records regarding infant formula processing. FDA would not have access to records of financial data, sales data, pricing data, or personnel data.

Sec. 412(G). Information labeling. This section provides requirements for consumer labeling of all infant formula including: A summary of the benefits and risks associated with bottle feeding, an endorsement of breast-feeding as the method of first choice unless otherwise advised by a physician, color coded labels to distinguish different preparations, clear and pictorial instructions for proper use, warnings against improper use of the product, and information concerning proper storage.

Sec. 412(H). Practitioner information labeling. This section directs the processor to provide a balanced view of the risks and benefits associated with the product when it is being promoted to health professionals. Such information should include adequate directions of use, risks and benefits of bottle feeding, risks and benefits of breast-feeding, indications for use of formula, contraindications for use, warnings, precautions, and side effects that might be expected with the use of this product.

Sec. 412(I). Tort liability. This section states that even though a manufacturer may be in compliance with the regulations of this act, the manufacturer is still subject to existing laws regarding production and marketing.

Sec. 412(J). Exports. This section would apply the same standards of purity and labeling set in this country for infant formula to formula products to be shipped overseas. Two exceptions to this would be the language of the labeling as specified by the foreign purchaser and the laws of the country to which it is being exported.

U.S. SENATE,
Washington, D.C., October 10, 1979.

Dr. JERE EDWIN GOYAN,
Commissioner, Food and Drug Administration, Department of Health, Education and Welfare, Rockville, Md.

DEAR DR. GOYAN: We write to call to your attention the widesperad and harmful misuse of infant formula in the United States. We are not alone in our concern. The American Academy of Pediatrics, the National Council of Churches, and numerous other health and religious organizations have long protested the tragic misuse of infant formula.

The labels on most brands of commercially produced infant formula are inadequate. They do not guide the consumer to use the product safely or educate the consumer about the risk of improper formula use.

Even when correctly prepared, infant is a distant, second-best alternative to breast feeding, as has been shown in literally hundreds of clinical and epidemiological studies. In October, 1978, for example, the American Academy of Pediatrics recommended that breast milk be the exclusive food of most infants for the first four to six months of life. But when formula is incorrectly prepared, the health risks rise dramatically as do the costs of unnecessary medical treatment.

We, therefore, urge that the FDA use its authority to prevent the misuse of infant formula through stringent labeling requirements. We ask the FDA to act immediately to mandate that all labels of infant formula:

1. Contain clear written and pictorial instructions for safe use that are understandable to the consumer regardless of the level of literacy or language background;

2. Differentiate by color of can for different preparations: powder, concentrated liquid, ready-to-feed liquid. There are documented reports of mothers feeding concentrated liquid to their infants, thinking it was ready-to-feed, and infants suffering serious side-effects from hypernatremia;

3. Contain a clear statement of the risks associated with the failure to use the product correctly, including but not limited to failure to sterilize, dilute correctly, and/or refrigerate leftovers; and

4. Contain a clear endorsement of breast feeding as the method of first choice. This method should be no shorter and no less prominent than any claims about the product itself.

While improved labeling alone will of course not prevent all misuse of infant formula, it constitutes an important and highly feasible step in the right direction.

We are interested in ensuring a mother's right to a healthy child, free of influences which may cause her to make an ill-informed and ultimately harmful decision on a feeding method for her child.

We would like to point out the label on Borden's Esbilac Puppy Formula which establishes a precedent for our request:

Feeding new-born mammals a milk formula always entails some risk, and your veterinarian should be consulted for advice on feeding Esbilac and on sound management practices. All puppies should receive their dame's milk for at least two days if possible. The colostrum milk gives extra nutrition and temporary immunity against some diseases.

Certainly, if we can take such precautions for our pets, we will not hesitate to do the same for our children. Under your mandate to guard the public against potential harm from the products they consume, we ask you to take prompt action. We respectfully request a substantive response to our proposal by November 1, 1979.

Thanking you in advance for your cooperation, we are

Sincerely,

HOWARD M. METZENBAUM,
PATRICK J. LEAHY,
MAX BAUCUS,
U.S. Senators.

PUBLIC HEALTH SERVICE,
FOOD AND DRUG ADMINISTRATION,
Rockville, Md., Jan. 21, 1980.

Hon. MAX S. BAUCUS,
U.S. Senate, Washington, D.C.

DEAR SENATOR BAUCUS: This is in further response to your letter of October 10, 1979, also signed by two of your colleagues concerning the misuse of infant formulas in the United States. I regret the tardiness of this reply, but I had delayed answering sooner in the belief that recent important developments relating to infant formulas should be included in this letter.

We share your concern that infant formula labels bear appropriate information to assure their correct use. While we in no way intend to minimize the importance of proper labeling, we do not believe by itself, labeling will prevent misuse. For example, a case of electrolyte imbalance in an infant fed concentrated formula was reported to us in April 1979 by our Cincinnati District staff. That case involved the concentrated liquid form of Similac, which was labeled clearly on the principal display panel:

ADD WATER BEFORE FEEDING CONCENTRATED LIQUID

The side panel repeated "Add water before feeding" and further stated "Make sure you are following dilution instructions for Similac Concentrated Liquid, not dilution instructions for Powder or the Instructions for Ready-to-Feed Forms." The side panel statement "Add water before feeding" was the only print in bold green ink on the entire label.

The top of the can stated in bold black letters: "Add water before feeding" and "Standard Dilution 1 part concentrated liquid plus 1 part water". Detailed instructions for dilution and preparation were also on the can body.

As part of our investigation, we also examined the labeling of the Ready-to-Feed form of Similac. This formula comes in cans twice as tall as the concentrated liquid. It is labeled on top, on the principal display panel, and on the side panel:

DO NOT ADD WATER

In the above described case, it was reported to us that the mother simply failed to read the label.

Labeling is an easily implemented way of conveying information to those consumers who take the time to examine product labels. However, as illustrated in the previously discussed situation, labeling alone can play only a partial role in combating electrolyte imbalance and dehydration or other illnesses in infants.

We do not believe the remedy for the potential dangers posed by misuse of infant formulas lies in the use of graphic symbols or additional warnings cautioning against improper use of these products, but rather by instructing mothers in proper formula preparation and making them aware of the very real dangers of feeding improperly sterilized, diluted, or stored formulas to infants. Such education should be provided on a one-on-one basis by a physician or other qualified health professional. A greater awareness by mothers of these risks is probably the most important factor in preventing illnesses due to misuse of infant formulas. Also, this type of education approach is a more appropriate course of action since, in addition to infant formulas, there are many highly concentrated protein products on the market (e.g., evaporated milk and skim milk) which are economical and frequently fed to infants, often without medical supervision.

As you note, the Committee on Nutrition of the American Academy of Pediatrics (AAP) (as well as the Nutrition Committee of the Canadian Pediatric Society) has endorsed breast feeding. The Committee also has recommended that, at the hospital level, efforts should be made to foster breast feeding by avoiding separation of mother and infant during the first 24 hours and by allowing breast feeding "on demand." In addition, it has recommended that, at the community level, there should be education about breast feeding for all school children, and a study should be made concerning the feasibility of day nurseries near mother's work to enable her to continue breast feeding.

While we endorse the AAP recommendations, we question that a statement on the label of an infant formula that breast feeding should be the first method of choice, would serve a useful purpose. The decision to breast feed or not to breast feed has generally been made before the baby is delivered and any formula purchased.

Since there are many reasons for not breast feeding an infant, such as chronic illness of the mother or a mother who must return to work, we believe that strong efforts should be made to foster breast feeding during antenatal clinic visits and continue into the postpartum period. After discharge from the hospital a nursing mother should be supervised by qualified health professionals to ensure that she receives encouragement, and appropriate nutrition counseling to nurse her infant as long as possible.

You are undoubtedly aware of the recent problems associated with two infant formula products marketed by Syntex Laboratories, Inc. of Palo Alto, California. In Commissioner Goyan's statement on that matter before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce (copy enclosed) he discusses actions we are taking to deal with infant formula problems. We have provided those individuals working on these issues with copies of your letter so that your concerns also will be carefully considered.

As indicated in the Commissioner's testimony, one of the steps we undertook was a careful internal review of our administrative and statutory authorities to determine if revisions were needed. As a result of that review, we have concluded that the following improvements are needed:

Revise our existing regulation on the nutrient composition of infant foods (21 CFR 105.65) to incorporate additional essential nutrients such as chloride, and to ensure that the regulation is in full accord with the nutrient quality guidelines of the American Academy of Pediatrics (AAP) and current knowledge of the most appropriate composition of infant formulas. A proposal to revise the regulation is now in preparation. It will be published in the Federal Register for comment as soon as possible after public meetings on the subject in February and March (discussed below).

Establish a good manufacturing practice (GMP) regulation for infant formulas, primarily involving quality control and nutrient analytical procedures. Infant formulas in liquid form are low-acid canned foods, and hence are already adequately regulated as to microbiological safety and freedom from contaminants and filth under the provision of 21 CFR 113 (Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.) The recommended GMP regulation, which calls for additional controls, is now being drafted and, like the infant formula composition regulation, will be published in the Federal Register promptly after completion of the public meetings.

Recommend to Congress, as we have in the past, that FDA be given records inspection authority applicable to all foods regulated by our Agency so that we could review quality control information to determine independently if manufacturers are in full compliance with the law and regulations.

Review the need for legislation to give us authority to require quality control GMP's for infant formulas so that we can prevent interstate shipment of any infant formulas that do not comply with the GMP regulations. Under our present authority, we can require only that the products be labeled that they were not processed in accordance with good manufacturing practices, rather than prohibit their sale.

As mentioned above, we are planning two public meetings in the near future concerning infant formulas. Both are now scheduled to be held for two days each in the Main Auditorium of the Department of Health, Education, and Welfare's North Building and will be chaired by the Director of the Bureau of Foods. The first will be an open public meeting to address quality control and quality assurance procedures for production of infant formulas and will be held on February 19 and 20, 1980. It is our intent to use this meeting as an information gathering session. Information generated and compiled as a result of this meeting will be utilized in finalizing the GMP proposal discussed above. The second meeting will be a legislative-type hearing on the nutrient composition of infant formulas. Again the results of this meeting will be utilized in finalizing the proposal to revise our existing infant formula regulation (21 CRF 105.65).

We are currently preparing a Federal Register announcement of the time, place, and subject areas for these meetings, and will provide you with a copy as soon as it is available. In addition, under contract, we are having a background working paper for these meetings prepared by the Federation of American Societies for Experimental Biology (FASEB). We anticipate receipt of this working paper no later than the first week of February and plan to make it available to you and all other interested parties as expeditiously as possible.

Problems associated with the Syntex recall made it apparent that our recall policies needed to be clarified and carefully communicated to FDA field offices. Therefore, in addition to the above actions, earlier this month we completed and published a revised recall policy and distributed it to field and headquarters staffs. To make certain that the revisions meet current needs, we will evaluate the new recall procedures after they have been in use for 3 months and again at 6 months. If additional changes are necessary, they will be made promptly.

We recognize that electrolyte imbalance and dehydration and other formula-related illnesses in infants are still important public health problems and, therefore, will continue studying additional approaches to provide greater protection to the population at risk.

If we can be of further assistance, please let us know.

Sincerely yours,
ROBERT C. WETHERELL, Jr.,
Associate Commissioner for Legislative Affairs.●

● Mr. BAUCUS. Mr. President, I am pleased to join my distinguished colleagues, Senator METZENBAUM, and Senator LEAHY, in introducing the Infant Formula Act of 1980.

Though the United States spends more per capita on the health of its citizens than any other nation, we also have one of the highest infant mortality rates in the Western World. There are several reasons for this tragedy, including the move away from breast feeding and the misuse of infant formulas.

The ever-growing scientific evidence that breast feeding is superior along with the mounting evidence that infant formulas are being misused, perhaps widely, compel us, in my judgment, to insure that consumers are able to make truly informed, safe choices about ways to feed their babies.

We all agree that there is an appropriate and important need for infant formula. That is not the question. However, inappropriate composition, labeling, and promotion of formula poses a serious threat.

There are no Federal regulations that govern these areas. The law sets no quality control standards. Product labeling often appears to be composed more for marketing than for information purposes, and intense promotion of infant formula within health care institutions often undermines sound nutritional standards.

Likewise, there are no laws stipulating nutritional standards for infant formula, despite their obvious life or death importance to babies.

Recently, a formula manufacturer was found to be distributing formulas deficient in chloride, an essential nutrient. The result was hundreds of reported cases of infant sickness, with untold hundreds more going undetected and unreported. It was even more shocking to learn that weeks after the voluntary recall procedures were initiated by the manufacturer, this formula was still widely available to innocent consumers on the shelves of our drug stores. Other incidents of faulty product manufacturing and inadequate product recall procedures has been reported over the years.

Reports from health workers also are rapidly growing that infant formula are being improperly prepared.

The result of giving a young baby infant formula that is either too strong or too weak can be serious illness with possible irreversible damage. A pediatrician from the University of California (San Diego) complains that her Spanish-speaking patients cannot distinguish between concentrated formula liquid and the ready-to-feed variety. Feeding concentrates to a newborn can lead to growth failure, acute diarrhea, and other serious metabolic problems. A registered nurse at Los Angeles Women's Hospital asserts, "You could actually kill an infant if you feed it straight concentrate of dilute ready-to-feed mixture."

Though some manufacturers have recently greatly improved their labeling, it would seem that most labels are designed for promotional purposes, stressing quick brand recognition and pretty pictures or layouts, rather than for warning and instructing users.

The Infant Formula Act of 1980 would remedy many of these problems by making product composition, labeling, and product promotion a matter of Federal law rather than manufacturers' caprice. Tough labeling requirements would guarantee that consumers are given sufficient information in an easy-to-understand format about product preparation and use.

Labels would stress the superiority of breast feeding and warn of the hazards of improper formula use.

Minimum nutrient composition standards would protect the vulnerable public from substandard, adulterated, or incompletely manufactured formulas, and strict production detention provisions would protect consumers in the event of errors in manufacturer and quality control.

I believe that this bill will help to alleviate the tragic problems of painful, expensive, and preventable illnesses in young infants associated with the inappropriate use of infant formulas.

It is particularly appropriate that this bill be introduced now, when the adequate feeding of babies has finally begun to receive increasing national and international attention.

In 1978 the American Academy of

Pediatrics issued a sweeping recommendation that virtually all babies be breast fed for the first 4 to 6 months when possible.

In October of last year, the World Health Organization (WHO) and UNICEF organized an international meeting in Geneva to discuss ways to improve infant and young child feeding. The final recommendations, which apply equally to the developed and developing world, strongly endorse breastfeeding and highlight the need to restrict the widespread commercial promotion of infant formula.

The provisions of the Infant Formula Act of 1980 are totally consistent with these recommendations, making this bill a model that other nations may wish to study as they begin to transform the WHO/UNICEF recommendations into their own national policy commitments.

I urge my colleagues in Congress and the American people as a whole to endorse this simple but far-reaching step to protect America's youngest people. It is an important step down the road of responsibility that this generation owes to the future.●

By Mr. PROXMIRE (for himself, Mr. GARN, Mr. WILLIAMS, and Mr. LUGAR):

S. 2491. A bill to provide for the monitoring of restrictions on Soviet trade; to the Committee on Banking, Housing, and Urban Affairs.

MONITORING TRADE SANCTIONS

Mr. PROXMIRE. Mr. President, the bill that my cosponsors from the Banking Committee and I are introducing today is intended to assure the effectiveness of the trade sanctions imposed against the Soviet Union.

I am convinced that the trade sanctions will succeed in forcing the Soviet Government to pay a heavy price for its aggression against Afghanistan provided they are properly enforced and observed.

The present law does not provide a system for monitoring trade sanctions or for reporting to Congress on the results of the sanctions. My bill fills this gap.

WE CANNOT DO BUSINESS AS USUAL WITH MOSCOW

We just cannot do business as usual with Moscow in light of its recent behavior On the other hand, it would be unrealistic and counterproductive to sever all relations to take military steps at the present time.

The economic measures taken so far, together with the Olympic boycott, constitute the most appropriate response that our Government can make to the Soviet actions in Afghanistan. But we must make sure that these measures will have the intended effect.

The bill requires all Federal agencies to give effective enforcement of the trade sanctions top priority. The first claim on the resources of each agency should be for purposes of implementation of the controls and obtaining the full cooperation of other countries.

Under the bill, the Department of Commerce is required to report immediately to the Congress any instances in which controls are reduced or exports licensed by reason of "foreign availability." This report would include identification of the source of such foreign availability in order for the Congress to consider what further steps to ensure the effectiveness of the sanctions might prove necessary.

QUARTERLY REPORTS TO CONGRESS

It requires the Secretary of Commerce with the cooperation of all relevant Federal agencies, to report quarterly to Congress all compliance actions taken with respect to export controls imposed in response to the Russian aggression, as well as each license to export or re-export goods or technology to the Soviet Union.

To improve monitoring of the grain embargo, the Secretary's report would have to include data on world grain trade, especially shipments to the U.S.S.R., and an account of all actions taken to secure the cooperation of foreign countries, in particular, the extent to which such countries curtail agricultural shipments to the U.S.S.R.

ASSESSMENT OF EFFECTS ON SOVIET ECONOMY

Finally, the Secretary's quarterly report would include an assessment of the effects of the sanctions on all sectors of the Russian economy. This portion of the report would be reviewed by the Joint Economic Committee, which has considerable expertise on the Russian economy.

The Joint Economic Committee's assessment would be provided to the committees of Congress with jurisdiction over export controls: The Senate Banking Committee which I chair, and the House Foreign Affairs Committee.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2491

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that effective monitoring and enforcement of the export control measures taken by the President in response to the Russian invasion of Afghanistan should receive the highest priority within the Department of Commerce and all other agencies with responsibilities related to those measures.

SEC. 2. Whenever for reasons of foreign availability the Secretary or the President remove or relax any export control which was imposed in response to the Russian invasion of Afghanistan, or, for reasons of foreign availability, approve the issuance of any export license for end use in the Union of Soviet Socialist Republics, such action shall be immediately reported to Congress together with the name of the foreign country and firms from which the goods or technology are determined to be available to the USSR.

SEC. 3. The Secretary of Commerce shall report to the Congress not less than quarterly with respect to the effectiveness of all export controls imposed in response to the Russian invasion of Afghanistan. Each such report shall include:

(a) a list indicating each compliance investigation or other compliance action undertaken by the Department of Commerce with respect to such controls, and any action taken under sections 11 or 12 of the Export Administration Act of 1979 to enforce such controls during the reporting period;

(b) a list indicating each export license and each re-export license approved during the reporting period for end-use in the Union of Soviet Socialist Republics;

(c) the latest available information on world grain trade shipments, including the sources, dates and amounts of any grain shipped to the Union of Soviet Socialist Republics;

(d) an account of actions undertaken to secure the cooperation of other countries in applying such controls and, in particular, the extent to which other countries have limited their shipments of agricultural commodities, high technology and other strategic items to the Union of Soviet Socialist Republics;

(e) an assessment of the economic effects of the controls on the Union of Soviet Republics, including effects on specific sectors of the economy as well as the overall impact.

SEC. 4. The Office of the United States Trade Representative, the President's Council of Economic Advisors, the Department of Agriculture, the Department of Defense, the Department of Energy, the Department of Treasury, the Board of Governors of the Federal Reserve System, the Central Intelligence Agency, and any other Federal agency having relevant information is authorized and directed to cooperate fully with the Department of Commerce in preparation of the report required by section 3.

SEC. 5. The Joint Economic Committee of the Congress shall review that portion of each report submitted by the Secretary of Commerce pursuant to section 3(e), and periodically provide an evaluation to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives.

By Mr. INOUYE (for himself, Mr. CANNON, Mr. HOLLINGS, Mr. MAGNUSON, Mr. MATHIAS, Mr. MATSUNAGA, Mr. PACKWOOD, Mr. SARBANES, and Mr. STEVENS):

S. 2492. A bill to regulate commerce, promote energy self-sufficiency, and protect the environment, by establishing procedures for the location, construction, and operation of ocean thermal energy conversion facilities and plant ships to produce electricity and energy-intensive products off the coasts of the United States; to amend the Merchant Marine Act, 1936, to make available certain financial assistance for construction and operation of such facilities and plant ships, and for other purposes; to the Committee on Commerce, Science, and Transportation.

OCEAN THERMAL ENERGY CONVERSION ACT OF 1980

● Mr. INOUYE. Mr. President, I am today introducing the Ocean Thermal Energy Conversion Act of 1980, which will provide a Federal framework for the licensing, siting, and financing of ocean thermal energy conversion facilities and plant ships.

Ocean thermal energy conversion or OTEC is a method of converting solar energy which is stored by the Sun in the surface layers of the oceans into electricity. Temperature differences between ocean surfaces and depths can be utilized to generate electrical energy, fresh water, hydrogen, ammonia, and other products. The electrical energy which can potentially be generated is many times larger than the projected total energy needs of the United States.

The principles involved in OTEC are

basically simple and straightforward and it makes use of state-of-the-art technology. This past year a "Mini-OTEC" was successfully operated off the coast of Hawaii. This joint venture of the State of Hawaii, Lockheed, and Dillingham Corporations, with additional cost-sharing by Alfa-Laval, Worthington, and Rotoflow Corporations, demonstrated successful electrical production at sea.

OTEC energy can be delivered to the United States by electric transmission cables and can be fed directly into utility grids from offshore U.S. islands or Gulf of Mexico sites. Energy can also be delivered to all parts of the United States via production of an energy product produced on an OTEC plantship sited in tropical waters. Ammonia is such a product that is very useful in its own right, as well as a safe and easily transported product which contains large amounts of hydrogen which can easily be made use of as a fuel. OTEC ammonia can replace ammonia now made from natural gas, thus conserving natural gas, and it can serve a hydrogen carrier for use in fuel cells which can provide a stored source of power for all regions of the United States.

Ammonia is easily liquefied, stored and shipped, and can be stored indefinitely at room temperature in pressurized containers similar to propane gas. In 1978 the use of natural gas as a feed stock in the production of ammonia consumed about 3 percent of the total U.S. natural gas produced; an amount approximately equal to the total residental use of natural gas in California. It has been estimated that the substitution of OTEC ammonia for ammonia made from natural gas could conserve the equivalent of 300,000 to 500,000 bbl/day of oil.

Since ammonia is a principal ingredient in fertilizer, OTEC could also play a key role in our agricultural production and in our ability to produce food for ourselves and for export. In the long term, the greatest need in the world is not oil, but food. America's greatest strength is its ability to produce food and OTEC ammonia could free us from dependence on gas and oil based fertilizers.

Because fertilizer today is still made from natural gas which was purchased with long-term contracts for as little as $0.17 per 1,000 cubic feet, we know that the cost of fertilizer, and consequently food, will increase dramatically when these contracts expire. It has been estimatetd that fertilizer which sells for about $150 a ton today is being made from natural gas with an average price of less than $0.85. New natural gas is selling for $2.40, and its Btu equivalent price would be $5.17 with oil at $30 a barrel.

Since it takes a great deal of energy to produce a ton of fertilizer we can expect the cost of fertilizer to at least double, if not triple, in price simply as a result of the higher decontrolled prices of natural gas working their way through the market system over the next 5 years, quite aside from any other inflationary increases.

It is in this context that the uniqueness of OTEC is especially evident. Because its only "fuel" is the solar energy stored in the oceans, there is no fuel cost to increase. Of course there are the costs of building the plantships and facilities and the ccsts of operation, as there are in all plants, but there is no cost for fuel. Because the solar energy that is used is stored in the ocean, plantships or facilities can operate 24 hours a day the entire year.

They can operate at night or on days that the sun is not shining and will make use of only an infinitesimal part of the solar energy stored in the oceans. The higher the cost of oil and natural gas, the more attractive is OTEC energy since its fuel is free and the cost of building and operating OTEC facilities is comparable to other powerplants.

Significantly, OTEC technology is relatively benign and safe. There is no pollution from radiation or oilspills since it is totally nonnuclear and only makes use of the temperature differences in ocean water. Unlike the burning of coal or oil to generate electricity, OTEC does not pollute the air. In that sense, it is similar to hydrogenerated electricity. While some cold ocean water from the depths will be warmed a few degrees, this water will not significantly increase the surface temperature of the ocean. To make certain that the environment is not adversely affected, this act requires the monitoring of the effects of plantships and facilities.

One of the potential benefits of OTEC is the development of aquaculture in the immediate vicinity of plantships and facilities. The combination of warm surface water and cold ocean water has advantages for growing a variety of food products. Since OTEC involves no chemical changes in the ocean and does not add any chemical pollutants, it is especially suitable for food production. Some analyses suggest that the economic benefits of growing food at OTEC sites may even exceed the benefits from energy production.

As the cost of oil has increased, the cost of electricity has increased in all parts of the United States. But the increases have been especially large in those States, like Hawaii, in which almost all of the electricity is generated from oil. In January the cost of electricity increased by over 17 percent over December 1979, as a result of the fuel adjustment from the higher costs of oil. Eight years ago, fuel costs were less than 20 percent of the cost of electricity in Hawaii, this year they are 51 percent of the cost and next year when a long-term contract for oil at $22 a barrel expires and they will have to pay the market rate of $30 or more, fuel costs will be over 61 percent of the cost of electricity on Oahu.

How much higher oil costs will go is hard to know, but they are likely to go higher rather than lower. Electricity on Maui already costs over $0.13/KW and electricity costs in Hawaii rank second highest among the 50 States. Clearly, OTEC offers real promise of holding down or even reducing the costs of electricity in Hawaii and elsewhere. Most importantly, it breaks the cycle of higher fuel costs being directly passed on in higher electricity rates because the "fuel" is the free solar energy from the ocean.

Fuel cells store energy in a chemical form and can be used to change chemical energy into electrical or thermal energy. The development of fuel cells means that the benefits of OTEC can be provided to all parts of the United States and the world. Fuel cells are quiet and can operate efficiently in small sizes; this means that fuel cell power generation can be adapted to sites within factories or communities that would not tolerate nuclear or coal plant installations.

Fuel cell emissions are far below EPA limits. The energy efficiencies of fuel cells are also much higher than the conventional generation of electricity from coal or oil which range from 30 to 40 percent and then have losses of 5 to 10 percent in transmission. General Electric is developing various fuel cells with fuel efficiencies of 65 percent which could be located very near the need for the electricity and consequently, virtually all of the electricity would be available for use. Their use can also be readily adjusted to meet varying peak and slack demands for electricity.

Thus, the use of fuel cells, with ammonia as the fuel, has the potential of meeting energy needs throughout the United States or the world with virtually no pollution and no consumption of foreign or domestic oil.

While building large plantships or facilities is a substantial engineering task, it does not require a new technology or depend on future technological breakthroughs. In contrast to the hostile environment of the North Sea, OTEC vessels and facilities will operate in a relatively mild climate. But the extensive experience gained from building offshore oil stations in the savage environment of the North Sea can be useful in building OTEC plantships and facilities. At the Sixth OTEC Conference in June 1979, John Derrington of Sir Robert McAlpine & Sons, London, stated that:

> In 1964 it has been reported, a leading oil company geologist forecast that no resources of oil or gas under the North Sea could be exploited commercially. That geologist is unnamed—and probably now unemployed—for in the last 15 years the U.K. has become self-sufficient in oil and gas, and over 1.5 mbbd are being produced from the North Sea. Many major engineering obstacles have been overcome to achieve this.

He concludes:

> For bottom founded structures, the engineering problems have been satisfactorily solved, and that these monsters can be built to programme and within cost budgets within current engineering knowledge.

There is a great deal of interest in the United States in the development of OTEC. Private corporations and the State of Hawaii funded "MINI-OTEC" with no Federal funds. A consortium of U.S. companies in 1979 submitted a proposal to build a 40 megawatt OTEC pilot plantship for the production of 125 tons per day by 1983 of anhydrous ammonia and offered to put up $40 million in funding—$25 million in direct funding and at least $15 million in matching funds. In addition, Florida, Puerto Rico, and the Virgin Islands have expressed a strong interest in OTEC.

The open cycle system which evaporates sea water under low air pressure and produces fresh water as well as energy is of special interest to the Virgin Islands. The U.S. Senate has shown its interest in OTEC in its passage of Senator MATSUNAGA's bill, S. 1830, which provides for the funding of two demonstration OTEC plants and sets a national goal for OTEC development as well as providing funds for research and development costs.

This measure is complementary to Senator MATSUNAGA's bill and provides the needed legal basis for the licensing, siting, funding, and administering of OTEC plantships and facilities.

The principal barriers to immediate commercial application of OTEC are: First, the need for demonstration of large-scale OTEC systems, and second, the need for enactment of a Federal regulatory framework and financing assistance provisions. The OTEC demonstration bill sponsored by Representative FUQUA (H.R. 5796) and Senator MATSUNAGA (S. 1830) provides for the needed demonstrations. The Ocean Thermal Energy Conversion Act of 1980, which Representative STUDDS introduced in the House (H.R. 6154) and which I am introducing today, will establish the needed Federal regulatory framework and financing provisions. I believe that both of these two pieces of legislation are necessary, and that passage of both is needed to insure prompt commercial development of OTEC.

This bill provides for one-stop Federal licensing of OTEC facilities and plantships by the National Oceanic and Atmospheric Administration; provides that OTEC facilities and plantships be treated as vessels for most purposes under U.S. laws; allows owners of OTEC facilities and plantships to use the capital construction fund tax treatment now available to vessel owners under the Merchant Marine Act, 1936; and makes both commercial and demonstration OTEC facilities and plantships eligible for Federal loan guarantees under title XI of the Merchant Marine Act of 1936. The bill's provisions are completely in accord with the current negotiating text of the Third United Nations Conference on the Law of the Sea.

I believe this act is fiscally responsible; it relies almost entirely on private financing. The only costs to the Federal Government are the relatively small administrative costs (up to $3 million) associated with licensing and monitoring and development of a new energy resource and the provision of loan guarantees for private financing (not loans or grants) which should not cost the government any money. All vessels built in the United States require loan guarantees to secure private financing from banks, and appropriately this bill provides similar guarantees for these vessels and facilities. OTEC has great potential for increasing our energy supplies and reducing our need for imported oil at a very small cost to our treasury.

This bill will make it possible for private enterprise to proceed with the development of this energy resource. Without the legal and administrative provisions of this bill, private enterprise cannot proceed to develop the enormous potential of OTEC in a responsible and expeditious manner.

Mr. President, I ask unanimous consent that the text of this bill as well as the brief summary of the major provisions of the bill, be printed in the RECORD.

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

S. 2492

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ocean Thermal Energy Conversion Act of 1980".

SEC. 2. DECLARATION OF POLICY.

(a) It is declared to be the purposes of the Congress in this Act to—

(1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities connected to the U.S. by pipeline on cable, consistent with the Convention on the Continental Shelf, the Convention on the High Seas, and general principles of international law;

(2) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;

(3) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships by United States citizens, consistent with the Convention on the High Seas and general prnciples of international law;

(4) provide for the protection of the marine and coastal environment, and consideration of the interests of other ocean users, to prevent or minimize any adverse impact which might occur as a consequence of the development of such ocean thermal energy conversion facilities or plantships;

(5) make applicable certain provisions of the Merchant Marine Act, 1936 to assist in financing of ocean thermal energy conversion facilities and plantships;

(6) protect the interests of the United States in the location, construction, and operation of ocean thermal energy conversion facilities and plantships; and

(7) protect the rights and responsibilities of adjacent coastal States by ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by electric transmission cable or pipeline to an ocean thermal energy facility as proposed in an application; (B) would be located within fifteen miles of any such proposed ocean thermal energy conversion facility; or (C) is designated by the Administrator in accordance with section 105(a)(2) of this Act;

(2) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration;

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, and sections 73 and 74 of the Act of August 27, 1894, as amended;

(4) "application" means any application submitted under this Act (A) for issuance of a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship; (B) for transfer or renewal of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "coastal State" means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

(6) "facility" means an ocean thermal energy conversion facility;

(7) "Governor" means the Governor of a State or the person designated by law to exercise the powers granted to the Governor pursuant to this Act;

(8) "high seas" means that part of the oceans lying seaward of the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

(9) "licensee" means the holder of a valid license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship that was issued, transferred, or renewed pursuant to this Act;

(10) "ocean thermal energy conversion facility" means any facility which is connected to the U.S. by pipeline or cable and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other equipment and appurtenances of such facility;

(11) "ocean thermal energy conversion plantship" means any vessel which is designed to use temperature differences in ocean water to produce, while moving through such water, electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other equipment and appurtenances of such vessel;

(12) "plantship" means an ocean thermal energy conversion plantship;

(13) "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity organized or existing under the laws of any nation, and any Federal, State, local or foreign government or any entity of any such government;

(14) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory, or possession over which the United States has jurisdiction;

(15) "thermal plume" means the area of the ocean in which a significant difference in temperature, as defined in regulations by the Administrator, occurs as a result of the operation of an ocean thermal energy conversion facility or plantship, and;

(16) "United States citizen" means (A) any individual who is a citizen or national of the United States; (B) any Federal, State,

or local government in the United States, or any entity of any such government; or (C) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

TITLE I—REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

SEC. 101. LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF AN OCEAN THERMAL ENERGY CONVERSION FACILITY OR PLANTSHIP

(a) No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is documented under the laws of the U.S. or which is connected to the U.S. by pipeline or cable, except in accordance with a license issued pursuant to this Act.

(b) The Administrator is authorized upon application and in accordance with the provisions of this Act, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship.

(c) The Administrator may issue a license in accordance with the provisions of this Act unless—

(1) he determines that the applicant cannot and will not comply with applicable laws, regulations, and license conditions;

(2) he determines that the construction and operation of the ocean thermal energy conversion facility or plantship will not be in the national interest and consistent with national security and other national policy goals and objectives, including energy self-sufficiency and environmental quality;

(3) he determines that the ocean thermal energy conversion facility or plantship will not be operated with reasonable regard to the freedom of navigation on other reasonable uses of the high seas or authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

(4) he has been informed, within forty-five days after the conclusion of public hearings on that application, or on proposed licenses for the designated application area, by the Administrator of the Environmental Protection Agency that the ocean thermal energy conversion facility or plantship will not conform with all applicable provisions of any law for which he has enforcement authority;

(5) he has received the opinion of the Attorney General, pursuant to section 104 of this Act, stating that issuance of the license would create a situation in violation of the antitrust laws, or the ninety-day period provided in section 104 has expired;

(6) he has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(7) the proposed ocean thermal energy conversion facility or plantship will not be documented under the laws of the United States;

(8) the applicant has agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the ocean thermal energy conversion facility or plantship unless such vessel is not documented under the laws of the United States;

(9) if the license is for an ocean thermal energy conversion facility, he determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cables or pipelines already in position on or in the seabed and the possibility of their repair;

(10) if the license is for an ocean thermal energy conversion facility, he has consulted with the Governor of each adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) to determine his or her views on the adequacy of the application, and its effects on programs within his or her jurisdiction;

(11) if the license is for an ocean thermal energy conversion facility, any adjacent coastal State to which the facility is to be directly connected by electric transmission cable or pipeline does not have an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(12) if the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge unreasonably on any other ocean thermal energy conversion facility already licensed or operating, without the consent of its owner;

(13) if the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation, without the consent of such nation;

(14) if the license is for an ocean thermal energy conversion plantship, he determines that the applicant has not provided adequate assurance that the plantship will be able to operate in such a way as to prevent its thermal plume from impinging unreasonably on any other ocean thermal energy conversion facility or plantship without the consent of its owner, and from impinging on the territorial sea or area of national resource jurisdiction, as recognized by the United States of any other nation without the consent of such nation; and

(15) issuance of the license will cause to be exceeded any upper limit placed on the number or total capacity of ocean thermal energy conversion facilities or plantships established as a result of determinations made pursuant to section 107(a) of this title.

(d) (1) In issuing a license for the ownership construction, and operation of an ocean thermal energy conversion facility or plantship, the Administrator shall prescribe conditions which he deems necessary to carry out the provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.

(2) No license shall be issued, transferred, or renewed under this Act unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator, and (B) he will comply with conditions the Administrator may prescribe in accordance with the provisions of this Act.

(3) The Administrator shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license, the licensee will dispose of or remove all components of the ocean thermal energy conversion facility or plantship as directed by the Administrator. In the case of components which another applicant desires to use, the Administrator may waive the disposal or removal requirements until he has reached a decision on the application. In the case of components lying on or below the seabed, the Administrator may waive the disposal or removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to navigation, fishing, or the environment.

(e) Upon application, licenses issued under this Act may be transferred if the Administrator determines that such transfer is in the public interest and that the transferee meets the requirements of this Act and the prerequisites to issuance under subsection (c) of this section.

(f) Any United States citizen who otherwise qualifies under the terms of this Act shall be eligible to be issued a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship.

(g) Licenses issued under this Act shall be for a term of not to exceed twenty five years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional ten years upon each renewal, as the Administrator determines to be reasonable and appropriate.

SEC. 102. PROCEDURE.

(a) The Administrator shall, as soon as practicable after the date of enactment of this Act, and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of this Act, in accordance with the provisions of section 553 of title 5, United States Code, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application, issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Administrator is further authorized, consistent with the purposes and provisions of this Act, to amend or rescind any such regulation. The Administrator shall complete issuance of final regulations to implement this Act within one year of the date of its enactment.

(b) Not later than thirty days after the date of enactment of this Act, the Secretary of the Interior, the Administrator of the Environment Protection Agency, the Secretary of the department in which the Coast Guard is operating, the Chief of Engineers of the United States Army Corps of Engineers, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of ocean thermal energy conversion facilities or plantships, shall transmit to the Administrator written description of their expertise or statutory responsibilities pursuant to this Act or any other Federal law.

(c) (1) Any person making an application under this Act shall submit detailed plans to the Administrator. Within twenty-one days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by paragraph (2) of this subsection. If the Administrator determines that such information appears to be contained in the application, the Administrator shall, no later than five days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Administrator determines that all of the required information does not appear to be contained in the application, the Administrator shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial technical, and other information as the Administrator determines by rule to be necessary to process the license pursuant to Sec. 101.

(d)(1) At the time notice of an application for an ocean thermal energy conversion facility is published pursuant to subsection (d) of this section, the Administrator shall publish a description in the Federal Register of an application area encompassing the site proposed in the application for such facility and within which the thermal plume of one ocean thermal energy conversion facility might be expected to impinge on another ocean thermal energy conversion facility.

(2) The Administrator shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area. Any person intending to file such an application shall submit a notice of intent to file an application to the Administrator not later than sixty days after the publication of notice pursuant to subsection (d) of this section, and shall submit the completed application no later than ninety days after publication of such notice. The Administrator shall publish notice of any such application received in accordance with subsection (d) of this section. No application for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area for which a notice of intent to file was received after such sixty-day period, or which is received after such ninety-day period has elapsed, shall be considered until action has been completed on all timely filed applications pending with respect to such application area.

(e) An application filed with the Administrator shall constitute an application for all Federal authorizations required for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship. At the time notice of any application is published pursuant to subsection (d) of this section, the Administrator shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Administrator the approval or disapproval of the application not later than forty-five days after public hearings are concluded pursuant to subsection (g) of this section. In any case in which an agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Administrator of the manner in which the application may be amended so as to bring it into compliance with the law or regulation involved.

(f) A license may be issued, transferred, or renewed only after public notice, opportunity for comment, and public hearings in accordance with this subsection. At least one such public hearing shall be held in the District of Columbia and in each adjacent coastal State. Any interested person may present relevant material at any such hearing. After the hearings required by this subsection are concluded, if the Administrator determines that there exist one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5, United States Code. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications with respect to facilities for any designated application area shall be consolidated and shall be concluded not later than two hundred and forty days after notice of the initial application has been published pursuant to subsection (d) of this section. All public hearings on applications with respect to ocean thermal energy conversion plantships shall be concluded not later than one hundred and forty days after notice of the application has been published pursuant to subsection (d) of this section.

(g) Each person applying for a license pursuant to this Act shall remit to the Administrator at the time the application is filed a nonrefundable application fee, which shall be deposited into miscellaneous receipts of the Treasury. The amount of the fee shall be established by regulation by the Administrator, and shall reflect the reasonable administrative costs incurred in reviewing and processing the application.

(h)(1) The Administrator shall approve or deny any timely filed application with respect to a facility for a designated application area submitted pursuant to this Act not later than ninety days after public hearings on proposed licenses for that area are concluded pursuant to subsection (g) of this section. The Administrator shall approve or deny an application for ownership, construction, and operation of an ocean thermal energy conversion plantship submitted pursuant to this Act no later than ninety days after the public hearings on that application are concluded pursuant to subsection (g) of this section.

(2) In the event more than one application or ownership, construction, and operation of an ocean thermal energy conversion facility is submitted pursuant to this Act for the same designated application area, the Administrator, unless one or a specific combination of the proposed facilities clearly best serves the national interest, shall issue licenses to the first applicant.

(3) In determining whether any one or a specific combination of the proposed ocean thermal energy conversion facilities clearly best serves the national interest, the Administrator shall consider the following factors:

(A) the goal of making the greatest possible use of ocean thermal energy conversion by installing the largest capacity practicable in each application area;

(B) the amount of net energy impact of each of the proposed ocean thermal energy conversion facilities;

(C) the degree to which the proposed ocean thermal energy conversion facilities will affect the environment;

(D) any significant differences between anticipated completion dates for the proposed ocean thermal energy conversion facilities; and

(E) any differences in costs of construction and operation of the proposed ocean thermal energy conversion facilities, to the extent that such differentials may significantly affect the ultimate cost of energy or products to the consumer.

SEC. 103. PROTECTION OF SUBMARINE ELECTRIC TRANSMISSION CABLES AND EQUIPMENT.

(a) Any person who shall willfully and wrongfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this Act shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding two years, or to fine not exceeding $5,000, or to both fine and imprisonment, at the discretion of the court.

(b) Any person who by culpable negligence shall break or injure any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this Act shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding $500, or to both fine and imprisonment, at the discretion of the court.

(c) The provisions of subsections (a) and (b) of this section shall not apply to any person who, after having taken all necessary precaution to avoid such breaking or injury, breaks or injures any submarine electric transmission cable or equipment in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel.

(d) The penalties provided in subsections (a) and (b) of this section for the breaking or injury of any submarine electric transmission cable or equipment shall not be a bar to a suit for damages on account of such breaking or injury.

(e) Whenever any vessel sacrifices any anchor, fishing net, or other fishing gear to avoid injuring any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this Act, the licensee shall indemnify the owner of such vessel for the items sacrificed, provided that the owner of the vessel had taken all reasonable precautionary measures beforehand.

(f) Any licensee who causes any break in or injury to any submarine cable or pipeline of any type shall bear the cost of the repairs.

SEC. 104. ANTITRUST REVIEW.

(a) Whenever any application for issuance, transfer, or renewal of any license is received, the Administrator shall transmit promptly to the Attorney General a complete copy of such application. Within ninety days of the receipt of the application, the Attorney General shall conduct such antitrust review of the application as he deem appropriate, and submit to the Administrator any advice or recommendations he deems advisable to avoid any action upon such application by the Administrator which would create a situation in violation of the antitrust laws. If the Attorney General fails to file such views within the nineyday period, the Administrator shall proceed as if such views had been received. The Administrator shall not issue, transfer, or renew the license during the ninety-day period, except upon written confirmation by the Attorney General that he does not intend to submit any further advice or recommendation on the application during such period.

(b) The issuance of a license under this Act shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws. Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of an ocean thermal energy conversion facility or plantship.

SEC. 105. ADJACENT COASTAL STATES.

(a)(1) The Administrator, in issuing notice of application pursuant to section 102 (d) of this title, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by electric transmission cable or pipeline to an ocean thermal energy conversion facility as proposed in an application, or (B) would be located within fifteen miles of any such proposed ocean thermal energy conversion facility.

(2) The Administrator shall, upon request of a State, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by electric transmission cable or pipeline to the proposed ocean thermal energy conversion facility, or if he determines that the thermal plume of the proposed ocean thermal energy conversion facility is likely to impinge on possible locations for ocean thermal energy conversion facilities which could reasonably be expected to be directly connected by electric transmission cable or pipeline to such State. This paragraph shall apply only with respect to requests made by a State not later than the fourteenth day after the date of publication of notice of application for a proposed ocean thermal energy conversion facility in the Federal Register in accordance with section 102(d) of this title. The Administrator shall make any designation required by this paragraph not later than the forty-fifth day after the date he receives such a request from a State.

(b)(1) Not later than ten days after the designation of adjacent coastal States pursuant to this section, the Administrator shall transmit a complete copy of the application to the Governor of each adjacent coastal State. The Administrator shall not issue a license without consultation with the Governor of each adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 USC 1451 et seq.). If the Governor of such a State notifies the Administrator that an application is inconsistent in some respect with the State's coastal zone management program, the Administrator shall condition the license granted so as to make it consistent with such State program.

(2) Any adjacent coastal State which does not have an approved coastal zone management program in good standing, and any other interested State, shall have the opportunity to make its views known to, and to have them given full consideration by, the Administrator regarding the location, construction, and operation of an ocean thermal energy conversion facility.

(c) The Administrator shall not issue a license for an ocean thermal energy conversion facility unless any adjacent coastal State to which the facility is to be directly connected by electric transmission cable or pipeline has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 USC 1451 et seq.).

(d) The consent of Congress is given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship or for the transfer of such a license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or other party thereto without further approval by the Congress.

SEC. 106. DILIGENCE REQUIREMENTS.

(a) The Administrator shall promulgate regulations requiring each licensee to pursue diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies.

(b) If the Administrator determines that a licensee is not pursuing diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies, or that the project has apparently been abandoned, the Administrator shall cause proceedings to be instituted under section 111 of this title to terminate the license.

SEC. 107. PROTECTION OF THE ENVIRONMENT.

(a) The Administrator shall initiate a program to assess the effects on the environment of ocean thermal energy conversion facilities and plantships. The program shall include baseline measurements of locations where ocean thermal energy conversion facilities or plantships are likely to be sited or operated, and research and monitoring of the effects of ocean thermal energy conversion facilities and plantships in actual operation. The purpose of the program shall be to assess the environmental effects of individual ocean thermal energy facilities and plantships, and to assess the magnitude of any cumulative environmental effects of large numbers of ocean thermal energy facilities and plantships. The program shall be designed to determine, among other things—

(1) any short-term and long-term effects on the environment which may occur as a result of the operation of ocean thermal energy conversion facilities and plantships;

(2) the nature and magnitude of any oceanographic, atmospheric, weather, climatic, or biological changes in the environment which may occur as a result of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships;

(3) the nature and magnitude of any oceanographic, biological, or other changes in the environment which may occur as a result of the operation of electric transmission cables and equipment located in the water column or on or in the seabed, including the hazards of accidentally severed transmission cables; and

(4) whether the magnitude of one or more of the cumulative environmental effects of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships requires that an upper limit be placed on the number or total capacity of such facilities or plantships to be licensed under this Act for simultaneous operation, either overall or within specific geographic areas.

Within one hundred eighty days after enactment of this Act, the Administrator shall prepare a plan to carry out the program, including necessary funding levels for the next five fiscal years, and submit the plan to the Congress.

(b) The program established by subsection (a) of this section shall be reduced to the minimum necessary to perform baseline studies and to analyze monitoring data, when the Administrator determines that the program has resulted in sufficient knowledge to make the determinations enumerated in subsection (a) of this section with an acceptable level of confidence.

(c) The issuance of any license for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(c)).

For all timely applications covering proposed facilities in a single application area, and for each application relating to a proposed plantship, the Administrator shall, pursuant to such section 102(2)(C) of this title and in cooperation with other involved Federal agencies and departments, prepare a single, consolidated environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this Act to prepare an environmental impact statement. Each such consolidated draft environmental impact statement relating to proposed facilities shall be prepared and published within one hundred eighty days following the date established pursuant to section 102(e) as the deadline for submission of additional applications for the application area. Each such consolidated draft environmental impact statement relating to a proposed plantsite shall be prepared and published within one hundred eighty days of the date the application is received by the Administrator. Each final environmental impact statement shall be published not later than one hundred eighty days following the date on which the draft environmental impact statement is published. The Administrator may extend the deadline for publication of a specific draft or final environmental impact statement to a later specified time for good cause shown in writing.

SEC. 108. MARINE ENVIRONMENTAL PROTECTION AND SAFETY OF LIFE AND PROPERTY AT SEA

(a) The Secretary of the department in which the Coast Guard is operating shall, subject to recognized principles of international law, prescribe by regulation and enforce procedures with respect to any ocean thermal energy conversion facility or plantship including, but not limited to, rules governing vessel movement, procedures for transfer of materials between such a facility or plantship and transport vessels, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (1) to prevent pollution of the marine environment, (2) to clean up any pollutants which may be discharged, and (3) to otherwise prevent or minimize any adverse impact from the construction and operation of such ocean thermal energy conversion facility or plantship.

(b) The Secretary of the department in which the Coast Guard is operating shall issue and enforce regulations, subject to recognized principles of international law, with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on any ocean thermal energy conversion facility or plantship.

(c) Whenever a licensee fails to mark any component of an ocean thermal energy conversion facility or plantship in accordance with applicable regulations, the Secretary of the department in which the Coast Guard is operating shall mark such components for the protection of navigation, and the licensee shall pay the cost of such marking.

(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating shall designate a zone of appropriate size around and including any ocean thermal energy conversion facility, and may designate such a zone around and including any ocean thermal energy conversion plantship, for the purpose of navigational safety. In such zone, no installation, structures, or uses will be permitted which are incompatible with the operation of the ocean thermal energy conversion facility or plantship. The Secretary of the department in which the Coast Guard is operating shall by regulation define permitted activities within such zone. The Secretary of the department in which the Coast Guard is operating shall, not later than thirty days after publication of notice pursuant to section 102(d) of this title, designate such safety zone with respect to any proposed ocean thermal energy conversion facility or plantship.

(2) In addition to any other regulations, the Secretary of the department in which

the Coast Guard is operating is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of an ocean thermal energy conversion facility or plantship, and to issue rules and regulations relating thereto.

(e) For the purposes of the vessel inspection laws, an ocean thermal energy conversion facility or plantship shall be deemed to be a vessel.

(f) Subject to the Secretary of the department in which the Coast Guard is operating shall promulgate and enforce such regulations as he deems necessary to protect navigation in the vicinity of a vessel engaged in the installation, repair, or maintenance of any submarine electric transmission cable or equipment, and to govern the markings and signals used by such a vessel.

SEC. 109. PREVENTION OF INTERFERENCE WITH OTHER USES OF THE HIGH SEAS.

(a) Each license shall include such conditions as may be necessary and appropriate to ensure that construction and operation of the ocean thermal energy conversion facility or plantship are conducted with reasonable regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other nations in their exercise of the freedoms of the high seas as recognized under the Convention of the High Seas and the general principles of international law.

(b) The Secretary of the department in which the Coast Guard is operating shall promulgate in conjunction with the Administrator, and shall enforce, regulations governing the movement and navigation of ocean thermal energy conversion plantships to ensure that the thermal plume of one ocean thermal energy conversion plantship does not unreasonably impinge on the operation of any other ocean thermal energy conversion plantship or facility except in case of force majeure or with the consent of the licensee or owner of the other such plantship or facility, and to ensure that the thermal plume of an ocean thermal energy conversion plantship does not impinge on the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation without the consent of such nation.

SEC. 110. MONITORING OF LICENSEES' ACTIVITIES.

Each license shall require the licensee—

(1) to allow the Administrator to place appropriate Federal officers or employees aboard the ocean thermal energy conversion facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any condition or regulation applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

(3) to monitor any environmental effects of the operation of the ocean thermal energy conversion facility or plantship in accordance with guidelines issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate mitigation methods and possibilities.

SEC. 111. SUSPENSION, REVOCATION, OR TERMINATION OF LICENSES.

(a) Whenever a licensee fails to comply with any applicable provision of this Act or any applicable rule, regulation, restriction, or condition issued or imposed by the Administrator under the authority of this Act, the Attorney General, at the request of the Administrator, shall file an action in the appropriate United States district court to—

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of thirty days after the Administrator mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this section is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) If the Administrator determines that immediate suspension of the construction or operation of an ocean thermal energy conversion facility or plantship or any component thereof is necessary to protect public health and safety or to eliminate imminent and substantial danger to the environment, or if the President determines that such suspension is necessary to avoid a conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States, the Administrator may order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

SEC. 112. RECORDKEEPING AND PUBLIC ACCESS TO INFORMATION.

(a) Each licensee shall establish and maintain such records, make such reports, and provide such information as the Administrator, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provisions of this Act. Each licensee shall submit such reports and shall make available such records and information as the Administrator may request.

(b) The Administrator shall not disclose information obtained by him under this Act that concerns or relates to a trade secret, referred to in section 1905 of title 18, United States Code, except that such information may be disclosed, in a manner which is designed to maintain confidentiality—

(A) to other Federal and adjacent coastal State government departments and agencies for official use, upon request;

(B) to any committee of the Congress having jurisdiction over the subject matter to which the information relates, upon request;

(C) to any person in any judicial proceeding, under a court order formulated to preserve such confidentiality without impairing the proceedings; and

(D) to the public in order to protect the public health and safety, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not in the opinion of the Administrator be detrimental to the public health and safety).

SEC. 113. RELINQUISHMENT OR SURRENDER OF LICENSES.

Any licensee may at any time, without penalty, surrender to the Administrator a license issued to him, or relinquish to the Administrator in whole or in part, any right to conduct construction or operation of an ocean thermal energy conversion facility or plantship, including part or all of any right of way which may have been granted in conjunction with such license: *Provided*, That such surrender or relinquishment shall not relieve the licensee of any obligation or liability established by this Act, or of any obligation or liability for actions taken by him prior to such surrender or relinquishment, or during removal of any components required to be removed pusuant to this Act.

(b) If part or all of a right of way which is relinquished, or for which the license is surrendered, to the Administrator pursuant to subsection (a) of this section contains an electric transmission cable or pipeline which is used in conjunction with another license for an ocean thermal energy conversion facility, the Administrator shall allow the other licensee an opportunity to add such right of way to his license before informing the Secretary of the Interior that the right of way has been vacated.

SEC. 114. CIVIL ACTIONS.

(a) Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person who is alleged to be in violation of any provision of this Act or any regulation or condition of a license issued pursuant to this Act; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary.

In suits brought under this Act, the district courts of the U.S. shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any regulation or condition of a license issued pursuant to this Act, or to order the Administrator to perform such act or duty, as the case may be.

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(c) In an action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement or to seek any other relief.

SEC. 115. JUDICIAL REVIEW.

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Administrator's decision to issue, transfer, modify, renew, suspend, or terminate a license may, not later than sixty days after such decision is made, seek judicial review of such decision in the United States court of appeals for the circuit within which the nearest adjacent coastal State is located. A person shall be deemed to be aggrieved by the Administrator's decision within the meaning of this Act if he—

(1) has participated in the administrative proceedings before the Administrator (or if he did not so participate, he can show that his failure to do so was caused by the Administrator's failure to provide the required notice); and

(2) is adversely affected by the Administrator's action.

TITLE II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION

FACILITIES AND PLANTSHIPS

SEC. 201. (a) For the purposes of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) any ocean thermal energy conversion facility or plantship licensed pursuant to this Act, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, shall be deemed to be a vessel operated in the foreign or domestic commerce of the United States.

(b) For the purposes of the shipping laws of the United States, any vessel documented under the laws of the United States and used in providing shipping service to or from any ocean thermal energy conversion facility or plantship licensed pursuant to this Act shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 905(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1244(a)).

SEC. 202. (a) Section 1101 of the Merchant Marine Act, 1936 (46 U.S.C. 1271) is amended—

(1) in subsection (b) by striking "and" immediately before "dredges" and inserting in lieu thereof a comma, and by inserting immediately after "dredges" the following: "and ocean thermal energy conversion facilities or plantships", and

(2) by adding at the end thereof a new subsection (i) to read as follows:

"(i) The term 'ocean thermal energy conversion facility or plantship' means any at-sea facility or vessel, whether mobile, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other equipment and appurtenances of such facility or vessel.".

SEC. 203. (a) Section 1104(a)(1) of the Merchant Marine Act, 1936 (46 U.S.C. 1274 (a)(1)) is amended by striking "or (E)" and inserting in lieu thereof "(E) as an ocean thermal energy conversion facility or plantship; or (F)".

(b) Section 1104(b)(2) of the Merchant Marine Act, 1936 (46 U.S.C. 1274(b)(2)) is amended by striking "vessel;" and inserting in lieu thereof "vessel: *Provided, further*, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost of the facility or plantship;".

SEC. 204. Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271–1279(b)) is further amended—

(1) in section 1103(f) thereof (46 U.S.C. 1273(f)) by striking "$10,000,000,000." and inserting in lieu thereof "$12,000,000,000, of which $2,000,000,000 shall be limited to obligations pertaining to demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1110.", and

(2) by adding at the end thereof a new section 1110 to read as follows:

"SEC. 1110. (a) There is hereby created a special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund. The OTEC Demonstration fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this title. Except as specified otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed $2,000,000,000.

"(b) Pursuant to the authority granted under section 1103(a), the Secretary of Commerce, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of an ocean thermal energy conversion facility or plantship owned by citizens of the United States. Guarantees or commitments to guarantee under this susbection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1104(a)(1), except that—

"(1) any other provisions of this title to the contrary notwithstanding, guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed 100 per centum of the actual cost or depreciated actual cost of the ocean thermal energy conversion facility or plantship;

"(2) the provisions of section 1104(d) do not apply to guarantees or commitments to guarantee made pursuant to this section; and

"(3) a guarantee or commitment to guarantee may not be made under this section unless the Secretary of Commerce determines, after consultation with the Secretary of Energy, that the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought is a demonstration plant for the development of alternative energy sources for the United States, and that sufficient guaranty of performance or payment is being provided by the Department of Energy and/or private industry to lower the risk of loss to a level which is reasonable, taking into account the need of the United States to develop new renewable sources of energy and the benefits to be realized from construction and operation of the proposed ocean thermal energy conversion facility or plantship.

"(c) The provisions of this section may be used to guarantee obligations for a total of not more than five separate ocean thermal energy conversion facilities or plantships.".

TITLE III—ENFORCEMENT

SEC. 301. PROHIBITED ACTS.

It is unlawful for any person who is a United States citizen, or a foreign national on board a vessel documented or numbered under the laws of the United States, or otherwise subject to the jurisdiction of the United States—

(1) to violate any provision of this Act, or any rule, regulation, or order issued pursuant to this Act, or any term or condition of any license issued to such person pursuant to this Act;

(2) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of sections 110 and 303 of this Act to board an ocean thermal energy conversion facility or plantship or any vessel documented or numbered under the laws of the United States, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this Act or any rule, regulation, order, term or condition referred to in paragraph (1) of this section;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (2) of this section;

(4) to resist a lawful arrest for any act prohibited by this section; or

(5) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person subject to this section knowing that the other person has committed any act prohibited by this section.

SEC. 302. REMEDIES AND PENALTIES.

(a)(1) The Administrator or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

(2) Whenever on the basis of any information available to him the Administrator finds that any person subject to section 301 of this title is in violation of any provision of this Act or any rule, regulation, order, license, or condition thereof, or other requirements under this Act, he may issue an order requiring such person to comply with such provision or requirement, or he may bring a civil action in accordance with subsection (b) of this section.

(3) Any compliance order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply wtih applicable requirements.

(b) Upon a request by the Administrator, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed $25,000 per day of such violation, for any violation for which the Administrator is authorized to issue a compliance order under subsection (a)(2) of this section.

(c) Upon a request by the Administrator, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation, by any person subject to section 301 of this title, of any provision of this Act, any regulation issued pursuant to this Act, or any license condition.

(d)(1) Any person subject to section 301 of this title is guilty of an offense if he willfully commits any act prohibited by this section.

(2) Any offense, other than an offense for which the punishment is prescribed by section 103 of this Act, is punishable by a fine of not more than $75,000 for each day during which the violation continues. Any offense described in paragraph (2), (3), (4), and (5) of section 301 is punishable by the fine or imprisonment for not more than six months, or both. If, in the commission of any offense, the person subject to section 301 uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than ten years, or both.

(e) Any ocean thermal energy conversion facility or plantship licensed pursuant to this Act and any other vessel documented or numbered under the laws of the United States, except a public vessel engaged in noncommercial activities, used in any violation of this Act or any rule, regulation, order, license, or condition thereof, or other requirements of this Act, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof, whenever it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

SEC. 303. ENFORCEMENT.

(a) Except where a specific section of this Act designates enforcement responsibility, the provisions of this Act shall be enforced by the Administrator. The Secretary of the department in which the Coast Guard is operating shall have exclusive responsibility for enforcement measures which affect the safety of life and property at sea, shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this Act as are authorized under other provisions of law, and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of any provision of this Act. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b) of this section. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) To enforce the provisions of this Act on board any ocean thermal energy conversion facility or plantship or other vessel subject to the provisions of this Act, any officer who is authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating may—

(1) board and inspect any vessel which is subject to the provisions of this Act;

(2) search the vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this Act;

(3) arrest any person subject to section 301 of this title if the officer has reasonable cause to believe that the person has committed a criminal act prohibited by sections 301 and 302(d) of this title;

(4) seize the vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act if such seizure is necessary to prevent evasion of the enforcement of this Act;

(5) seize any evidence related to any violation of any provision of this Act;

(6) execute any warrant or other process issued by any court of competent jurisdiction; and

(7) exercise any other lawful authority.

(c) Except as otherwise specified in section 115, of this Act, the district courts of the United States shall have exclusive original jurisdiction over any case or controversy arising under the provisions of this Act. Except as otherwise specified in this Act, venue shall lie in any district wherein, or nearest to which, the cause of action arose, or wherein any defendant resides, may be found, or has his principal office. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(d) For the purposes of this section, the term "vessel" includes an ocean thermal energy conversion facility or plantship, and the term "provisions of this Act" or "provision of this Act" includes any rule, regulation, or order issued pursuant to this Act and any term or condition of any license issued pursuant to this Act.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT OF LAW OF THE SEA TREATY.

If the United States ratifies a treaty, which includes provisions with respect to jurisdiction over ocean thermal energy conversion activities, resulting from any United Nations Conference on the Law of the Sea, the Administrator, after consultation with the Secretary of State, shall promulgate any amendment to the regulations promulgated under this Act which is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

SEC. 402. EXEMPTIONS FOR DEMONSTRATION FACILITIES AND PLANTSHIPS.

The provisions of title I of this Act shall not apply to ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by, the Department of Energy. The Secretary of Energy, after consultation with the Administrator, shall require such demonstration projects to abide by as many of the substantive requirements of title I of this Act as he determines to be practicable without damaging the nature of or unduly delaying such projects.

SEC. 403. RELATIONSHIP TO OTHER LAWS.

(a) (1) The Constitution, laws, and treaties of the United States shall apply to an ocean thermal energy conversion facility or plantship licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such facility or plantship, in the same manner as if such facility or plantship were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty.

(2) Ocean thermal energy conversion facilities and plantships licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(3) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State on the United States within the territorial seas of the United States.

(b) The law of the nearest adjacent coastal State to which an ocean thermal energy conversion facility licensed pursuant to this Act is connected by electric transmission cable or pipeline, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to such facility, to the extent applicable and not inconsistent with any provision or regulation under this Act of other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States.

(c) Except insofar as they apply to vessels documented under the laws of the United States, the customs laws administered by the Secretary of the Treasury shall not apply to any ocean thermal energy conversion facility or plantship licensed under the provision of this Act, but all foreign articles to be used in the construction of any such facility or plantship, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

SEC. 404. SUBMARINE ELECTRIC TRANSMISSION CABLE AND EQUIPMENT SAFETY.

(a) The Administrator, in cooperation with other interested Federal agencies and departments, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of submarine electric transmission cables and equipment over which the United States has jurisdiction. Such standards and regulations shall include, but not be limited to, requirements for the use of the safest and best available technology for submarine electric transmission cable shielding, and for the use of automatic switches to shut off electric current in the event of a break in such a cable.

(b) The Administrator, in cooperation with other interested Federal agencies and departments, is authorized and directed to report to the Congress within sixty days after the date of enactment of this Act on appropriations and staffing needed to monitor submarine electric transmission cables and equipment subject to the jurisdiction of the United States so as to assure that they meet all applicable standards for construction, operation, and maintenance.

SEC. 405. ANNUAL REPORT.

Within six months after the end of each of the first three fiscal years after the date of enactment of this Act, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report on the administration of this Act during such fiscal year. Such report shall include, with respect to the fiscal year covered by the report—

(1) a description of progress in implementing this Act;

(2) a list of all licenses issued, suspended, revoked, relinquished, surrendered, terminated, renewed, or transferred; denials of issuance of licenses; and required suspensions and modifications of activities under licenses;

(3) a description of ocean thermal energy conversion activities undertaken pursuant to licenses;

(4) the number and description of all civil and criminal proceedings instituted under title III, of this Act, and the current status of such proceedings; and

(5) such recommendations as the Administrator deems appropriate for amending this Act.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Commerce, for the use of the Administrator in carrying out the provisions of this Act, not to exceed $3,000,000 for the fiscal year ending September 30, 1981, not to exceed $3,500,000 for the fiscal year ending September 30, 1982, and not to exceed $3,500,000 for the fiscal year ending September 30, 1983.

SEC. 407. SEVERABILITY.

If any provision of this Act or any application thereof is held invalid, the validity of the remainder of the Act, or any other application, shall not be affected thereby.

SUMMARY OF THE OCEAN THERMAL ENERGY CONVERSION ACT OF 1980

Section 2 of this bill states that the purposes of the Congress in passing the Act are to (1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion (OTEC) facilities standing on or moored to the Continental Shelf of the United States beyond its territorial sea, consistent with international law, (2) authorize and regulate the construction, location, ownership, and operation of OTEC plantships documented under the laws of the United States, consistent with international law, (3) authorize and regulate the construction, location, ownership, and operation of OTEC plantships by U.S. citizens, consistent with international law, (4) provide for the protection of the marine and coastal environment and other ocean users, (5) make applicable to OTEC facilities and plantships certain of the financing provisions of the Merchant Marine Act, 1936, (6) to protect the interests of the United States, and (7) to protect the rights and responsibilities of adjacent coastal States.

Section 3 defines the major terms used in the bill. An OTEC facility is an OTEC plant which is connected to the United States by pipeline or cable and an OTEC plantship is an OTEC plant which moves through the water while operating. All Commonwealths, territories, and possessions over which the United States has jurisdiction are included in the definition of State.

Title I of the Act sets out the procedures and requirements to be followed in regulation of OTEC facilities and plantships. Section 101 prohibits any person from engaging in the ownership, construction, or operation of an OTEC facility without a license, and prohibits any U.S. citizen from engaging in the ownership, construction, or operation of an OTEC plantship without a license. The section also authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue, transfer, amend, and renew licenses when applications meet the requirements of the Act. The Administrator is required to establish bonding requirements to assure removal of OTEC apparatus from the ocean and seabed when operations cease. The maximum term of a license is 25 years, with preferential rights for renewals not to exceed 10 years at a time.

Section 102 sets out the detailed administrative procedures to be followed in issuing regulations, receiving and processing applications, and issuing licenses. The Administrator is instructed to make every effort to complete issuance of regulations to implement the Act within 270 days after its enactment. Applications must include detailed plans of the proposed OTEC facility or plantship, other detailed information listed in subsection (d)(2), and such other information as the Administrator deems necessary or appropriate. When an application for a license relating to an OTEC facility (not a plantship) is received, the Administrator is to designate an "application area" which includes the proposed location of the facility. Other persons interested in applying for a license to place an OTEC facility within the designated application area have 60 days to submit notice of intent, and a total of 90 days to submit their completed applications. If more than one application to place an OTEC facility in the same application area is received, public hearings and other proceedings on those applications are consolidated. Subsection (i) specifies criteria to be used by the Administrator in choosing between competing applications for the same designated application area.

Section 101 also establishes a single-application procedure for all required federal approvals, with other involved agencies making recommendations to the Administrator of NOAA on elements of the licensing decision within their legal responsibilities. Public hearings must be held before issuance, transfer, or renewal of a license. All public hearings on plantship applications must be completed within 140 days, and all public hearings on facility applications must be completed within 240 days. Final decisions on properly filed applications must be made within 90 days of the time public hearings are concluded. The time schedule established by section 102 requires a final decision on an application relating to an OTEC plantship within 266 days of its submission, and a final decision on an application relating to an OTEC facility within 356 days of its submission.

Section 103 makes it a misdemeanor to break or injure any submarine electric transmission cable or equipment being constructed or operated under a license, and specifies penalties for any violation. The section requires licensees to pay the owner of any anchor or fishing gear which is sacrificed in order to avoid damaging the licensee's electric transmission cable or equipment, and requires any licensee who causes injury to any type of submarine cable or pipeline to pay for its repair.

Section 104 provides for a 90-day antitrust review of each application by the Federal Trade Commission and the Attorney General. The reviews and actions taken under this Act in no way prejudice any other actions to enforce the antitrust laws of the United States.

Section 105 requires the Administrator to designate as an "adjacent coastal State" for an application any State which will be directly connected to an OTEC facility by cable or pipeline, and any State within 15 miles of a proposed facility location. Other potentially affected States may also be designated as adjacent coastal States. If a designated adjacent costal State has an approved coastal zone management program, its Governor is given the right to veto the application. No license may be issued for an OTEC facility directly connected to a State by cable or pipeline unless that State has an approved coastal zone management program. The consent of Congress is given to two or more States to enter into agreements or compacts for the purpose of applying for licenses under the Act.

Section 106 requires each licensee to pursue diligently the construction and operation of the OTEC facility or plantship to which the license applies. If the Administrator determines that diligence is not being shown, he is required to start proceedings to terminate the license.

Section 107 requires the Administrator to start a program to assess (through research, baseline measurements, and monitoring of OTEC operations) the effects of OTEC facilities and plantships on the environment. Subsection (a) sets out several specific questions which the program must be designed to answer, including whether any of the cumulative environmental effects require that a ceiling be placed on the number or capacity of OTEC facilities or plantships to be licensed for simultaneous operation, either overall or within specific geographic areas. Subsection (c) states that the issuance of a license is deemed to be a major Federal action significantly affecting the quality of the human environment; this requires preparation of an environmental impact statement for the issuance of a license. The subsection provides that a single consolidated environmental impact statement be prepared, rather than separate statements by each agency involved.

Section 108 requires the Secretary of the department in which the Coast Guard is operating to issue and enforce regulations governing marking, safety equipment, vessel movement, and other aspects of OTEC facility or plantship operation which may affect pollution of the marine environment or safety of life and property. The Secretary is also authorized, after consultations, to establish safety zones around OTEC facilities and plantships. OTEC facilities and vessels are deemed to be vessels for the purposes of the vessel inspection laws.

Section 109 requires that each license include conditions to ensure that construction and operation of the OTEC facility or plantship are conducted with reasonable regard for navigation, fishing, or other uses of the high seas by U.S. citizens or other countries. The Secretary of the department in which the Coast Guard is operating is required, in conjunction with the Administrator, to promulgate regulations governing the movement of OTEC plantships to ensure that any ocean temperature changes caused by the plantship do not unreasonably impinge on other OTEC operations or on any other country.

Section 110 provides for placement of Federal observers on board licensed OTEC facilities and plantships, and requires licensees to provide environmental monitoring data to the Administrator.

Section 111 provides procedures for suspension or revocation of a license when a licensee has failed to comply, and permits the Administrator to issue orders to cease or alter construction or operation under certain specified conditions.

Section 112 requires licensees to keep records described in regulations and to submit such reports as the Administrator requests. The section also provides for availability of information and documents to the public, and contains provisions to protect trade secrets as defined in 18 U.S.C. 1905.

Section 113 provides that a licensee may at any time surrender a license, or relinquish part or all of his rights under the license, to the Administrator, but does not thereby relieve himself of any liabilities or obligations.

Section 114 provides authorization for citizen civil suits to force enforcement or compliance with the Act.

Section 115 allows any person who is adversely affected and who participated in the administrative proceedings, 60 days during which to seek judicial review by the United States Court of Appeals of the Administrator's decision with respect to an application.

Title II of the bill contains amendments to the Merchant Marine Act, 1936, which insure that OTEC facilities and plantships will be included within the coverage of certain provisions of that Act. Section 201(a) states that for the purposes of section 607 of the 1936 Act any OTEC facility or plantship licensed under this Act, and any vessel providing shipping service to or from such an OTEC facility or plantship, is deemed to be a vessel operated in the foreign or domestic commerce of the United States. The substantive effect of this statement is to clarify that OTEC facilities and plantships, and vessels serving them, are eligible to use the capital construction fund provisions of the 1936 Act.

Section 201(b) states that for the purposes of the shipping laws, any vessel documented under the laws of the United States and used in providing shipping service to or from an OTEC facility or plantship licensed under this Act shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 905(a) of the 1936 Act. The substantive effect of this statement is to clarify that vessels serving OTEC facilities and plantships are eligible for construction and operating differential subsidies under the provisions of the 1936 Act if they meet the specific requirements for receipt of those subsidies.

Section 202 amends section 1101 of the 1936 Act to include a definition of OTEC facilities or plantships, and to include them in the definition of vessel. Section 203 amends section 1104 of the 1936 Act to include OTEC facilities and plantships in the list of items to which the section applies, and to provide a ceiling of 87½ per centum of actual construction cost for an OTEC facility or plantship which is built without the use of construction-differential subsidy. The net effect of all these amendments is that OTEC facilities and plantships would be eligible for mortgage obligation guarantees up to a maximum of 87½ per centum of their cost, under the program established by title XI of the 1936 Act.

Section 204 amends title XI of the 1936 Act to set up a special subaccount in the Federal Ship Financing Fund to handle mortgage obligation guarantees for OTEC demonstration facilities or plantships which would not satisfy the "economically sound" criterion of section 1104(d). Such demonstration plants would have to be approved by the Secretary of Commerce, after consultation with the Secretary of Energy, and the mortgage obligation guarantee could cover 100 per centum of the actual construction cost of the demonstration plant. The limit on all mortgage obligation guarantees for OTEC demonstration plants would be set at $2 billion, and the special provisions of section 204 could be used for not more than 5 OTEC demonstration projects.

Title III of the bill contains enforcement provisions, including specification of criminal and civil penalties, issuance of compliance orders by the Administrator, enforcement responsibilities, powers of enforcement officers, jurisdiction and venue of courts, and other enforcement matters.

Title IV of the bill contains miscellaneous provisions. Section 401 requires the Administrator to modify regulations issued pursuant to this Act to conform them to the provisions of any Law of the Sea treaty ratified by the United States.

Section 402 exempts demonstration OTEC projects designated as such by the Secretary of Energy from the licensing and other requirements of Title I of the Act, and requires the Secretary of Energy to make such demonstration projects abide by as many of the substantive requirements of title I as he determines to be practicable.

Section 403 specifies the relationship of activities under this Act to other laws. The Constitution, laws, and treaties of the United States would apply to licensed OTEC facilities and plantships to the same extent they would to a Federal enclave located within a State. If an OTEC facility is connected to a coastal State by cable or pipeline, the laws of that State would apply to the facility so long as the State laws do not conflict with Federal law. U.S. customs law would not apply to OTEC facilities and plantships, but payment of duty would be required on foreign articles used in the construction of the facility or plantship.

Section 404 requires the Administrator, in cooperation with other interested Federal agencies, to establish and enforce regulations for the safe construction and operation of submarine electric transmission cables and equipment under U.S. jurisdiction.

Section 405 requires the Administrator to submit an annual report to the Congress for each of the first three years after enactment of the Act. Section 406 authorizes appropriations of $3.0 million for fiscal year 1981 and $3.5 million for each of fiscal years 1982 and 1983 to implement the Act. Section 407 provides that if any provision or application of the Act is held invalid, the holding does not affect the validity of the remainder of the Act or other applications.

Mr. INOUYE. Mr. President, I ask unanimous consent that a paper presented by Dr. W. H. Avery of the Johns Hopkins Applied Physics Laboratory at the Institute for Electrical and Electronic Engineers 1980 Region 6 Conference held on February 20, 1980, in San Diego, Calif., be printed in the RECORD. He analyzes several ways of developing ocean thermal energy and products in various geographic locations and compares the projected costs of delivering electrical power and ammonia with the projected costs from coal or nuclear plants. His analysis indicates OTEC plants would be highly competitive.

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

THE OTEC CONTRIBUTION TO ENERGY NEEDS OF ALL REGIONS OF THE UNITED STATES*

[Figures mentioned in text not printed in RECORD]

ABSTRACT

OTEC energy can be provided to the U.S. via direct electric power transmission from offshore U.S. island or Gulf of Mexico sites, or via production of an energy product produced on an OTEC plantship sited in tropical waters. Ammonia provides an outstanding choice for the second option. OTEC ammonia can replace ammonia now made from natural gas to conserve fuel or serve as a hydrogen carrier for fuel cells, to provide a stored source of power for all regions of the U.S. Projected costs of delivered ammonia and electrical power after 1990 are competitive with projected costs from coal or nuclear plants.

Ocean Thermal Energy Conversion or OTEC is a method of converting solar energy which is stored by the sun in the surface layers of the tropical oceans into electrical energy. The electrical energy that can potentially be generated in this way is many times larger than the projected total U.S. energy needs. OTEC energy can be delivered to all regions of the U.S. via an energy product or to the Gulf States via direct transmission of electric power, at costs that will be comparable with energy derived from coal or nuclear power. Since OTEC power will be inexhaustible and the environmental impact will be relatively minor, we believe OTEC development should be a priority National program.

Two methods of operation of OTEC plantships are commercially attractive and are under development. In the first method OTEC plants will be moored in areas near shore where a suitable temperature difference is available and power will be transmitted by underwater cable to the utility grid on shore.

In the second method of OTEC operation maneuvering plantships will be sited in the areas of maximum ΔT in the tropical oceans and will move about slowly to remain in the warmest surface waters which drift with the seasons. Oceanographic data show that an annual average ΔT of 24°C (43.0°F) could be available for OTEC by this mode of operation. (The term "grazing" has been used to describe the ½ knot speed of the plants.) These grazing plantships are designed to use the electric power generated on the ship to operate an industrial plant that produces a chemical product which may be shipped to U.S. ports. There the product is used either to replace a product now requiring petroleum fuel or electric power for its manufacture, or the OTEC product may be used as a fuel for direct electric power generation.

Because of the temperature advantages and environmental tradeoffs the cost of energy delivered to mainland U.S. sites is approximately the same for the grazing OTEC system as for the moored plants.

The basic features of the OTEC power system were described in the paper by Dr. Craven [1] and will not be further elaborated here. However, it is important to discuss in more detail certain features essential for optimum performance of the OTEC energy product plantship system.

If a temperature differential of 22°C (39.6°F) between the surface water and the cold water at depth is available about one-fourth of the electric energy produced will be needed to drive the pumps and other auxiliaries, leaving a net output of 75% of the gross OTEC power to be used for other purposes. As shown in Fig. 1, the OTEC net temperature difference, ΔT. A 100 MW plant designed for operation in the Gulf of Mexico where the ΔT is 21°C (37.8°F) would deliver 140 MW with the same water flows when operating in the ocean near the equator where a ΔT of 24°C (43.0°F) can be found.

Figs. 2 and 3 show the vast region of the oceans where an annual average ΔT of 22°C (39.6°F) exists, which is suitable for OTEC operation. The area enclosed by the 22°C contours is approximately 60 million square kilometers, (22 million sq. miles). In Table 1 it is shown that this area could support 30,000 325 MW OTEC power plants if all of the suitable ocean area was utilized. About 1500 such plants would be able to supply the projected total needs of the U.S. for electric power in the year 2000 via ammonia and fuel cells at 50% power delivery via the OTEC-ammonia fuel cell route. One hundred plants could supply California's projected needs.

TABLE 1.—*Energy potentially available from OTEC*

Ocean area suitable for OTEC plantships = 60 million sq. km.

(ΔT greater than 22°C.)

Estimated minimum operating area per 325 MW plantship = 2000 sq. km.

Total OTEC power generation capability: $30{,}000 \times 325$ MW = 10,000 GW = 9×10^{13} KWH/year.

Energy demand;

U.S. total electric power generation 1977: Peak load 385 GU; total consumption 2.2×10^{12} KWH; California = 0.15×10^{12} KWH.

A survey of chemical compounds suitable for transporting OTEC energy to shore shows that ammonia is nearly ideal for this purpose.* It can be manufactured onboard the OTEC ship wherever the ship is operating, from nitrogen which can be extracted from the air, and from hydrogen which is made by electrolysis of water from the sea.

Ammonia is formed in an equilibrium process with small evolution of heat so that it efficiently transforms electrical energy into storable chemical energy. It is easily liquified, stored and shipped, and on land may be stored indefinitely at room temperature in pressure containers similar to those used for bottled propane gas. Ammonia is already a major industrial chemical, since it provides the basis for all nitrogen fertilizer made in the U.S. as well as other industrial materials. Ammonia production was 16 million metric tons (m.t.) (18 million standard tons) in 1978 and is expected to increase to 22–25 million m.t./year by 1995. Ammonia is now made in the U.S. using natural gas as a feedstock, and consumed 18 billion cubic meters (630 billion cubic feet) in 1978, 3 percent of the total U.S. natural gas produced, an amount approximately equal to the total residential use of natural gas in California. With a high priority program substitution of OTEC ammonia for ammonia made from natural gas could conserve the equivalent of 300,000 bbl/day of oil by 1995 and 500,000 bbl/day by 1999.

*Paper presented at the IEEE 1980 Region 6 Conference Feb. 20, 1980 (Revised Feb. 28, 1980).

*It is a coincidence that ammonia is also the preferred medium for the heat exchanger. The two uses have no relation to one another.

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Ammonia is formed by combination of three parts hydrogen and one part nitrogen under high pressure in the presence of a catalyst. It may easily be decomposed, by application of higher temperature and lower pressure in the presence of the same catalyst, to provide hydrogen that is chemically pure* and is preeminently suitable for generation of electric power through reaction of hydrogen and air or oxygen in a fuel cell. Fuel cells convert chemical energy into electrical energy with efficiency of 50–90 percent compared to 30–35 percent attainable with gas turbine systems. The most efficient fuel cells currently available are those developed by the General Electric Company which employ a solid polymer electrolyte (SPE).[2]

At a current density of 300 amperes per square foot SPE cells employing hydrogen and oxygen as reactants have a maximum demonstrated efficiency of 65 percent (defined as the ratio of electrical energy output to heat of the reaction). Some improvement is expected with further research. However, for the present estimates a range of fuel cell efficiencies ranging from $\eta = 0.5$ available in current SPE cells to η 0.65 expected for the 1985–90 period appears appropriate. The system is shown in Fig. 4. See Footnote (1) also.

(1) The efficiency of the hydrogen-oxygen cell is limited by polarization at the oxygen electrode. G.E. has shown that such polarization does not occur with fuel cells employing chlorine and hydrogen. They have, therefore, proposed and demonstrated a fuel cell system which uses hydrogen and chlorine as the feed to produce hydrogen chloride as a reaction product and then regenerates the chlorine in a separate cycle by reacting the hydrogen chloride with oxygen to produce water and chlorine, which is returned to the fuel cell. The system is shown in Fig. 4a. With this system fuel cell efficiency referred to the hydrogen chlorine reaction could approach 100%, and practical efficiencies of 80–85% for the complete fuel cell system including power conversion are thermodynamically possible. With a fuel cell system efficiency of 80% an overall power transmission efficiency of 60% to 65% appears possible from the OETC busbar to the on-shore electricity consumer, via ammonia shipment to the land site followed by fuel cell power production: i.e. a 325 MW OTEC plantship will deliver 200 MW of electric power to the land site busbar. An R&D program to explore this possibility is desirable.

An analysis has been completed of the hydrogen-chlorine regenerative fuel cell cycle by E. Balko of G.E. which indicates that a cycle which employs a gaseous $HCl-O_2$ reaction to regenerate chlorine for the fuel cell will not achieve an overall thermal efficiency, based on the high heat of reaction of hydrogen and oxygen, better than approximately 65%, which is achievable with the SPE hydrogen-oxygen cell. The analysis shows that the benefit expected from the high efficiency of the H_2Cl_2 fuel cell can not be realized because of the requirement in the regenerative cycle to use a substantial part of the energy to gasify the dilute HCl solution produced in the fuel cell. A cycle in which the HCl oxidation occurs in the liquid phase offers promise of achieving the higher efficiencies quoted, based on strictly thermodynamic considerations. However, further study is necessary to evaluate this possibility.

There is a loss of energy in using OTEC power to form ammonia which will later be decomposed to produce electric power. However, compared with direct transmission of OTEC power to shore, the much larger power output of grazing OTEC plantships operating near the equator, as well as the transport and storage advantages of ammonia, compensate for the efficiency loss. Thus, the cost of delivered power is estimated to be about the same for moored OTEC plants delivering power to shore via underwater cable in the Gulf of Mexico, as for grazing OTEC ammonia plantships delivering ammonia to shore which is decomposed and used in fuel cells to produce electric power at coastal U.S. sites. The latter mode of operation allows OTEC to supply electric power anywhere in the U.S. and to draw on the vast tropical ocean area as an energy resource. Since fuel cells are quiet and can operate efficiently in small sizes, fuel cell power generation can be adapted to sites within factories or communities that would not tolerate large nuclear or coal plant installations. Operating data show that fuel cell emissions are far below EPA limits.

Fig. 5 shows a conceptual design of a 100 MW OTEC ammonia plantship which is made up of twenty 5 MW power modules. The ship shown is 150 meters long, 60 meters wide, and 20 meters deep and is of reinforced concrete construction. Fig. 6 identifies the system components.

PROJECT COSTS

During the past two years major effort in the DOE program has been devoted to definition of baseline engineering designs of 40 MW pilot/demonstration plants that will provide a firm basis for industry proposals for construction to begin in 1981. The purpose of the pilot plants is to provide accurate data on cost and performance for follow-on construction of moored and grazing commercial plants which will deliver busbar power of 100 to 400 MW. Under DOE support and APL direction a two-year engineering evaluation effort has been conducted by representatives of the shipbuilding and marine construction industries to define a baseline barge type of configuration for the 40 MW pilot plant.[4] The design is similar to that shown in Fig. 5 scaled down to 40 MW. The pilot plant configuration is shown in Fig. 7. The barge type platform is of concrete construction and is 43 meters wide (140 ft), 135 meters long (444 ft) and has an operating draft of 20 meters (65 ft). The launching draft is 10 meters (33 ft) (without the CWP!) which will allow construction in existing U.S. shipyards. The CWP is 9.1 meters in diameter (30 ft) and is made of post-tensioned light weight concrete in 15 meter (50 ft) sections joined by flexible connections. The concrete density is 1360 kg/m^3 (85 lb/ft^3). The low submerged weight of the CWP and its sectional construction facilitate deployment and insure that dynamic loads under 100 year storm conditions will be well below safe limits for post tensioned concrete.[5] An FRP plastic CWP is an alternative.[6]

The capital costs of the pilot plants and expected commercial OTEC plantships for moored and grazing options are projected from work in progress to be as shown in Table 2.* Costs for the 40 MW pilot plants are based on engineering drawings, on industrial estimates of the costs of the platform and CWP, on detailed estimates of the cost of manufacturing the folded tube aluminum heat exchanger made by The Trane Company who built the full scale section tested at the Argonne Laboratory, on a quotation from the Alfa Laval Corp. who manufacture plate type titanium heat exchangers, and from quotations from vendors for the pumps, propulsion equipment, control systems, ammonia plant and auxiliary equipment. The cost differences among the pilot plants reflect the effects of differences in ΔT, in heat exchanger life requirement and in environmental rigor. Costs of mooring equipment at Puerto Rico and Hawaii are based on preliminary industry estimates. Costs for power conversion/transmission from moored plants at Puerto Rico and Hawaii are based on current NOAA supported work and the Gulf of Mexico estimates are based on data of Winer and Nicol.[11]

The data in the tables are presented in a format similar to that used by the Nuclear Regulatory Commission, to show a range of costs reflecting uncertainty in the estimates. The range shown for OTEC options is taken to be from -10 percent to $+80$ percent of the nominal values based on the projected cost, derived from estimated uncertainties in the design estimates for moored and grazing barge configurations. This is approximately twice the uncertainty assigned by the NRC to their estimates. It will be recognized by all engineers who have followed R&D programs into production that projections of future costs are subject to the whims of chance. Nevertheless such estimates must be attempted, to distinguish the good options from the economically impractical ones. The author assumes sole responsibility for these estimates.

Cost reductions in dollars per kilowatt shown in Table 2 for the first commercial plants relative to the pilot plants are projected to result from scale-up of the platform, from establishment of production procedures for the heat exchanger modules, from rearrangement of the space-inefficient layout of equipment for convenient access in the pilot plant tests, and from design improvements and packaging volume reductions indicated by pilot plant experience. Further cost reductions shown for the eight plantships are expected to result primarily from volume production and improved manufacturing procedures. Learning curve factors used for the eight plantships are 0.9 for the heat exchanger modules, 0.95 for the ammonia plant, 0.85 for the basic hull and cold water pipe, 0.8 for other platform components, and 0.9 for other equipment.

The capital costs quoted for the grazing plantships are based on the preliminary engineering design of the grazing configuration planned for operation 350+ kilometers (200+ mi.) off Brazil or Central America where an annual ΔT of 24°C (43.0°F) will be available. Higher costs compared to the grazing plantship are estimated for the moored plantship off Puerto Rico because of the selection of a titanium heat exchanger to meet utilities requirement for guaranteed 30 year life, because of the need for heavier platform and CWP construction to meet the more severe environmental stresses, and because the lower ΔT causes diminished power output. Estimated costs for Hawaii are adjusted for lower ΔT compared with Puerto Rico. Costs for the Gulf of Mexico are the same as Puerto Rico except for the added cost of the long underwater power transmission system for which the engineering requirements have not been defined. The dashed upper boundary in Table 2 indicates this uncertainty.

Fuel cell costs are based on G.E. estimates derived from an on-going program to scale up their present SPE fuel cell to 5 MW utility use. Use of pure hydrogen* derived from ammonia will simplify fuel cell construction and make the SPE fuel cell system significantly lower in cost than phosphoric acid and carbonate fuel cells. The latter types are designed to be tolerant of impurities in hydrogen derived from coal or petroleum fuels, which are favored at present by the utility industry as sources of hydrogen.[7] Since such hydrogen contains sulfur and carbon monoxide contaminates, higher temperature operation and less efficient and much more costly fuel cell systems are required.

Costs of delivered electric power shown in Table 3 are presented for moored plantships

*Except for the 25 percent volume fraction of inert nitrogen.

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*A report presenting updated cost estimates for both moored and grazing configurations is to be issued early in 1980. Data shown are provisional.

near shore in Puerto Rico and Hawaii and 200 km (125 mi.) offshore in the Gulf of Mexico, and from grazing plantships producing ammonia which is transported to U.S. sites and there used to provide electric power via fuel cells. For the moored plants which are subject to severe tropical storms, 330 days per year operation is assumed. Power conversion and transmission efficiency of 97 percent are estimated for the Puerto Rico and Hawaii installations, and 95 percent for the Gulf of Mexico sites.

For the grazing plantship which operates in the Atlantic near the equator where tropical storms do not occur (the "doldrums") 345 operating days per year are projected, leading to an annual ammonia output of 345,000 metric tons per year for a 325 MW (net) plantship. (1.062 m.t./KW). The fuel cell costs shown in Table 3 are itemized in Table 5. A range of fuel cell efficiencies from 50 percent to 65 percent is used in estimating power costs. Costs for production and delivery of OTEC ammonia to U.S. sites are shown in Table 4. This table provides the basis for the fuel cost shown for the fuel cell installation in Table 3. A comparison of projected costs of OTEC ammonia vs ammonia made from fossil fuel stocks indicates that OTEC ammonia after 1985 will be lowest in cost.[8]

TABLE 4.—*Estimated OTEC ammonia delivered cash costs*

(1980 dollars)

Plantship investment (P.I.) 8th plantship $/KWe.	1200
Annual ammonia production Metric tons (m.t.) Per plantship KW.	1.062
Cash costs $/KW:	
Interest 10% P.I.	121
Insurance 0.5% P.I.	6
Interest on working capital 120 days 10%	4
O&M cost 1.8% P.I.	21
Total $/KW	152
Total $/m.t.	143
Shipping cost, $/m.t.	17
Delivered cost:	
$/m.t.	160
$/KG	0.16

TABLE 5.—ESTIMATED OTEC—AMMONIA FUEL CELL SYSTEM COST

[Dollars per kW$_e$ output power (1980 dollars)]

	Hydrogen-oxygen fuel cell	
	η=.50	η=.65
Ammonia converter	90	70
Fuel cell and power conditioning	200	400
Oxygen separation plant	100	100
Storage	20	20
Total (dollars per kW$_e$)	410	590
Ammonia cost dollars per Kq	.16	.16
kWh$_e$/Kq	3.22	4.19
Ammonia cost dollars per kWh$_e$	.050	.038

All of the costs listed in Table 3 are cash costs to the owner-operator for producing and delivering power to a land site busbar, based on the following assumptions:

a. Interest at 10 percent on plant investment. (P.I.)

b. Insurance at 0.5 percent on P.I.

c. Operation and maintenance at 1.8 percent of P.I.

d. Interest on working capital at 10 percent for 120 days/year.

e. Power transmission efficiency at 94 percent to 97 percent.

f. Ammonia shipment and storage cost of $17/per m.t.

These cash costs will be lowered if benefits accorded to other solar energy and synthetic fuel programs such as investment tax credits, loan guarantees, construction differential subsidies, etc. are available. On the other hand the cost of busbar power to the consumer will be higher because it must also include amortization of the investment, taxes and profit. Since all of these factors depend on the financing methods adopted to satisfy a particular industrial interest no attempt has been made to estimate the costs to the consumer. However, it is possible using the same assumptions to compare the OTEC cash costs with cash cost estimates for power from coal and nuclear power plants. Suitable data have been presented by the Nuclear Regulatory Commission.[9] Further information on recent costs has been provided by Roddis.[10] Fuel costs and operating costs are itemized in reference 9. The comparison indicates that OTEC power will be competitive in cost with coal and nuclear power if the estimated OTEC costs are attained. The data are shown in Table 3.

COMMERCIALIZATION

Along with technical development of OTEC, studies and investigations have been conducted to determine what institutional, legal and commercial barriers must be overcome to permit OTEC to become a major new energy industry. The studies have shown that legal and environmental barriers to OTEC operation are minimal. However, industry interest has been low until recently. Developments within the past year have modified negative opinions and support is now emerging both from the electric utilities and from ammonia producers for early demonstration of OTEC capabilities.

Projected costs of delivered power from the first full-scale moored OTEC plants at sites a few kilometers offshore in Puerto Rico and Hawaii are in the range of 40 to 75 mills/KWH, which is lower than the projected cost of power from imported oil, the only present source of power in those islands. To facilitate early commercial plant development the Commonwealth of Puerto Rico and Puerto Rico Electric Power Authority with some local industry support have proposed sharing part of the costs of developing a moored 40 MW pilot plant, if after the initial shakedown DOE would assign the power produced by the pilot plant to the Puerto Rico utility. A similar proposal is expected from the State of Hawaii. A group of ammonia producers have submitted to DOE a proposal to provide 40 million dollars in cost sharing for the construction of a 40 MW pilot ammonia plantship if the 125 ton per day ammonia output is assigned to them for sale.

These proposals to share funding of the pilot plants provide encouraging evidence of industry commitment to rapid commercialization of OTEC after successful demonstration of expected pilot plant performance.

CONCLUSION

OTEC plantships producing ammonia can supply electric power via hydrogen fuel cells to all regions of the United States and the world, and can conserve natural gas now used as a feedstock for ammonia based fertilizers and chemicals. Moored OTEC plants sited near Puerto Rico, Hawaii or offshore in the Gulf of Mexico can supply electric power directly to utility grids. Projected costs of OTEC ammonia and electrical energy after 1990 are comparable with those projected for conventional plants based on fossil fuel or nuclear power. Since OTEC energy will be inexhaustible, economical and environmentally benign OTEC deserves high priority among the Nation's energy programs.

FOOTNOTES

[1] John Craven—Ocean Energy—The Promise. IEEE 1980 Region 6 Conf., Feb. 20, 1980.

[2] L. J. Nuttal—Status of Solid Polymer Electrolyte Technology, 6th OTEC Conf., Wash., D.C., June 19–22, 1979.

[3] W. H. Avery et al.—Maritime & Construction Aspects of OTEC Plantships, APL/JHU SR 76–1B, April 1976.

[4] J. F. George et al.—A Baseline Design of an OTEC Pilot Plantship, APL/JHU SR 78–3, May 1979.

[5] Ibid., p. 7–0.

[6] W. G. Sherwood, J. P. Walsh, OTEC Ocean Engineering Progress Report, p. 3A–1–1, 6th OTEC Conf., Wash., D.C., June 19–22, 1979.

[7] Arnold P. Fickett—National Fuel Cell Seminar, p. 5, Marriott Hotel, Bethesda, Md., June 26–28, 1979.

[8] E. J. Francis, Investment in Commercial Development of OTEC Plantships, U.S. Dept. of Commerce (MarAd), Dec. 1977.

[9] Nuclear Reg. Comm., Total Generating Costs—Coal and Nuclear Plants, NUREG–0248, Tbl 4–3, Feb. 1979.

[10] Louis Roddis, Private Communication, "Present Capital Costs in Range $1000–1200/KW for Coal & Nuclear. Nuclear Fuel $38–$40/lb."

[11] B. M. Winer and J. Nicol, "Electrical Energy Transmission for OTEC Power Plants," Proc. 4th OTEC Conference, New Orleans, La., p. III-26, Mar. 22–24, 1977.

Mr. INOUYE. Mr. President, I also ask unanimous consent for the printing of a statement by Jacques-Yves Cousteau, founder of The Cousteau Society, from the October 1979, Calypso Log Dispatch, Vol. 1, No. 7, p. 2.

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

Jacques Constans, our Vice-President for Science and Technology, has gathered abundant documentation about the various sources of energy that people could find and develop in and from the sea: OTEC (Ocean Thermal Energy Conversion), Wind (mainly from the constant trade winds), Tides (in a few preferred areas), Currents, Swell (and particularly the "wave lenses"), Salinity Gradients (at the estuaries of rivers), Bioconversion (open ocean kelp farms), Solar Ponds, etc. . . . Many of these techniques could be naturally associated with various forms of Aquaculture to produce food as a by-product of energy.

In short, the main handicap in harnessing solar energy is that it is thinly spread over immense areas and that it is difficult and costly to concentrate in order to exploit it. Not so in the sea, because the ocean is a natural concentrator of the enormous solar energy poured over 70 per cent of the planet, thanks to permanent tropical and equatorial currents, and to evaporation. We at The Cousteau Society are painfully surprised that such a potential resource (literally equivalent to millions of nuclear plants) be systematically omitted from federal or presidential plans, and we will endeavor to promote all forms of energy from the sea.

JACQUES-YVES COUSTEAU.

Mr. INOUYE. Mr. President, I have discussed the introduction of this bill, the Ocean Thermal Energy Conversion Act of 1980, with Mr. CANNON, chairman of the Commerce Committee, and Mr. JACKSON, chairman of the Energy and Natural Resources Committee. I ask unanimous consent for printing of a colloquy.

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

Senator CANNON. Up until now ocean thermal energy bills have been handled by the Energy and Natural Resources Committee since they have concerned research and development of energy resources. This bill, the Ocean Thermal Energy Conversion

Act of 1980, as drafted amends the Merchant Marine Act of 1934 and is primarily concerned with providing a Federal framework for the licensing, siting, and financing of ocean thermal energy conversion facilities and plantships and is properly referred to the Commerce Committee.

The Chairman of the Energy Committee, Senator Jackson, and I have agreed that we will review the situation when the bill is reported by the Commerce Committee and, if changes in the bill warrant, we will consider an appropriate rereferral.

Senator INOUYE. I also wish to thank Mr. Randolph, Chairman of the Environment and Public Works Committee, for his cooperation in expediting the consideration of the measure and his agreeing to have the measure referred to the Commerce Committee. I want to assure him that the Commerce Committee will consult the Committee on Environment and Public Works during its consideration of the bill, and that I will seek to incorporate the advice of the Environment and Public Works Committee on matters within its jurisdiction.●

ADDITIONAL COSPONSORS

S. 446

At the request of Mr. WILLIAMS, the Senator from Connecticut (Mr. RIBICOFF) was added as a cosponsor of S. 446, a bill to amend title VII of the Civil Rights Act of 1964 to prohibit discrimination against individuals because they are handicapped, and for other purposes.

S. 1572

At the request of Mr. HELMS, the Senator from Oklahoma (Mr. BOREN), the Senator from Wyoming (Mr. WALLOP), the Senator from North Dakota (Mr. YOUNG), the Senator from Indiana (Mr. LUGAR), the Senator from Mississippi (Mr. COCHRAN), and the Senator from California (Mr. HAYAKAWA) were added as cosponsors of S. 1572, a bill to exempt family farms from the Occupational Safety and Health Act of 1970.

S. 2147

At the request of Mr. CULVER, the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Utah (Mr. GARN), and the Senator from Michigan (Mr. RIEGLE) were added as cosponsors of S. 2147, a bill to establish the Regulatory Policy Board, to provide for the regulatory analysis of proposed major rules, to improve rulemaking procedures affecting small businesses and local governments, to require the Congress and the President to review certain regulatory agencies, to increase competition in regulated industries, to make other improvements in regulatory procedures, and for other purposes.

S. 2435

At the request of Mr. CHILES, the Senator from Indiana (Mr. LUGAR), the Senator from Missouri (Mr. DANFORTH), the Senator from Illinois (Mr. PERCY), and the Senator from Vermont (Mr. STAFFORD) were added as cosponsors of S. 2435, a bill to rescind certain appropriations provided for the purchase of furniture by Federal departments, and for other purposes.

SENATE JOINT RESOLUTION 115

At the request of Mr. RIEGLE, the Senator from Arizona (Mr. DECONCINI), and the Senator from Georgia (Mr. NUNN) were added as cosponsors of Senate Joint Resolution 115, a joint resolution designating July 1980 as "National Porcelain Art Month."

SENATE CONCURRENT RESOLUTION 81

At the request of Mr. DOLE, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of Senate Concurrent Resolution 81, to express the sense of Congress against wage and price controls.

SENATE RESOLUTION 382

At the request of Mr. DOLE, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of Senate Resolution 382, a resolution relating to wage and price controls.

SENATE RESOLUTION 392

At the request of Mr. MAGNUSON, the Senator from Arkansas (Mr. BUMPERS), and the Senator from Indiana (Mr. BAYH) were added as cosponsors of Senate Resolution 392, a resolution expressing the sense of the Senate that the Board of Governors of the Federal Reserve System should immediately take steps to reduce interest rates.

SENATE RESOLUTION 394—SUBMISSION OF A RESOLUTION HONORING COACH J. ROLAND LADNER

Mr. COCHRAN submitted the following resolution, which was referred to the Committee on the Judiciary:

S. RES. 394

Whereas, Coach J. Roland Ladner has achieved a landmark record as a coach, teacher and builder of character for thousands of young people during his three decades of service in the schools of his home state; and

Whereas, after 28 years of serving as head basketball coach at Sellers, Harrison Central and Hancock North Central High Schools in Mississippi, J. Roland Ladner has guided his boys' teams to 806 wins against only 249 losses; and

Whereas, this outstanding record makes him the winningest active high school boys basketball coach in the United States; and

Whereas, Coach Ladner has dedicated his life and career as a coach and mathematics teacher to the young people of the rural communities he has served, interrupted only by a tour of duty with the United States Army in Korea in 1952–54; and

Whereas, Coach Ladner has given unselfishly of his time and talents to his church, his schools, his home community and his state and nation in providing educational guidance and leadership to the young people with whom he has worked:

Therefore, be it resolved by the Senate that this outstanding citizen, educator and athletic official be commended for his dedication and accomplishments in providing able stewardship for the young people whose education and athletic training have been entrusted to him.

NOTICES OF HEARINGS

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. PROXMIRE. Mr. President, the Committee on Banking, Housing, and Urban Affairs has scheduled hearings on the Chrysler Corporation Loan Guarantee Act of 1979. The hearings will be held on March 31 (at 10 a.m.) and April 2 (at 3 p.m.), 1980, in room 5302 of the Dirksen Senate Office Building.

The act, which was signed into law on January 7, authorizes up to $1.5 billion in Federal loan guarantees to the Chrysler Corp. through December 31, 1983. It establishes a Loan Guarantee Board to administer the program consisting of the Secretary of the Treasury (as Chairman), the Chairman of the Federal Reserve Board, and the Comptroller General of the United States.

The purpose of the oversight hearings is to examine the proposed Chrysler financing and operating plans submitted pursuant to the act, prior to action by the Loan Guarantee Board, and to assess whether all of the requirements of the act are being met. Before any Federal guarantees can be issued, the Board must determine, among other things, that these plans are realistic and feasible, that all of the financing contemplated by the financing plan will be made available, and that there is reasonable assurance of repayment of the loans guaranteed.

For additional information, please contact Elinor Bachrach of the committee staff at 224-7391.

COMMITTEE ON LABOR AND HUMAN RESOURCES

● Mr. WILLIAMS. Mr. President, I wish to announce that the Committee on Labor and Human Resources has scheduled a hearing on Monday, March 31, 1980, at 2:30 p.m. in room 4232, Dirksen Senate Office Building, on the nomination of Steven A. Minter, of Ohio, to be Under Secretary of Education.●

COMMITTEE ON LABOR AND HUMAN RESOURCES

● Mr. WILLIAMS. Mr. President, on behalf of the Committee on Labor and Human Resources, I would like to announce that the committee will hold an additional hearing on oversight of the Occupational Safety and Health Act on Wednesday, April 2, 1980, commencing at 2:30 p.m. The hearing will be held in room 4232 of the Dirksen Senate Office Building.

Anyone desiring information on this hearing should contact Mike Goldberg, labor counsel, Committee on Labor and Human Resources, U.S. Senate, Washington, D.C. 20510 (telephone: (202) 224-3674).●

SUBCOMMITTEE ON ENERGY REGULATION

● Mr. JOHNSTON. Mr. President, the Subcommittee on Energy Regulation of the Committee on Energy and Natural Resources will hold hearings on April 23 and April 25, 1980, on S. 2470, the Powerplant Fuels Conservation Act of 1980. These hearings will begin at 10 a.m. in room 3110 of the Dirksen Senate Office Building. Inquiries about this hearing should be directed to Elizabeth A. Moler, at 224-0611, or Benjamin S. Cooper, at 224-9894.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate today to hold hearings on proposed revisions to the President's overall defense budget request for fiscal year 1980 and fiscal year 1981.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today to hold a hearing on the nomination of Peter N. Teige to the Federal Maritime Commission.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today to hear Secretary Cyrus Vance's statement on the U.S. foreign policy objectives.

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

CONSUMER SUBCOMMITTEE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today beginning at 2 p.m. to hold a hearing on the Federal Fire Prevention and Control Act authorization.

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

COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold hearings on proposed juvenile justice legislation.

The PRESIDING OFFICER. Without objection, so ordered.

ADDITIONAL STATEMENTS

THE SESQUICENTENNIAL CELEBRATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

• Mr. CHURCH. Mr. President, today I wish to honor the Church of Jesus Christ of Latter-day Saints as it approaches the 150th anniversary of its founding. At the same time, I would like to honor its president, Spencer W. Kimball, whose 85th birthday celebration I will be attending tomorrow night in Salt Lake City.

The life of President Kimball and the history of the church have many similarities. Although coming from inauspicious beginnings, great nobility and strength of character were developed in the fire of adversity and severe trials. Before becoming president of the Mormon Church, Spencer Kimball successfully battled cancer and a series of heart attacks. Recently, in response to the faith and prayers of millions, he has sprung back to health after two serious brain operations. He is truly a man loved and honored by all who know him.

The church, over which President Kimball presides, was organized by the prophet Joseph Smith on April 6, 1830, in Fayette, N.Y. With only six members and a number of well-wishers, the church had its official organization in the small log cabin of Peter Whitmer, Sr. From that small beginning the church grew rapidly, with tens of thousands of devout members joining its ranks. Religious intolerance and persecution forced the body of the church to move several times.

Its leader Joseph Smith finally established a new city on the banks of the Mississippi. Reclaimed from swampland by the sweat and toil of the saints and called Nauvoo the Beautiful, the new city was as noble and grand as its prophet-planner had envisioned. With a population of over 20,000, it was larger, at that time, than the city of Chicago.

Yet still more persecution resulted in the assassination of the young prophet and forced the migration of tens of thousands of Mormon pioneers across the United States to a new haven in the Salt Lake Valley. Led by the great colonizer Brigham Young, the saints established a series of settlements stretching from Salt Lake City to Canada and Mexico, including many settlements in my native State of Idaho.

The greatness of the vision which the founder Joseph Smith had for his people and the soundness of the principles which he taught them are manifest in the great body of 4.4 million people who count themselves Latter-day Saints. Following the principles taught by the prophet Joseph Smith, the Church of Jesus Christ of Latter-day Saints encourages its members to seek educational opportunities; to be industrious and honest; and to be law-abiding citizens of their respective countries. The application of these principles, along with the church's emphasis on the importance of the family, accounts, in part, for its extraordinary growth and demonstrable appeal. Over 250,000 new converts come into the church each year, joining other members in over 90 different countries and territories throughout the world. Serving 2-year voluntary missions, 30,000 missionaries are bringing the message of the church to the world.

The Mormons have a long history of taking care of their own and of not relying on Government aid, and have an extensive self-help welfare system to sustain its members in economic hardship.

Also, it should be noted that the relief society of the church is the oldest and largest organization for women in the world. It was also founded under the direction of Joseph Smith in 1842. From the beginning, the relief society's purpose has been to provide an organization through which women might give compassionate service, continue their pursuit of knowledge, and meet the current needs of themselves, their husbands, their communities.

In a world beset by turmoil, the Mormon Church reaches out to those in need with a message of hope. It provides a strong base upon which the family unit, the most basic unit of any society, can anchor itself.

This 150th anniversary is indeed an historic time for the members of the Church of Jesus Christ of Latter-day Saints. And it is a happy occasion for millions around the world who join with me in celebrating the 85th birthday of President Kimball. These are significant milestones in the life of a great man and a great organization.

The celebration of the sesquicentennial of the church would not be complete without honoring its founder, Joseph Smith. It was he, through inspiration, who taught the principles and built the base upon which the church now flourishes. A recent essay authored by Gordon B. Hinckley of the Quorum of the Twelve Apostles, captures beautifully the greatness of this man and the strength of the roots of the early church.

I ask, Mr. President that Elder Hinckley's essay be included at this point in the RECORD.

JOSEPH SMITH—HIS SHORT LIFE CHANGED THE FUTURE FOR MILLIONS

(By Elder Gordon B. Hinckley)

Joseph Smith! How common a name it is. By now there must have been thousands of boys born into this world who have been given that name. But among them all there is but one who ushered in the Restoration.

Born in obscure circumstances, reared in poverty, chosen by God, his name is spoken in honor by ever-increasing numbers of men and women across the world.

His life was not long—less than 39 years. His travels were not extensive—from Vermont to New York, to Ohio and Missouri, and then to Illinois; with a brief, disappointing visit to Washington, D.C. Yet every year millions of miles are covered by his followers in bearing witness of his worth to the people of the 67 nations where the cause he began is now established.

He came of a remarkable inheritance. His ancestral roots drew strength from the soil of England and Scotland. He was of the sixth generation of his people in America on his father's side and of the fifth on his mother's. Until his family moved to western New York in 1816 all of these generations had lived in Massachusetts, New Hampshire and Vermont. They, with others like them, had cleared the wilderness, established farms and built homes, participated in the affairs of local government, and served with honor in the War for Independence.

Self-reliant, they knew both good years and bad as they worked to wrest a living from the thin soil of the areas of their residence. They saw firsthand the pain and devastation of epidemics of disease that periodically swept their communities. Joseph himself, as a little boy, was the victim of an attack of typhus fever followed by a severe infection of the leg.

It seems more than coincidence that only a few miles away in Hanover, N.H., was Dr. Nathan Smith, perhaps then the only surgeon in the United States who had developed a procedure by which that leg might be saved. But the saving was not without terrible suffering. It is difficult to understand how the small boy stood it, held in the arms of his father while his mother walked and prayed among the trees of the farm to escape his screams, as the surgeon entered the leg and removed the diseased bone, all without benefit of anesthesia.

Remembrance of that intense suffering possibly made a little more bearable the later tarring and feathering at Kirtland, the painful winter in Liberty Jail, and the shouts and shots of the mob at Carthage.

Cumorah was in western New York, and the Smith family had to get there if Joseph was to become a participant in bringing to light the ancient record that lay hidden in its soil.

The moving force was a series of bitter late frosts, even reaching into summer, that took the crops of New England and caused the Smiths and many others to look elsewhere. Palmyra, a thriving community along the Erie Canal, became their temporary stopping place until they could acquire a farm in nearby Manchester Township.

They were participants in the religious revivals held in the area, and out of the confusion of these experiences came the determination of the boy Joseph, then 14 years of age, to ask God concerning which church he should join.

There followed, on a spring day in 1820, the remarkable vision in the grove. Joseph Smith was never the same after that. He was ridiculed, jeered at, belittled, threatened, but he was certain of what had occurred.

Three years later there was another miraculous experience, again in answer to prayer. Moroni visited him, Moroni the keeper of the record of peoples who centuries earlier had inhabited this land and had gone down to destruction in terrible civil war. Came later the translation of that record "by the gift and power of God," and its issuance from the press in March of 1830 as the Book of Mormon.

There were 5,000 copies in that first edition. A man whose business is books has commented that an edition of 5,000 under those circumstances would be the equivalent of an edition of 100,000 under today's press runs.

One is led to marvel at the boldness of Joseph Smith in so daring an undertaking. It becomes another evidence of the character of the man, of the certainty of his mission as he perceived it, of his absolute confidence that he was not doing his own work, but, rather, the work of God.

It is not reasonable to assume that a young man who was the product of a rural upbringing and largely without means, would declare that he had seen God the Father and the Risen Lord Jesus Christ; that he had spoken on a number of occasions with a resurrected prophet of ancient America; that he had conversed with John the Baptist, and Peter, James, and John; and that he had received under their hands the authority of the priesthood of God.

His statements of divine beings were arguable, and were much argued over by his detractors. But here was the book, tangible and real and to be read. His detractors would argue over that also. But those who read it carefully and prayerfully experienced an undeniable conviction of its truth as "the word of God."

Among them were men and women of education, of substance, and of achievement. Yet they were so moved that they were willing to leave friends, lands, and the security of their employment to follow Joseph Smith. Unlike most leaders who have attracted followers, he offered neither wealth nor worldly honor. Rather, they came to know bitter persecution with its pains and losses, long and lonely missions, separation from family and friends, and in many cases, death itself.

With the establishment of the Church on April 6, 1830 there came into being an organization that for 150 years has stood unchanged in its basic fundamentals, notwithstanding remarkable growth and adaptation to the various societies of the many lands in which it today functions.

It has been a remarkable test of the genius of Joseph Smith. But it is not the result of his native instincts. It is the result of the revelations of God received through him, as he testified.

There were the chapters following that organization, chapters penned sometimes in blood; at best, in suffering, in New York and Ohio, in Missouri and Illinois. There was the setting up of the same organization that existed in the Church established by the Savior, with apostles and prophets as its foundation, Jesus Christ being the chief cornerstone.

There followed the construction of temples and other houses of worship, the printing of books and other literature, the establishment of schools, and the building of good homes and beautiful communities, all under the personal direction of Joseph Smith, the planner, the builder, the Prophet.

With all of this there was the persecution, the great and unrelenting persecution. But through that fabric of pain was a thread of the future, interwoven by a divine hand.

Note these words of prophecy concerning Joseph Smith, in the misery and loneliness of Liberty Jail: "The ends of the earth shall inquire after thy name, and fools shall have thee in derision, and hell shall rage against thee; while the pure in heart, and the wise, and the noble, and the virtuous shall seek counsel, and authority, and blessings constantly from under thy hand."

Nauvoo the Beautiful was the flowering of his life. But its bloom was brief. He had come there in 1839, walking across the swampland. He left in 1844, looking back upon a beautiful city and a prosperous and happy people. He went to Carthage, and there on the sultry afternoon of June 27, a cowardly mob, their faces painted to disguise their individual identity, shot him and his brother, Hyrum, killing them both. His last words—"O Lord, my God."

John Taylor was with him in Carthage Jail that afternoon. Of his martyred leader and friend he wrote: "Joseph Smith, the Prophet and Seer of the Lord, has done more, save Jesus only, for the salvation of men in this world, than any other man that ever lived in it. . . . He lived great and he died great in the eyes of God and his people."●

EXPORT EXPANSION: HOW SERIOUS IS THIS ADMINISTRATION?

● Mr. JAVITS. Mr. President, in the rush of events affecting the economy in the past year, it is easy to forget that it was 18 months ago—in September 1978 to be exact—that this administration unveiled its new export expansion program. At the time of the President's message, this export program was to signal a new era in export awareness, one in which all sectors of the economy—business, labor, and government—would work together to revive our international trade competitiveness.

Mr. President, we are in a position today to assess the results of this administration's commitment to exports enunciated 18 months ago and I would suggest that contrary to observations emanating from the administration the results are worrisome and should be of concern to very Member of this body.

The indications are clear that the fundamental weaknesses of our trade performance remain. The data on our 1979 export activities do reveal a modest improvement in the trade account from a deficit of $28 billion in 1978 to $25 billion last year, and this is certainly a positive development. But when trade in nonmonetary gold, including gold sold by the U.S. Treasury, is factored out, the trade balance shows almost no change.

Indeed, when scrutinized, the trade data reveals little in our 1979 export performance that represents real gains. The long-awaited improvement in the manufactured goods sector simply restores a surplus in this area that used to be the mainstay of our trade account and to some extent may be attributable to lagged trade effects of dollar depreciation.

In a recent statement by the President on "Reduction of Export Disincentives" he noted that "rebounding exports and overseas earnings of U.S. companies combined to overcome our chronic deficit . . . in the 'current account' balance." He went on to characterize this development as "heartening." Mr. President, such false optimism will only serve to deflect our energies away from the task before us—to rectify the rapid and continuing deterioration in our international competitiveness. Such false optimism will only serve to mask the stark realities of our weak trade position. Indeed, U.S. exports as a percentage of GNP fell to 6.8 percent in 1979 from 7 percent in 1975 and our share of world exports fell from 15.4 percent in 1970 to 12.2 percent in 1978.

This is no time for self-congratulations or complacency; we have work to do, across the board to buck up our exports. Much remains to be done in terms of Government disincentives and, of course, we have only begun to scratch the surface on what government can do positively to support exports. Yet even more fundamentally, the weakness in our trade performance can be traced to structural deficiencies in our ecomony such as inflation and lagging productivity.

Mr. President, in a recent interview with Financier, Mr. Robert H. Malott, the Chairman of FMC Corp., offered his own judgment of the past 2 years' trade performance and specifically matched the results with several export priority areas he identified in 1978. With the exception of the admirable performance of the Export-Import Bank and its chairman, John Moore, he sees little that is "heartening"; and in the vital area of productivity sees a severe deterioration that will continue to retard our international competitiveness. I commend the article to my colleagues and request that it be printed in the RECORD.

The article follows:

ROBERT H. MALOTT: SCANT PROGRESS TOWARDS EXPORT POLICY

(By Willard C. Rappleye Jr.)

Two years ago, in a talk before the Chicago World Trade Conference, Mr. Malott listed six primary recommendations for the making of a successful National Export Policy. In this interview he evaluates progress towards each of his 1978 proposals (reprinted in italic); except for the improved performance of the Export Import Bank, he finds very little has been made.

The Chairman of FMC Corp. discerns within the private sector growing but still insufficient awareness of the need to export—and even less among the political formulators of national policy.

First, America must aim for tax parity with foreign competitors.

"I don't think we've moved very much," Mr. Malott says. "You know there are some countries with whom we're competing that do not tax profits on exports. There are countries who do not tax the profits on overseas-generated income at all. Certainly we have not moved toward that. We still have those tax disadvantages.

"The only good thing you can say in that area is that they have quit threatening to remove DISC, pending further resolution in GATT. And I gather that outside of the oil industry they've also stopped quite so vociferous about country-by-country offsets, too. So I think we're in a little better position.

"I think there's some improvement in general understanding, but in terms of actual improvement in terms of the facts of where we stand, I don't see a lot of change."

Second, America must aim for credit parity with foreign competitors.

"I would say that compared to two years ago the Ex-Im Bank is doing a substantially better job. Their rates are becoming more competitive. The percentage of exports that they will finance have improved. Their funding levels have gone way up. And I think you have to give John Moore, the head of Ex-Im Bank, a lot of credit for improving that situation."

Mr. Malott does not see the Ex-Im Bank pre-empting the work of private lending institutions: "I don't think you could expect commercial banks to take the kind of risks that Ex-Im has."

He notes that the agency is effectively extending this country's export reach into softer credit areas. "I wouldn't say they are soft loans," he insists. "I think the Ex-Im Bank performance, both collection and credit, has been very good. On the other hand, I think if you look very aggressively at the terms that are being offered you'd find very few banks that would take that kind of paper. So I don't think that Ex-Im Bank is replacing. Theirs are different kinds of loans.

"I think the Ex-Im Bank is addressing export assistance in a way that assists us in becoming competitive with what foreign countries are doing for their exporters."

Third. America must achieve a reduction of non-tariff barriers to US exports.

"Obviously that was the primary objective of the Tokyo Round," Mr. Malott observes, but "it is too early for us to be sure that in fact that was accomplished. I think that was their objective and they claim we've made some improvements. But because non-tariff barriers are fairly subtly applied, I dont think that the impact is measurable month by month. So we just haven't had long enough to see the full impact."

Fourth, America must build positive economic relations with other nations.

"Probably the situation is no better," Mr. Malott finds. "It might be somewhat worse. Certainly pre-Ayatollah I would say there was more antagonism in terms of commercial relationships for different reasons country by country around the world than there were two years ago.

"I mention the Ayatollah because he has treated us in a way that has engendered a lot of support from overseas, and I think that has improved our relationship, and diverted attention from some of the more mundane aspects of commercial relations.

"You have to talk about various areas of the world I think in many areas human rights, certainly in South America, in Argentina for example, where they have lived through terrorism in a way that we haven't, for the U.S. to be preaching to them about human rights was not regarded very kindly.

"I think in the Middle East it might be perceived as being unrealistically tough anti-boycott legislation.

"Human rights policies and Arab boycott legislation and the Corrupt Practices Act and our efforts to export our standards on the environment—you know that's all regarded by a big part of the commercial world as nonsense," Mr. Malott contends.

"It would sound terrible to come out and say that all we should stand for is commercial objectives. Obviously they have to be tempered by a move toward a more and more moral world. But I think in terms of the pragmatic. How we weigh both the moral and commercial is becoming increasingly important in this country. I think we have to weigh some questions as to whether or not that balance has been correct.

"The impact of all these things collectively it seems to me is a depreciating dollar, which is not doing us any good. It is an increasing rate of inflation in this country which can't be tolerated very long. And I don't think these moral objectives are necessarily contributing."

Fifth, America must negotiate non-discriminatory treatment of international investment.

"I don't think there's a great deal that's been done in that area," Mr. Malott comments. "Japan has talked about it, but when it has come to the practical aspects, it hasn't happened.

"There are two compartments on this argument of discrimination against U.S. investment," he points out. "One is Japan, specifically, because they had such an absolute policy. The other has been the threshold nations that have tended to go to a 51 percent local ownership against 49 percent overseas. We see some subtle signs of softening in Mexico—you might be able to do some things today with a majority ownership down there that you couldn't do a few years ago. But it isn't significant."

Sixth. America must expand U.S. Government export programs.

Mr. Malott reiterates his comments on the good work of the Ex-Im Bank, and affirms that a program to encourage small business "in entering international trade, assisting and promoting their participation, is a great idea.

"My only concern," he cautions, however, "is that I see the political rhetoric which addresses itself obviously to vast numbers of small businesses and trying to develop export opportunities for minority-owned enterprises or directing international development promotional programs to areas of high unemployment.

"Now, I'm all in favor of that if it happens to be a corollary to the main objective which is to increase US exports. But I find that unfortunately a lot of the rhetoric coming out of Washington puts these things very high on the agenda. And only incidentally talks about what I think is a very fundamental but less politically appealing fact of life. That large corporations are still going to do most of the exports in terms of percentage. They are going to provide most of the additional employment for this country that results from an improving export posture," he emphasizes.

"Now I'm not discriminating against high unemployment areas," Mr. Malott insists. "I'm not discriminating against minority businesses. And I'm not discriminating against small business. We ought to do everything we can to get all of those types of companies and those parts of the country that that describes involved.

"But let's put it in perspective. If our objective is to increase exports and create jobs as a result, the large corporations are going to carry the major thrust."

US SHARE DECLINES

Overall, Mr. Malott finds scant progress towards development of a strong national trade policy. The US share of world exports has declined from 15.4 percent in 1970 to 12.2 percent in 1978; "our absolute magnitude of exports has been going up as our percentage of world trade is going down. At a time when Japan and UK and Germany have all been going up.

"In 1970 our percentage of GNP in exports was 4.3 percent; it has zoomed all the way up to 6.6 percent. Compare that to Germany with over 22 percent of their GNP in the export market, the UK at around 23 percent, Japan something like 10 or 12 percent. So we've got a long way to go. A very long way to go."

He acknowledges that "there's probably an increasing recognition in Washington about the importance of trade to this country." But he notes that the Commerce Department task force that was organized to address fundamental trade issues "might have addressed the issues, but its report did not reflect that it had. It was not fundamental in terms of addressing the kinds of things that I think in the long run this country has to do if we're going to really improve our trade position."

On the threat of rising protectionism, Mr. Malott observes: "I think we probably go through emotional cycles of expressing ourselves on the threat of foreign competition. I think if we continue to have these dramatic trade deficits there's going to be a trend towards more protectionism.

"Now maybe the first thing that people who are concerned in that direction ought to do is say that we shouldn't import any more energy. That is a logical extension of those who feel that we should retreat from the rest of the world. But I don't think you'd get many people to say that we should do that, at least in the near future.

OIL NOT THE MAJOR CAUSE

"People must recognize the fact that oil importation or energy importation is really not the sole, and actually not even a major, cause of our increasing deficit. I think we had a \$6 billion surplus in trade including oil in 1975 and we went from there to something like a \$33 billion deficit—so that was a swing of \$39 billion over that three or four year period. Only \$15 billion of which was due to increasing importation of energy.

"It's politically attractive for the Administration to concentrate on that \$15 billion as opposed to the balance, which is all due to our increasing lack of competitiveness in the manufactured goods sector. And I think that's where we have to give our attention."

Mr. Malott does not believe that the solution is necessarily export incentives. "Its more fundamental. We really have to address the matter of US competitiveness. That's a function of productivity, and productivity is a function of investment. We've got to create incentives in this country to encourage industry and individuals to invest.

"By the latest figures, our productivity has been negative. And you look at comparable figures on the part of our trading partners, and they're substantially higher than ours. That trend has got to be reversed."

National awareness of the need to export is growing, but not enough, he believes. In the private sector, Mr. Malott finds "a lot of people who recognize the problems and the opportunities, who are becoming increasingly vocal.

BUSINESS SECTOR INEFFECTIVE

"But there obviously are not as many as there should be because I wouldn't agree that the business sector of the economy, if we really got behind something, would be as ineffective as we apparently have been to date.

"It seems to me that a responsible political approach would result in a position that's somewhat more courageous than I think we've taken. There is nothing anti-labor about the things that we're talking about. But it is either misunderstood or understood and not accepted by a broad segment of labor that these are all programs designed to replace American workers. And even overseas investment on the part of a lot of US companies do more to encourage US employment and US exports than were given any credit for by the labor unions.

"Now I think that a courageous political leader would take on the issue of that challenge and attempt to bring labor on board in terms of what we're all trying to do.

"And from that point of view I think we haven't been very successful."●

AIRLINE DEREGULATION APPEARS TO BE BENEFICIAL

● Mr. CANNON. Mr. President, I would like to insert the attached editorial from the Muskegon, Mich., Chronicle in the RECORD. There are many communities that have positive views of airline deregulation in that they do not blame airline deregulation for their air service problems but on the contrary, look to its provisions to help improve their air service.

The editorial follows:

AIRLINE DEREGULATION APPEARS TO BE BENEFICIAL

Airline deregulation became effective in late 1978, so now we have data on the first full year of experience under that law to give us a picture of how the traveling public and the airlines have benefitted or suffered.

Well, we have the word of Civil Aeronautics Board Chairman Marvin S. Cohen that, thanks to more efficient operations made possible by deregulation, airlines have been able to absorb substantial cost increases, saving consumers, he says, millions of dollars a week. Speaking recently to the New York Security Analysts, Cohen said "the most striking phenomenon of the law . . . has been the unparalleled increase in the overall efficiency of the industry."

Before airline deregulation became law, two of the benefits most frequently predicted by advocates were lower fares and higher profits. Yet in the first full year after enactment, according to a Newhouse News Service report late last week, the average standard coach fare jumped almost 30 per cent and earnings dropped $800 million—the sharpest one-year decline in the airline industry's history. Cohen says the industry's performance wasn't really all that bad and in fact, could have been a lot worse.

"Had the industry still been laboring under the yoke of the kind of regulations and regulatory thinking that prevailed in the (CAB) board and in the industry in the first half of the decade—and the preceding 30 years—profit probably would have plummeted into the red," he says.

In support of Cohen's contention, there is some evidence from the record that, in 1979, things didn't turn out as badly as they could have.

Fuel prices, the reason for higher fares and lower earnings, were the biggest single source of trouble. By the end of the year, a gallon of jet fuel had increased about 80 cents, pushing the total fuel bill from $2.5 billion in 1978 to $6.5 billion in 1979. Since 1973, the Air Transport Association notes, fuel costs have skyrocketed by 667 percent.

Other events last year didn't help the industry much, either; spot fuel shortages, grounding of the DC-10s for safety reasons, and strikes against several airlines. However, among the bright spots were passenger totals, hitting 300 million for the first time, a 7 percent increase over the previous year. And although standard coach fares were higher, half of all passengers were able to use discounts that cut their prices by 10 to 70 percent. Some first-class tickets were cut, too, so the average fare paid by passengers in 1979 was only 16 percent higher than the year before.

Deregulation made it easier for airlines to launch routes that previously had been the exclusive province of other carriers, and the increased competition often meant lower fares.

Muskegon experienced its own air service problems in 1979, but whether deregulation was a factor to any great extent is problematical. County Commissioner Donald Nutt, who is chairman of the Airport Board, says that prior to deregulation it was more difficult for airlines to pull out of communities because they were, in a way, "under contract."

Although deregulation helped United Airlines in its decision to pull out of Muskegon, a withdrawal to be finalized March 1, it would appear that the overall picture for Muskegon under deregulation has not been all bad. Republic Airlines has added space on its flights effective March 1, and Midstate Airlines has been boosting its commuter service here in the interim. Republic Airlines also has said it will move to fill in some of the service gaps.

Says Nutt, regarding the outlook in short for Muskegon under the new act: "I would say it doesn't look too bad." When United first announced its intentions regarding Muskegon, the picture was pretty bleak, Nutt agrees, but he feels it has improved appreciably since then.

The experience of only a year is obviously too little to tell us whether airline deregulation, in the long run, will do what it was supposed to do for the industry and the users. But it would appear that, despite problems, the move was worth the try. Another year will tell us more.●

MOMENTUM ON IRAN IS DOWNHILL

● Mr. DOLE. Mr. President, in this Presidential election year when there is a great deal of talk about momentum and large shifts of the public mood, it is worth noting that the scientific principle behind momentum and inertia is the same. Applied to political psychology, momentum and inertia are key indicators of the trend in human events, particularly with regard to this country's response to international events. Recently it has become all too clear that the momentum of the crisis involving our hostages in Iran is all downhill.

President Carter has been content so far to go where the force of events overseas has taken him, hesitant to initiate meaningful actions for fear they would precipitate a momentum beyond his managerial calculations. Instead an inertia has gripped American policy that turns our hopes and capabilities for action into sluggish indecision. The voters of New York and Connecticut last Tuesday finally turned on the President, demanding a reversal to the politics of inaction.

This public dissatisfaction with Mr. Carter's policies was heralded before the primary vote in a recent letter to the editors of Newsweek by a citizen of New Haven, Conn. Elia V. Chepaitis wrote:

> The President precipitates crises by ineptitude, and then exaggerates them to distract us from the business of replacing him. These three months of moral outrage may have felt good, but has any of it been effective? Can we afford four more years of this circus?

HOW LONG CAN THE HOSTAGES HOLD ON?

The Senator from Kansas wonders how much longer the courage and hope of our diplomats held hostage in Tehran can sustain them. Can they afford further delay? We know their situation is desperate. The administration has time and again refrained from actions or even words that might intimidate the terrorists out of a deep concern for the hostages' safety. The success of this policy can be measured in the continued imprisonment of our diplomats, alive at least but not well. The hostages live but they have suffered greatly, and worldwide U.S. policy has been severely damaged. Our great dilemma has been that this gang of terrorists never has been given any incentive to release the Americans by any actions of the United States or by condemnations of the international community.

OPPORTUNITIES FOR ACTION

There are avenues remaining to our Nation, short of military force, that we can take against Khomeini and his band of criminal fanatics. What is more the Senator from Kansas and many others have advocated these actions from the very beginning, when a firm response might have halted the radicals in their tracks, before the current inertia of the power stalemate set in Iran. In a resolution submitted November 13, the Senator from Kansas suggested the United States organize a unified, voluntary world boycott of Iranian oil. Yet in January the United States alone still received 7.3 million barrels of oil from Iran, and all the rest of Iran's oil is eagerly lapped up by the world market.

Little more than a week after the hostages were kidnaped, the Senator from Kansas proposed that Mr. Carter should enlist the support of our allies and all other nations, calling on them to close their Embassies, withdraw their citizens and diplomats and suspend diplomatic relations with Iran. Yet what has happened after nearly 5 months of captivity? Our friends the Japanese quickly moved in to buy the surplus Iranian oil and their financial experts helped Khomeini's government to get around the U.S. seizure of Iranian assets, the only firm action we have ever taken in response to the crisis.

The United States ought to put as much pressure on Iran as we possibly can, without further endangering the hostages. We have not yet done that. There is a great deal more pressure we can put on our so-called allies to back us up, and we have yet to do that. The Senator from Kansas suggested suspending all trade, including agricultural products, with Iran on November 6. I called for an economic embargo in January, urged the President to enforce economic sanctions again in March after the failure of the UN Commission of Inquiry, and today I repeat in the strongest terms possible: let us exercise our considerable economic might to close down Iran, using our naval forces to impose a blockade of goods going in to Khomeini and his people, and to squeeze the Iranians until they let our people go. Only when we provide an impetus strong enough can we expect there to be any movement toward freeing the hostages.●

DEATH OF ALLARD LOWENSTEIN

● Mr. KENNEDY. Mr. President, all of us were saddened by the recent tragic death of Allard Lowenstein. Last week in New York City, I delivered a eulogy to Al at the memorial service held for him at Central Synagogue. A few days earlier, I spoke of Al to the annual convention of the New York State Federation of Teachers.

Mr. President, I ask that my remarks on these two occasions may be printed in the RECORD.

The remarks follow:

STATEMENT OF SENATOR EDWARD M. KENNEDY, LOWENSTEIN MEMORIAL SERVICE, CENTRAL SYNAGOGUE, MANHATTAN, MARCH 18, 1980

What a friend we have all lost.

And far beyond the walls of this temple, or the borders of this city, there are countless human beings, whom Al Lowenstein had befriended, who did not even know his name.

There are Black people in Mississippi who can vote because he was there in the civil rights summer of 1964.

There are American sons, living out normal lives, who did not die in Vietnam, because he was there in New Hampshire in 1968 in the winter of our national discontent.

There are political prisoners in the Soviet Union whose cause was heard before the world because he was there, in the United Nations, to demand that their cases be stated and debated.

He was everywhere.

He was the man who lived for others. I always thought that somehow he was too good for this world. And in the end the world he reached out to broke him because he was the last friend left of a man scorned by everyone else.

But while we mourn his death, we remember most the light and the joy of his life. He was a person of impassioned political conviction, but personally he loved so many who so often disagreed with his politics. Who but Al Lowenstein could claim among his best friends both William F. Buckley and Robert Kennedy? Bill Buckley had the good sense to endorse him for Congress. And Al had the good sense not to endorse Bill for Mayor in 1965. Al would do almost anything for Bill.

As I said last Saturday, Al was a loyal friend who spoke with uncommon frankness.

No man was an island as long as Al Lowenstein was near.

Where Blacks were repressed he was Black.

When soliders were dying in a war that was wrong, he was a draftee to his own conscience.

Where children were hungry, he thirsted after justice.

Where families could not afford a house, he was homeless.

For me, he was more than a friend, though his friendship was rare. He was more than a counselor, though his counsel was wise.

For me, and for so many others, he was our brother.

Last Thursday, the day before he died, he was writing a speech he wanted me to give. His last words in that speech read: "Do we want four more years of what we have experienced to date?"

It was the wonder and the glory of Al Lowenstein that he never wanted more years of what we had experienced to date. Always he called us to do better. It is the last, and the least, that we can give to Al in return for all that he gave us—the pledge of our hearts that we shall, each in our own way, strive as he so tirelessly did, to do better.

Our brother left us his love.

He goes with ours.

ADDRESS OF SENATOR EDWARD M. KENNEDY TO THE NEW YORK STATE UNITED FEDERATION OF TEACHERS ANNUAL CONVENTION, MARCH 15, 1980

I had looked forward to our meeting today. As the strongest affiliate of the A.F.T. and the largest teachers' union in any state, you have been in the front rank of progressive leadership in American education and in the labor movement.

Your president, Tom Hobart, and your executive vice president, Dan Sanders, have been powerful voices for the teachers and children of New York. And your national president, Al Shanker, has made the A.F.T. a powerful force for justice here at home and for a strong America abroad.

And in all that, I have stood with you.

I had planned to come here today to speak of inflation and the economy, of education and the cities, and to state my opposition to the administration's policies.

But this is not the right day and that is not the right speech.

For yesterday in this city that he loved, in this state that he served, Allard Lowenstein was shot and killed. This peaceful, generous man became the latest victim of the senseless violence that stalks our generation, and of the arms race in our cities that threatens to make any citizen a casualty at anytime.

If no man is an island, then Allard Lowenstein was a continent, a universe, a vast expanse of compassion, conviction, and courage. These qualities drew out the best in all who knew him, but especially in the young, who heard his call and joined his ceaseless quest against injustice and indifference.

He was the irresistible force that made immovable objects move. Almost single-handedly, twelve years ago, he set out to stop the relentless escalation in Vietnam. When others thought nothing could be done to change an incumbent administration and its war policy, and that no one could make a difference, he insisted that we had to try, that it had to be done—and so he did it.

With his endless energy, with his papers, his clothes, his books, and seemingly his whole life jammed into briefcases, envelopes and satchels—all of it carried with him everywhere—he was a portable and powerful lobby for progressive principles. All by himself, he was more effective than an organization of thousands. He was a one-man demonstration for civil rights; even when he walked alone, he was a multitude marching for peace. He had a gentle passion for the truth.

As much as anyone I know, he proved that one person truly can make a difference.

The only public office he was ever elected to was Congress, for a single term. But his memory, his work in 1968, his record of commitment will live in the history on which he had such impact of his own.

Even as he lay dying, Al Lowenstein struggled as fiercely for his life as he had struggled all his life on behalf of others. The flame resisted the loss of its spark to the last; the fire that had burned so brightly was not easily quenched.

Al was always intense, but never selfish. He was a man who lived for the many he sought to help, and for the America he sought to make.

Whenever Al came to see me, at home or in the Senate, I knew that he brought with him a challenge to be met, a wrong to be righted, a dream to be fulfilled. He would show up unexpectedly; he would pace the floor; he would loose a shower of ideas; he was impatient with our country's failures; he was hopeful for its prospects. Standing in a living room, he would try to move the world.

So, when this campaign began, it was inevitable that he was everywhere. He would speak in Portland in the morning, practice law in the afternoon, and be off that evening for a forum in Des Moines.

For Al, no precinct was too remote, no reporter too resistant, no voter to insignificant. Let others have their legions of surrogates; give me Allard Lowenstein, who could outpersuade all of them combined.

There was electricity in his thought, and eloquence his words. What this man, who was my friend, once said of my brother Robert Kennedy must be said of him: "He wanted everyone to see what seemed so obvious to him: that if people couldn't be roused to make a difference in the effort to reclaim their country, they would make a difference anyway by not trying . . . he managed to become a presence as well as a politician, an American resource."

Allard Lowenstein, who was also taken too soon, wrote his own epitaph when he wrote of Robert Kennedy: "If he were still around, he would be saying that we have dallied long enough, and that it is past time to do better."

Allard Lowenstein would say that we have a duty to protest when we know a policy is wrong—and that criticism of official error is not criticism of country. He was perhaps the greatest dissenter of his time, a patriot who understood that dissent is the essence of democracy.

In 1962, he left a Senate staff to travel across Southern Africa. And then he wrote a book warning us that we could not abide and abet the racism of that land—that once again we had to make "the word America sing out hope and generosity and compassion" to all the world."

His vision of justice recognized no national borders, no boundaries of race, or special concern, or political ideology. When Anatoly Shcharansky was sent to the Lubyanka prison, Allard Lowenstein stood in the United Nations and spoke the truth about the Soviet Union to the Soviet ambassador. He broke through the regular agenda; he cut through the diplomatic protocol—and he moved the Human Rights Commission, for the first time, to take up the individual cases of the human beings who were the victims of repression.

And if Allard Lowenstein were here, he would say that we must continue to speak for all those who have no voice in our own society. Minorities and the poor may be out of political fashion, but they were never far from his conscience. For him, inflation and unemployment were not statistics, but hard-working families who could not pay their bills. He thought not only of the deficit of dollars, but of the deficit of justice.

He was a gifted lawyer who could have made himself rich; instead he lived modestly, often it seemed from month to month, giving of himself to make this a better land.

If he were here, he would be speaking as he did last week, for economic justice, for energy that warms homes without bankrupting families, for taxes that treat both workers and the wealthy fairly, for schools with more teachers and less violence, for a public principle that puts the last and the least among us first in our priorities—and above all, for a government that cares about the people and their problems.

He would say the effort must be made; the promise must be kept; the work must go on. And if he were here, I would say to him: The work will go on.

We will not accept a society in which health is a function of wealth, where hospitals close in the inner city and millions worry that sickness will bring not only fear and pain, but financial ruin.

We will not accept a society in which houses are boarded up while hundreds of thousands of families wait in rat-infested tenements for decent shelter—and where other families lose the dream and the hope of owning a home.

We will not accept a society in which whole sections of our cities become a blighted wasteland—and where the urban crisis becomes a perpetual condition of decay and decline.

We will not accept a society in which prosperity rests on the backs of a permanent class of poor people—where young workers are made idle and children are told to go hungry for their country.

We will not accept a society in which students fail to learn because schools are understaffed and teachers are underpaid—and where half of an entire generation in New York City will never finish high school.

We will not accept a society in which discrimination still afflicts the minority who are not white and the majority who are women—and where crosses are still burned on suburban lawns and swastikas are still scrawled on synagogue walls.

We will not accept a society in which a handgun can be bought today and fired tomorrow to kill a man like Allard Lowenstein.

Two decades ago, Eleanor Roosevelt said of Allard Lowenstein in his youth: "I think he will always fight crusades because injustice fills him with a sense of rebellion."

He always fought crusades; he continually rebelled against injustice. And when he died at the age of 51, he was still young. He was a good man who could not stand by doing nothing. He sought to do everything, and he succeeded more than most people ever dream of. Sometimes he was called a gadfly; in fact he was a rare conscience for us all.

To me, he was a loyal friend who spoke with uncommon frankness.

To America, he was a loyal citizen who spoke the uncommon truth.

For him, the crusade is over.

For us, the cause continues—and in his spirit, with the memory to prod us through the man has passed away, let us resolve to seek justice, to search out the best in ourselves, to see and secure the bright possibilities of our country and of democracy itself.

Allard Lowenstein's life leaves us with the philosopher's question: "If not me, who; if not now, when?"●

WHAT IS THE STATUS OF THE PANAMA CANAL COMMISSION?

● Mr. HELMS. Mr. President, as I have pointed out earlier on the floor, President Royo of Panama wrote to President Carter on January outlining his views on the Panama Canal Act of 1979, that is, the implementing legislation for the Panama Canal treaties. President Royo termed the legislation "illegal" and "unacceptable."

The letter was, in fact, a total rejection of the fundamental status of the Panama Canal Commission as organized under our law. It demonstrated once again that there has never been a meeting of minds on the Panama Canal issue, and that the treaties, in fact, were designed to paper over profound differences in outlook and interpretation of the U.S. role in operating the canal. The Royo letter is printed in the RECORD on page 5207, on March 11.

However, our negotiators ignored those differences, and wrote a text open to obvious ambiguities in semantic interpretation. These ambiguities came out in the Senate debate on the treaties in 1978, but the administration chose to ignore the problems, and resisted every attempt to clarify their meaning and define the U.S. status and rights. When the resolution of ratification was approved by the Senate, the Panamanian foreign ministry issued a lengthy white paper denouncing the administration's interpretations of the treaty, and rejecting the reservations and understanding attached by the Senate. The administration made no attempt to resolve the issues raised by Panama.

Once the exchange of ratifications had taken place, attention turned to the implementing legislation. As the Members of this body are aware, that legislation came in for severe criticism not only in this body but also in the House. The House, in particular, had very strong opinions about the legislation, and, because of this strong interest in the matter, shaped a law which successfully defined many of the problems, even though the administration once again resisted every effort to clarify our status in the canal. At that time, President Royo wrote to President Carter rejecting most of the key aspects of the legislation as conceived by the House. Despite the fact that it was clear that Panama rejected the essential points in the bill, the administration made no effort to resolve the differences either with Panama or with Congress.

Then on January 8, after passage of the legislation, President Royo wrote once again to reject the fundamental basis for cooperation. Once again, the administration ignored Panama's protests. Indeed, the administration proceeded as though nothing at all was wrong. The President sent the names of its five nominees for Panama Canal Commissioners to the Senate. When these nominees testified before the Armed Services Committee on March 7, they said that the President had not yet replied to President Royo. The committee, quite properly, refused to act until President Carter's reply to President Royo was made available.

The administration then proceeded to draft such a letter, but refused to make it available to the public on the grounds of executive privilege. On March 11, I wrote to President Carter urging him to make his letter available. That letter has finally been made available to the public. It now becomes apparent why the administration sought refuge in executive privilege. In the first place, it is backdated to March 3, 4 days before the administration testified to the Armed Services Committee that no reply had been sent. But more important the letter contains absolutely no response to the grave and fundamental issues raised by President Royo in his letter. The President says only that he finds President Royo's objections to be "interesting and useful." He is giving them "the most careful consideration."

Mr. President, imagine if you please, the President of one sovereign nation writing to the President of another. The President of the first nation says that the vehicle being set up for cooperation between the two nations is "illegal" and "unacceptable." In other words, there is no basis for cooperation. The second President simply ignores the objection. Two months later, after prodding from the U.S. Congress, he replies and says that the views of the other are "interesting and useful" and he is giving them "the most careful consideration."

Meanwhile, the President continues as though it were business as usual. He wants us to approve his nominees to the Panama Canal Commission even though the other country thinks the commission is illegal and unacceptable as organized.

Mr. President, this is an impossible situation that is going to lead us further and further into the morass. I think we all admit that, today, Panama is sovereign over the canal. I believed that the 1903 treaty transferred the sovereignty to the U.S. in the Canal Zone; but the Carter-Torrijos treaty unmistakably confirmed Panama as sovereign. We may have treaty rights over the canal, but Panama as sovereign can abrogate those rights whenever she so wishes. That is why I objected to the new treaties.

But we cannot treat Panama today as though she were not sovereign over the canal. If we continue to ignore Panama's objections, we will either have to give up the pretense of following international law and use military force to impose our interpretation of our rights, or we will have to give up the canal entirely. Obviously, no one wants either of those alternatives. Instead, we should use diplomacy to resolve these differences before they escalate into a crisis. But the administration refuses even to state our interpretation of our rights.

Mr. President, I have written once more to President Carter urging him to resolve the differences with Panama before we move ahead with confirmation of the Panama Canal Commissioners. Certainly the fundamental issues should be resolved before the Senate acts. Mr. President, exactly what is our status in Panama? What is the status of the Panama Canal Commission? How is the administration going to respond to President Royo's criticisms? Are we entering into permanent negotiation with Panama over the treaties? Will the positions demanded by the U.S. Congress be further compromised? The people of the United States, and the Members of the Senate, have a right to know before the Senate acts on these nominees.

Mr. President, I ask that my letter to President Carter and President Carter's letter to President Royo be printed in the RECORD at the conclusion of my remarks.

The letters follow:

THE WHITE HOUSE,
Washington, D.C., March 3, 1980.

Excellency ARISTIDES ROYO,
President of the Republic of Panama,
Panama.

DEAR MR. PRESIDENT: Thank you for your letter of January 9. Your comments and observations on various aspects of the Panama Canal treaties of 1977 and the related implementing legislation were interesting and useful. We are giving them the most careful consideration.

I share your views on the importance of monitoring the initial stages of treaty implementation. As you know, the Panama Canal Act of 1979 requires me to make recommendations to the Congress by October 1, 1981, regarding necessary or desirable modifications in the implementing legislation. In preparation for this task, it is important that we identify any specific problems that can be attributed to the legislation itself.

Many of the problems that have arisen so far, however, do not appear to be the result of legislative requirements and so we need not wait for legislative action to address them. In such cases, I believe problems might usefully be referred for study and recommendation to one or more of the committees established by the treaties. The Consultative Committee, with its collaborative and independent views, could be especially helpful.

I am pleased, as I am sure you are, that the spirit of cooperation built up during the negotiation of our new treaty relationship has carried over into the initial period of implementation. Because of the intrinsic technical and political problems, differences of opinion will undoubtedly arise from time to time. But I am confident that we will be able to resolve such differences satisfactorily by building on the firm and successful foundation we have already put in place.

In closing, I want to assure you once again that the United States is as deeply committed to making these treaties work as it was to building the Canal. I look forward to continued cooperation and correspondence on whatever difficulties may arise.

Sincerely,

JIMMY CARTER.

—

U.S. SENATE,
Washington, D.C., March 26, 1980.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: On March 11, 1980, I wrote to you concerning the nominations of Messrs. Michael Blumenfeld, John A. Bushnell, John W. Clark, Clifford B. O'Hara and William Sidell to be Panama Canal Commissioners.

At that time I pointed out that President Aristides Royo of Panama had written to you on January 8 terming the implementing legislation passed by this Congress, and signed into law by you as President, to be "illegal" and "unacceptable". By implication, the appointment of Commissioners to an illegal and unacceptable Commission also would be considered illegal and unacceptable by Panama. I suggested that it would be prudent for the Senate to refrain from acting on these nominees until your response to President Royo had been made available to the Senate.

Now that you have made your letter to President Royo available to the American people, I am more deeply disturbed by the lack of substantive response to the Panamanian position. You state that President Royo's views were "interesting and useful", and that the problems involved could be referred to the Consultative Committee set up by the treaties.

This response sidesteps the main issue, namely, that President Royo is calling into question the fundamental basis of U.S.-Panamanian cooperation under the treaties. To call such fundamental criticism "interesting and useful" is to demean the sender, and to disparage the validity of the Panamanian criticism.

Mr. President, until the Administration is prepared to restate its position on the essential validity of the Commission, I do not think that it makes much sense for the Senate to act on the nominations. While many of President Royo's criticisms could be usefully referred to the Consultative Committee, the fundamental questions as to the validity and legality of the Commission's status cannot. I urge you to clarify the Administration's position on the status of the Panama Canal Commission so that the Senate may act intelligently and with dispatch upon the nominees.

Sincerely,

JESSE HELMS.●

AGENT ORANGE

● Mr. HEINZ. Mr. President, the controversy surrounding agent orange continues to grow. In spite of the apparent wishes of administration officials, this issue will not disappear. We simply cannot follow their advice to postpone further consideration of the plight of our veterans who have been exposed to agent orange. While the Government pursues studies without deadlines, thousands of Vietnam veterans are going uncompensated for—and, far worse, some may die as a result of—disabilities received in service to their country. It is past time for the Congress to act to direct the Veterans' Administration to provide the benefits our Nation owes to those who have served their country and made sacrifices on its behalf.

An article in the March 18 New York Times describes the effects of agent orange in Vietnam and provides further evidence of the serious problems our own veterans must now endure. Mr. President, I ask that this article be printed in the RECORD and I urge my colleagues to read it, and consider its implications.

The article follows:

BURNT. ORANGE.

(By Bill Kurtis)

CHICAGO.—The Agent Orange controversy has grown dramatically since a small group of veterans attributed their illnesses to the United States chemical defoliant used in Vietnam from 1962 to 1972.

In two years, more than 5,000 veterans have filed claims with the Veterans Administration; others exposed to the herbicide mixture have created the largest product-liability suit in history through a variety of individual actions against the various chemical companies that manufactured the defoliant.

North Vietnamese war veterans exposed to Agent Orange are also complaining of birth defects, and the Government in Hanoi is asking for war reparations to replant the vast forests destroyed by the United States defoliant.

Against this international background, the Vietnamese Government recently granted me a visa to return to Vietnam to inspect the damage to both the land and the people.

An aging Vietnamese river boat carried our party—two professors from Ho Chi Minh University had joined my television crew—north of Vung Tau into the delta of the Saigon River. We cut through choppy waters where American river boats had patrolled so extensively during the Vietnam War.

There had been impenetrable thickets of huge mangrove trees that provided perfect cover for Vietcong guerrillas infiltrating into Saigon (since renamed Ho Chi Minh City), and nearly 260,000 acres became a prime target for Agent Orange. Air Force C-123 planes passed back and forth across the area, spraying a white fog of defoliant until leaves dropped from the trees and then the trees themselves fell into the tidal water. Now, a few sun-bleached stumps are the only hint of what only a decade ago was a thick forest of trees reaching 70 feet into the air, supported by aerial roots extending deep into the mud of the delta.

We were driven northwest of Saigon, deep into Tay Ninh Province near the Cambodian border. No propaganda was needed to dramatize the damage here: 200,000 acres of eucalyptus trees had been reduced to a scrubby landscape. United States biological warfare had wiped out valuable timber throughout much of the 3.5 million acres where it was used.

I remembered that as a youngster I helped my father spray a pasture in Kansas with 2,4,5-T, one of the herbicides in Agent Orange. It killed the blackjack-oak trees and left a beautiful spread of virgin prairie that accommodated several hundred head of cattle. In Vietnam, lush grasses filled much of the empty forest and, it seemed to me, could provide an unexpected benefit. My Vietnamese companions were not amused, however. One said, "We are rice farmers, not cowboys."

Dr. Ton That Tung, one of Vietnam's most prominent surgeons, believes that Agent Orange has had a long-range effect on the people as well as the landscape of Vietnam. Since the war ended, he has been trying to link Agent Orange with an increase in birth defects and liver cancer. When Dr. Tung presented his findings to United States scientists during a scientific exchange visit to the United States last summer, they were disappointed at his lack of data linking the cancer to dioxin, a contaminant found in the herbicide 2,4,5-T. But during his visit Dr. Tung learned of the complaints of American veterans and returned to Hanoi to initiate a study of North Vietnamese soldiers who had been exposed to the herbicide spraying.

He led me into a room in Hanoi's Viet Duc University hospital where 10 couples were waiting. Their children had all been born with severe birth defects. Four children had no eyes, and one three-year-old constantly looked at the stump of his left arm, extending just below the elbow with five tiny appendages growing like small fingers out of the skin. The children were part of his new study, the results of which he felt suggested a significant link between exposure to Agent Orange and the birth defects.

The couples came from Yen Bai, a small town northwest of Hanoi. His surgical team had studied 670 couples, he said. All the men had been exposed to a "white spray from American planes" and had returned to marry women who had not been exposed. Dr. Tung's researchers studied 1,401 pregnancies from 1975 to 1979. They reported 214 abortions and premature deliveries. Among the remaining 1,187 births, his doctors found 43 birth defects, which Dr. Tung interpreted as double the rate he considers normal in Vietnam.

The team compared its findings among the exposed veterans against a controlled group of 116 couples from small towns around Hanoi. The men were civilians and veterans who had not been exposed to a defoliant. Among this group, he found no birth defects and 36 abortions and premature deliveries. Dr. Tung concluded in his reports: "There is a significant differences for the defects between the group of Vietnamese soldiers in the south and the others. About the characteristic of these defects, one must insist on the excessively high frequency of brain defects) nencephaly, microephaly and anophtalmy) in Vietnam on the second generation."

But researchers in the United States found this study just as vague as his attempted linkage of liver cancer with dioxin. Dr. Marion Moses of New York City's Sinai School of Medicine calls it "suggestive" but feels it needs far more work before it could provide the basis for solid conclusions about the effects on humans of exposure to dioxin. Dr. John Bederka, a toxicologist at the University of Illinois Medical Center, finds many inconsistencies in the report that, he says, preclude any conclusions, but he still finds it very "interesting"—the kind of study that should lead to further dialogue between scientists on the subject of dioxin exposure.

Dr. Tung is pressed into every medical task in Vietnam because there are so few specialists in any field. His hospital is so poor it can't even afford modern drugs to treat cancer. The population of Hanoi suffers most from malnutrition. His study may not provide definitive answers to the questions raised in the Agent Orange controversy but it cries out for help from the international scientific community.

I felt Dr. Tung knew of the shortcomings of his attempt at a health survey but hoped his data would provide enough interest so that both countries would begin to search for answers to one of the most controversial issues still left by the Vietnam War: Did the United States chemical warfare leave veterans on both sides with a deadly legacy that they must live with for the rest of their lives?●

HENRY HEALEY WINS AUTO DEALER AWARD

● Mr. RIBICOFF. Mr. President, Henry F. Healey, Jr., secretary-treasurer of Healey Motors, Inc., a Subaru dealership in Derby, Conn., was named a Time magazine Quality Dealer Award (TMQDA) winner for 1980 at the National Automobile Dealers Association (NADA) convention in New Orleans, February 9.

He is also president of Healey Dodge, Inc., and Healey Car & Truck Leasing, Inc., in Branford, Conn.

I want to congratulate him on winning this award.

Mr. Healey, whose dealership is located at 21–25 New Haven Avenue in Derby, is one of only 70 dealers in the entire Nation selected for the Time honor.

The TMQDA program, sponsored by Time in cooperation with the NADA, annually honors outstanding new car dealers for "exceptional performance in their dealerships combined with distinguished community service." This year's winners were chosen by a panel of faculty members from the University of Michigan Graduate School of Business Administration.

Mr. Healey's award was announced by Michael M. Carey, director of the TMQDA program for Time. He and the other winners received their awards at the opening business meeting of the NADA convention which was attended by over 5,000 people involved in the automotive industry.

A native of Connecticut, Mr. Healey attended the National Sheriffs Institute at the University of Southern California and the FBI Academy at Quantico, Va. He served in the U.S. Navy during World War II and was awarded a purple heart.

He started in the automobile business in 1947 as a salesman for George J. Flint, Inc., a Dodge dealership in Ansonia. In 1949, he opened his own service station which he expanded into a new car dealership. He obtained the Subaru franchise in 1968.

A member of the Connecticut Automotive Trade Association (CATA), Mr. Healey was nominated for the Time award by that organization. He is a member of NADA, a member and past Auto Show Chairman of the Valley New Car Dealers Association and has served on the Subaru of New England Dealer Council since 1972.

Mr. Healey has led his dealership to many honors and was named CATA Dealer of the Year in 1979.

Active in community affairs, Mr. Healey is a director of the Derby Veterans Community Center, the Housatonic Bank & Trust Co., the National Sheriffs Association, and serves on the State of Connecticut Governor's Justice Commission.

His membership includes the Derby Eagles, the Knights of St. Patrick, American Legion, VFW, and the Derby Elks, where he served as exalted ruler in 1954. He also is a member of the neighborhood watch program for senior citizens.

In political affairs, he is a member of the State Democratic Central Committee and was president for 12 years of the Derby Board of Aldermen. He also serves as high sheriff of New Haven County.

Mr. Healey has received many civic honors, including the Civilian Award from Providence College in 1978 and Distinguished Service Awards from the Storms Fire Department in Derby, State of Connecticut Police Commissioners Association, and the Derby Democratic Town Committee.

In addition, he was named Civic Man of the Year by the Central Connecticut Council of U.S. Navy League, 1978, the New Haven East Rock Lodge of Black Elks, and the Hamden, Conn. Italian American Club.

Mr. Healey and his lovely wife, Jean, live in Derby and have six children. Their son, Michael, is vice president of Healey Motors, Healey Dodge and Healey Car & Truck Leasing. Their son Patrick is office manager of Healey Dodge.●

FIFTIETH ANNIVERSARY OF THE INAUGURATION OF HERBERT HOOVER AS THE 31st PRESIDENT OF THE UNITED STATES

● Mr. HATFIELD. Mr. President, in the series of essays from scholars commemorating the 50th anniversary of the inauguration of Herbert Hoover, I would today like to place in the RECORD a paper entitled "Poland's Friend" which was written especially for this series by Prof. George J. Lerski of the University of San Francisco, California.

World War I had left much of Europe starving. President Hoover's concern was manifest from the war's outset, as he led efforts to feed the starving in Belgium and other nations occupied by Germany. To accomplish his goals, he had overcome military obstacles, such as a blockade, with his humanitarian appeals. Once the Armistice was signed, Hoover's actions turned toward Poland. He moved expeditiously, knowing that millions faced starvation before the harvest of 1919 would be available.

Under his leadership, the American Relief Administration for the next 3 years provided meals for over a million starving Polish children. Professor Lerski is well qualified to tell the story of Hoover's efforts in the 1920's. As a small child in Lwow, Poland, He himself was a recipient of food under this great humanitarian project.

Professor Lerski's paper is an updated summary of his book, "Herbert Hoover and Poland." Both documents are interesting reading and should help dispel the cold image of Mr. Hoover, perpetuated by later biographers, such as his alleged inability to relate emotionally to the suffering of others.

I request that Professor Lerski's essay, as well as a biographic sketch of the author, be printed in the RECORD.

The essay follows:

BIOGRAPHIC SKETCH—GEORGE J. LERSKI

Born: January 20, 1917.

Education: Undergraduate studies: Foreign Trade Institute (A.H.Z.) Lwow, Poland; Law at Jan Kazimierz University of Lwow, Poland, 1936–39; LL.M. in Polish Law (valde bene degree) University of Oxford, England, 1945–46; Graduate studies in American History and History of Political Theory, Georgetown University, 1949–53.

Professional experience: Educational officer, Polish Army in Exile, 1940–42; (Special Envoy ("Emissary") of Allied Headquarters, 1939–45; Private Secretary to Prime Minister of Poland, 1944–45; Visiting lecturer for Council on Asian Affairs and Japan Institute of Foreign Affairs in Japan, 1954; Editor, "Polish Daily," Detroit, Michigan, 1955; Professor of Western History, University of Japan, Tokyo; lecturer, Chuo University Graduate School, Tokyo; Law department, University of Sacred Heart (Seisan University), Tokyo; International Christian University, Tokyo; seminar leader, Japan Institute of Foreign Affairs, Inc., Tokyo, 1955–58; Professor, American History and International Relations, University of Karachi, Pakistan, 1958–60; The Asia Foundation Program Specialist, Review and Development Department, San Francisco, California, 1960-62; Visiting professor of political science, University of Ceylon, 1962–64; Research associate, Hoover Institute on War, Revolution and Peace, Standard, California, 1964–65; Senior research associate, The Asia Foundation, San Francisco, 1965–66; Associate professor, Department of Political Science, University of San Francisco, 1966–68; Professor of History and Government, University of San Francisco, 1969–70; Professor of Modern European History, University of San Francisco, 1970.

Publications: "Herbert Hoover and Poland: A Documentary of a Friendship," Stanford, California: Hoover Institution on War, Revolution and Peace, Stanford, University, 1977.

"Origins of Trotskyism in Ceylon: A Documentary History of the Lanka Sama Samaja Party, 1935–1962," Stanford: Hoover Institute on War, Revolution and Peace, Publication No. 74, 1968.

"A Polish Chapter in Jacksonian America: The United States and the Polish Exiles of 1831," Madison: The University of Wisconsin Press, 1958.

"History of Western Political Thought," Tokyo: Risosna Co., 1958.

"The Economy of Poland," Washington, D.C.: Council for Economic and Industry Research, Inc., 1954.

Editor and co-author: "The Unseen and Silent: Adventures from the Underground Movement Narrated by Paratroops of the Polish Home Army," London and New York. Sheed and Ward, 1954.

POLAND'S FRIEND

Dr. Vernon Kellogg, one of Herbert Hoover's earliest biographers, gives the following, moving account of a march of 32 thousand Polish children to honor Hoover in August of 1919, in Warsaw:

They marched and marched and cheered and cheered * * * And all went by as decorously and in as orderly a fashion as many thousands of happy, cheering children could be expected to, until suddenly from the grass an astonished rabbit leaped out and started down the track. And then five thousand of these children broke the ranks and dashed madly after him, shouting and laughing. And they caught him and brought him in triumph as a gift to their guest. But they were astonished to see as they gave him their gift, that this great strong man did just what you or I or any other human sort of human being could not have helped doing under the circumstances. They saw him cry * * *. But the children of Warsaw had no need to be sorry for him. For he cried because he was glad.[1]

As a child in a Lwow kindergarten, I happened to be among the lucky 1,315,490 recipients of the "Hoover Meals" and distinctly remember that as far as America was concerned Mr. Hoover's name was second in popularity only to that of Woodrow Wilson. It is therefore unfortunate that the post war Communist regime failed to restore, in an otherwise laudable effort of rebuilding Warsaw from ashes, the Hoover Square and Monument in the heart of the city so that those growing up in present day Poland are not sufficiently reminded of the great generosity of the man who became America's 31st president. In the period from 1919–1923, the sum total of the American Relief Administration headed by Hoover for Poland reached $200,864,857.73, while more than 150 American relief workers became deeply involved in Poland's needs—the largest such U.S. operation on Polish territory ever, reminiscent of a much earlier outburst of American sympathy to that far away country in the Jacksonian period.[2]

Asked in 1975, by Dr. Milorad Drachkovitch, director of the Hoover Institute Archives, to prepare a book on the experiences of the first U.S. envoy in Poland, Hugh Gibson, I instead proposed to first do the monograph on Mr. Hoover's long involvement in Poland. It was published in 1977, as the first in the series of Hoover Archival Documentaries, with a gracious forward by Senator Mark O. Hatfield.[3] Doing research in the Hoover Presidential Library at West Branch, Iowa, and at the Hoover Institute for War and Peace at Stanford, California, I realized that Mr. Hoover always showed a special interest in the underdog countries starting with his successful operation in German-occupied Belgium. His experiences in many parts of the world, both in engineering enterprises and in relief operations made him by far the most internationally minded member of the otherwise isolationist Harding and Coolidge Administrations.

Moreover, Hoover's insistence on the sort of "seed" help to assist the Poles in building their own relief institutions, as extensions of the network which he set up, created an interesting antecedent and model for post World War II American foreign aid such as the Point Four Program, the Marshall Plan, Food for Peace, the Economic Cooperation Administration (E.C.A.), etc. To be sure, Hoover's free enterprise philosophy determined not only his anti-communist but also his anti-socialist posture, but even in the case of the famine stricken Soviet Russia of Lenin's day, he was ready to serve with his unique organizational talents, the populace of that vast country whose government was not even recognized at that time by the U.S. By the way, such a substantial undertaking would not have been possible without the logistic cooperation of Poland despite her recent war with the Soviet Union.[4]

Unfortunately, the pro-German stance of Hoover's Secretary of State, Henry Stimson, following the Dawes and Young Plans to accommodate German financial grievances over war reparations serve some anti-American official historians of present Poland, (e.g., Professor Marian Wojciechowski) to attack Hoover as the supporter of the German Revisionism responsible for the new *Drang nach Osten* in the Nazi version. The unfortunate interview with the Chairman of the Senate Foreign Relations Committee, Senator William Borah of Idaho, indicating support for the German claims on Gdansk (Danzig) and the so-called Polish Corridor was immediately countered by a White House denial: "A press statement that the President has proposed any revision of the Polish Corridor is absolutely without foundation. The President has made no suggestions of any such character."[5] Hoover remained till the very end of his life one of the staunchest supporters of Poland's independence. Ever since his student days at Stanford he had a particular admiration for Mr. Paderewski, but was even-handed in his respect for Poland's strongman, Marshal Josef Pilsudski:

Poland is fortunate in having in her leadership two out of the six or seven great idealist statesmen of the world, Mr. Pilsudski and Mr. Paderewski. Upon them the eyes of all liberals in all countries are today turned with hopes for their continued success. The helping hand of all liberal governments will be extended to these men and to the Polish people in the consummation of their task.[6]

In view of the Communist attempts to stifle the truth about Hoover's friendship towards Poland, I was particularly happy with Ambassador Richard Davis' suggestion that a special exhibit in Warsaw be arranged to show the Polish public the great accomplishments of Herbert Hoover and the American Relief Administration (A.R.A.) Present Ambassador William Schauffele seemed equally interested in implementing that project, but after a few phone calls from the State Department nothing further has been done. I believe that it would be most proper and timely to document America's genuine interest in the welfare of Polish children in 1919–1923.

Since President Wilson, the Polish people never had a more knowledgeable and dedicated friend in the White House than that Iowa Quaker who visited the country four times under different circumstances between 1913 and 1946, the last time, to use Hoover's own words, Poland had come:

Under the heel of Communist oppression. The Polish people for more than a thousand years have suffered under repeated subjugation. But the indomitable spirit of the race has time and again led them out of oppression into freedom.

The spirit of a great race does not die from oppression. A free Poland is not dead. It will rise again; and its people will once more live according to the spirit and the principles of its noble Constitution of 1791—the anniversary of which you are celebrating in your hearts today.

There is more to nations than their soil, their cities, their wealth, and even their government. There is a soul in a great people. That soul is forged in the instincts of their race, their traditions, their heroic struggle, their heroic men, and their genius in art, music and literature. It is steeled in their sufferings. They may be impoverished. But the soul of a great people cannot be crushed. From that their national life and their freedom will rise again and again from the ashes of their homes.[7]

FOOTNOTES

[1] Vernon Kellogg, *Herbert Hoover: The Man and His Work* (New York: D. Appleton and Co., 1920) pp. 4–6. In his own memoirs, Hoover quotes the French Military Attache's comment on the event: "There never has been a review of honor in all history which I would prefer for myself to that which has been given you today!" See *The Memoirs of Herbert Hoover: Years of Adventure, 1874–1920* (New York: Macmillan Co., 1952) p. 360.

The above quotes should help to dispel the inhuman image of Mr. Hoover perpetuated by later biographers such as his alleged inability "to relate emotionally to the suffering of others, . . ." Cf. *Herbert Hoover: Forgotten Progressive* (Boston: Little, Brown and Co.).

[2] Jerzy Jan Lerski, *A Polish Chapter in Jacksonian America: the U.S. and the Polish Exiles of 1831* (Madison: The University of Wisconsin Press, 1958).

[3] George J. Lerski, *Herbert Hoover and Poland: A Documentary History of a Friendship* (Stanford: Hoover Institution Press, 1977).

[4] Harold H. Fisher, *The Famine in Soviet Russia, 1919-23: The Operation of the American Relief Administration* (New York: Macmillan Co., 1927) pp. 176-177.

[5] *U.S. Foreign Relations*, 1931, 1:603.

[6] Lerski, *Hoover and Poland*, p. 83.

[7] "Message of Herbert Hoover read over Radio Free Europe on the 162nd anniversary of the Polish Constitution", in Lerski, *Hoover and Poland*, p. 114.●

A NEW APPROACH TO ENERGY

● Mr. HEINZ. Mr. President, a recent editorial in the Washington Post forcefully makes a point about energy policy that we would all do well to heed. The editorial comments on the efforts of the Senate to delete from current law a provision that prohibits utilities from financing energy-conserving improvements in their customers' homes, and it contrasts those efforts favorably with the approach of the House, which has been to make the program more complex than it already is.

At the same time, however, the editorial is making a larger point about energy policy in general—that we need to let economic forces work for us rather than against us in our efforts to achieve energy independence. Utility financing of home conservation improvements takes advantage of an available industry-customer linkage utilizing available technology at a cost per barrel of oil saved that is considerably less than the current price of new oil. This is simple economic good sense, and it is past time that we recognized that and did something about it.

But this is not the only such case. The Mellon Institute's Energy Productivity Center has estimated that if we had invested $364 billion in energy efficiency techniques over the last 10 years, we could have reduced our fuel consumption by 19.3 quadrillion Btu's, and we could have eliminated the need for $401 billion of other expenditures—$240 billion in new electricity generating capacity and $161 billion worth of imported oil. In short, we could have reduced oil imports by 17 billion barrels.

Obviously we cannot have those 10 years back. But we can begin to make up for lost time. We can begin to understand the economics of energy and make it work to our advantage. Mr. President, I spoke to this subject at greater length recently in Philadelphia, and I ask that my remarks and the Post editorial be printed at this point in the RECORD.

The material follows:

ANTI-CONSERVATION IN THE HOUSE

At a time when the exploding costs of imported energy are leading inflation, and when energy experts are in near-unanimous agreement that conservation offers the largest and lowest-cost near-term energy supply, the House of Representatives has agreed to fight in a House-Senate conference for a provision that will *prevent* the states from adopting one of the most promising conservation opportunities available.

The House set out, as did the Senate, to repair an acknowledged mistake in the Energy Conservation Act of 1978: a provision that prohibits utilities from financing energy-conserving improvements in their customers' homes. The Senate simply deleted the offending provision. The House replaced it with pages of new language that make matters worse.

An aggressive program to improve the energy efficiency of existing homes and businesses could save the country the equivalent of 2.5 million barrels of oil a day by the mid-to late-1980s—an amount equal to two-thirds of the oil now imported from the Persian Gulf states. But if individual homeowners can cut so much of their energy use by making energy efficiency improvement, why aren't more of them doing it? The answer is simple: the relatively high capital cost of the improvements; the time, hassle and difficulty of finding a bank loan; and, perhaps most important, the uncertainty of finding a contractor who knows what to do and who will do a quality job.

Utility financing is one way of solving all three problems. It is not the only way, but until an independent conservation service industry is built up, it is the only way *now available*. A properly regulated utility financing program does something else equally important—it gives utilities a stake in energy conservation. Instead of seeing conservation as a threat, utilities can, under such a program, turn conservation into another way of making a profit.

The key to the feasibility of utility financing is that the necessary home improvements cost much less than the cost of providing new energy to meet growing demand. Specifically, the cost is equivalent to $20 per barrel of oil *saved*, while the average cost of *new* oil is already about $36 per barrel. The difference is so great that a utility can finance the home improvements with low-interest loans, and make a profit, and keep all its customers' bills lower than they would otherwise be—and save energy.

Such programs are not merely wishful thinking; they already exist—in Oregon, California and elsewhere. But if the House position prevails, new programs like them would be illegal. None of the programs now in existence may be the best possible conservation program, but the best way cannot be found by forbidding experimentation in the states. Utility regulation should be left where it has traditionally been—with the individual state public utility commissions. All Congress has to do is lift its previous prohibition and let the utilities help with the job.

REMARKS OF SENATOR JOHN HEINZ

Nowhere is a new look at policy more needed—nowhere is this nation more challenged—than in the area of energy.

Energy—the supply of energy and the cost of energy—is going to make the most significant, the most far-reaching, the most long-lasting changes in the American way of life . . . than any other force or factor in our entire history. It is already happening. The fact is that while Jimmy Carter has offered us clinches and cardigans, the American people have waited in gas lines and watched their heating bills skyrocket.

The energy crisis isn't a crisis of supply. There are plenty of energy sources. It is a question of utilizing them wisely.

And it's a crisis compounded by the unhealthy intrusion of government into the energy scene. Of all the bureaucratic nightmares in Washington, D.C., the worst by far is the Carter-created Department of Energy, whose annual budget, paid for by the American taxpayer, is $11 billion.

$11 billion. . . . That's more than the total profits of the seven biggest oil companies put together; that's more than the cost of all the oil we produce in Texas or import from Saudi Arabia in a year.

The energy crisis is not the result of purposely perverse overconsumption on the part of the American people. The American people will cooperate in energy conservation, and they will support energy innovation as long as their leaders take them into their confidence instead of treating them like children who have to be disciplined and regulated into energy submission.

While the key to our energy future is to reduce our use of imported oil, the United States is becoming daily more dependent on imports. In recent years our oil supplies from foreign sources have almost doubled. OPEC now provides almost half our oil. And if current trends continue we will be even more dependent on oil imports as we move into the energy-troubled 1980's.

The results of this dependence are painfully clear—in the economic and political intimidation we are subjected to by foreign oil producers.

We also see and feel it in the inflation which is led by soaring fuel prices, and which is eroding our purchasing power. We see it in the trade deficits which are robbing American industry of needed capital for expansion. And reduced capital investment means loss of jobs.

Everywhere we look we are reminded of one simple fact: our national energy policies have failed.

That is because the policies set by the Carter Administration have been self-contradictory.

The President's programs, planned to the last detail and administered by bureaucracies like the Department of Energy, have met inevitable failure.

Why? Because they ignore the basic economic forces that are capable of producing the energy results we want, and need, and, finally, must have to prosper as a nation.

I submit that we need a thorough reversal in our energy policy. The system of haphazard regulation we have been burdened with is clearly not the answer.

We need, instead, a policy which places a greater reliance on the marketplace and incentives to people not just to produce the energy we need—but to assure that we use our energy more wisely. We need to give incentives to unconventional sources such as solar and geothermal energy as well as to conventional sources. And we also have to start thinking about conservation as a source of energy supply.

Market regulation versus free market choice are two dramatically different ways of looking at energy. But the most dramatic difference between them is in their results: one will work; and one won't.

To understand why the Carter system of selective regulation cannot work, let's look at some of the fallacies and the failures of this administration's energy policies.

The Administration's operating assumption is that government can selectively allocate, regulate and price-fix a national system of energy efficiency and conservation.

It presumes that detailed regulations and narrow, technology-specific incentives will channel future energy use and conservation in the direction desired.

But consider some of the results of this monolithic way of thinking—two years ago the President proposed a program to discourage the installation of oil and gas boilers for new electric generating plants. This policy, as expected, increased the market for coal.

But last year, when we suddenly found ourselves with a surplus stock of natural gas, the President shifted to encouraging the use of natural gas instead of coal for generating electricity. And then, literally yesterday, the President sent down new specifications for conversion back to coal.

—Or you may remember how the Administration encouraged homeowners and commercial business to retrofit as a conservation measure. But then, with the help of Congress, it imposed a ban on utilities moving into the retrofitting business. This contradictory self-defeating move stopped utilities from making loans to customers to insulate and retrofit their homes under a plan whereby those customers could pay back the loan as part of their monthly utility bill.

The list goes on. But long or short, it illustrates one significant point: when conflicting, burdensome government policies get the marketplace for energy coming and going, the marketplace for energy gets nowhere.

But that need not be the case. We can institute an energy policy that corrects these distortions so that all energy sources will be able to compete more freely and on an equal footing.

We can achieve an energy policy of optimum economy by providing incentives for all energy sources, and by providing a positive motive for individuals and businesses to conserve and to adapt to changing energy conditions.

If we really mean to let the market work, and if we really want to provide an equitable and productive incentive system, I think we must start looking at energy in an entirely different way than we have in the past.

For example, we have to begin by asking the most basic question: What is energy? Is it coal, or oil, or a panel that traps the sun's rays? Or is energy a warm house, hot water, a moving freight train, or a microphone that amplifies my voice? Whether these results are provided by oil, natural gas, or solar power isn't of primary importance to us. What is important is how much fuel, and at what cost, is needed to obtain the energy services we want.

If we start thinking about energy in these terms, then incentives to conserve it and use it efficiently will naturally take precedence over efforts to allocate and direct the specific use of specified energy sources. The results of this change of approach will be immediate and substantial. According to the Mellon Institute's Energy Productivity Center, if we had invested $364 billion in energy efficiency techniques over the last ten years, we could have reduced our fuel consumption by 19.3 quadrillion BTU's. But more significantly, this would have eliminated other costs of $401 billion—$240 billion worth of new electricity generating capacity and $161 billion worth of imported oil—for a total savings of $36 billion. We would not have had to sacrifice any of the services derived from energy use, and we would be importing significantly less oil. In fact, we would have reduced oil imports by 17 billion barrels—the equivalent of the entire annual oil output of Saudi Arabia for six years!

As this example shows, energy can be acquired from the more efficient use of fuel equally as well as from the opening up of new sources. That is not a new idea. What is new is the idea that the achievement of greater energy efficiency should not be dependent upon the dictates, controls, and specifications of the government. And what is new is the idea that energy efficiency can be better achieved through the free choice of an informed public operating in the economic marketplace. What is new is that energy efficiency pays . . . if we let it.

We must abandon the idea that the Federal Government knows what is best for each and every home or industry, and instead focus on the economic sense of energy consumers provided with good information.

I suggest, therefore, that we re-orient our policies in line with a new energy efficiency strategy. This strategy would be directed to one end: the identification and removal of the institutional barriers in our economy that prevent the energy consumer from doing what makes most sense economically.

Such a strategy does not mean more large federal programs.

For example, in the residential sector, we need house-by-house examinations of energy use patterns and case-by-case recommendations for needed improvements by qualified experts.

This is the "house-doctor" concept, suggested in a study by Princeton University, and it is a step in the right direction.

The question is how to get people to do it. One way would be to provide a tax credit to anyone who had such a residential analysis performed. Another way would be to give people an annual tax credit on the energy savings they realize from year to year. Such an energy conservation tax credit would work as follows:

For the average homeowner, all fuel bills would be combined into one formula to establish how many BTU's the howeowner consumed in a given year. Thereafter, if that homeowner can establish that his home's consumption of energy declined from one year to the next, he would receive a tax credit that would be deducted from the Federal Income Taxes he owes each year.

For the automobile driver, the system would work largely as in prior years when people were permitted to deduct the federal excise taxes on gasoline from their federal income taxes. Only now, instead of being rewarded by the Treasury for consuming more gasoline, the taxpayer will be rewarded for consuming less.

In the commercial and industrial sectors, this energy efficiency strategy means a similar case-by-case analysis and the widespread adoption of techniques like cogeneration to take advantage of energy that currently goes to waste. This means a very different approach.

For example, right now, General Public Utilities is launching an innovative effort to make not just the supplying of electricity, but the conservation of electricity its business. Short on capital and forced to review its entire operation due to the events at Three Mile Island, this utility company has realized that it can't follow the traditional course of simply building more power plants to meet increased demand.

Instead, it will be working with all its customers—residential and commercial—to reduce demand by increasing the efficiency of current energy use and by developing their energy "sense".

It believes this will result in lower consumer costs and be more profitable than building power plants.

We must remove the institutional barriers erected by government to competition and ingenuity. And we must create an institutional structure that will show people how they can save at the same time that we are making it economical for them to do so. For as the "house-doctor" proposal illustrates, people do not necessarily know how to save energy, even if they want to, and therefore will not invariably or automatically do the right thing without information and help.

We need a new kind of energy policy which provides incentives for performance; which removes barriers rather than erects them; which reduces the role of government rather than increases it; and which is intelligence-intensive and cost reducing, rather than spending-intensive and cost increasing.

A policy which encourages people to be smart about their own energy use and planning.

This is a particularly important policy change because of the serious capital shortage our economy is experiencing. We just cannot afford to throw money away or invest one more non-productive dollar.

The policy I propose is one which is right for today, right for tomorrow, and right for America.●

MILWAUKEE RAILROAD RESTRUCTURING ACT

● Mr. JEPSEN. Mr. President, the Congress passed the Milwaukee Railroad Restructuring Act in November of last year and one of the major provisions was to provide certain protections for Milwaukee Railroad employees. The act allocated $75 million for a smooth and responsible settlement of labor-related problems which may arise as workers lose their jobs and work their way into new ones on the lines.

However, I have heard nothing but complaints from ex-Milwaukee employees about the "mass confusion" they confront when seeking assistance under the restructuring act.

Because of my concern that this issue must be resolved immediately, I have sent letters to Department of Transportation Secretary Goldschmidt, Interstate Commerce Commission Chairman Gaskins, and Presidential Assistant Stu Eizenstat asking for a swift investigation of the enactment of the labor protection clauses in the act. It is time the agencies get themselves together to make sure that those benefits are received by the people in Iowa who need them.

Mr. President, I ask that the text of my letter to Secretary of Transportation Goldschmidt be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, D.C., March 25, 1980.

Hon. NEIL GOLDSCHMIDT,
Secretary, Department of Transportation, Washington, D.C.

DEAR MR. SECRETARY: In November of 1979, the Milwaukee Railroad Restructuring Act passed the U.S. Congress and was signed by the President. The legislation contained provisions for the protection of Milwaukee Railroad employees. However, in recent months I have received hundreds of complaints from Milwaukee employees in my state who have been hit with mass confusion as they attempt to seek compensation or assistance. In the following paragraphs, I will outline some of the problems.

According to the Railroad Retirement Board, the Milwaukee Railroad is responsible for administering separation allowance, interim employee assistance, employee incentive compensation, and moving expenses. Apparently, there is some question as to what the Railroad must be accountable to the Railroad Retirement Board for as regards their actions in these areas.

For instance, we have reliable reports that some of the railroads taking over the Milwaukee lines have hired new people off the streets when there were Milwaukee employees ready and willing to take those same jobs. This appears to be a violation of the law and must be addressed.

We also asked the Milwaukee Railroad whether they would create an organized system to enable disrupted employees to exercise their seniority rights as is required. The answer was "no." This has created complete chaos. Employee A has 15 years on the job, is approved by the supervisor for the area, and begins to work, perhaps even moving to the new locale. Along comes employee B with 20 years experience and he then bumps employee A who thought he had found permanent employment.

The sensible way to alleviate this situation is to compile a list of all employees and their seniority within a 125 mile radius.

The most senior would be asked if he wants to exercise his seniority, then the second most senior employee, and on down the line. If the Milwaukee Railroad is unwilling to institute such a system, can you instruct them to do so?

According to the Milwaukee Railroad Restructuring Act, $75 million was to be made available to the Milwaukee to allow for a smooth and responsible settlement of labor-related matters. Has the Railroad received the money? If so, it is obviously not being used in a responsible manner. The Milwaukee Railroad and the other parties involved must be held accountable to the Milwaukee employees.

A clarification of the Milwaukee Railroad Restructuring Act's labor protection provisions is desperately needed—not at some future date, but now, when the situation is volatile. I therefore respectfully request that the Department of Transportation, the ultimate overseer of the restructuring plan, immediately analyze and clarify the situation so that the employees will be treated fairly and equitably by all parties.

The employees are confused and bewildered; they do not know where to turn for the answers. I look forward to your forthcoming reply clearly defining those answers.

Sincerely,

ROGER W. JEPSEN,
U.S. Senator.●

INTEREST RATE REDUCTION

● Mr. BAYH. Mr. President, I have 'oined Senator MAGNUSON in cosponsoring Senate Resolution 392 calling upon the Federal Reserve System to immediately take steps to reduce interest rates.

What I want to convey is a sense of urgency. I believe that the Federal Reserve does not fully appreciate the impact of its policies on people who have to live with them. Monetary aggregates and targets are numbers and dots on a piece of paper or computer printout. However, I have been receiving calls and letters from people who are telling me that tight money is not just a theoretical concept.

What my constituents are telling me about is the inability to purchase a home, the inability to plant a crop, the inability to finance a floor plan for a Chrysler dealership, loss of jobs, and bankruptcy, all because banks will not grant credit or because the price of that money is so much higher than it has ever been before.

I want to convey that the recession in my State of Indiana is already a reality. It is not something that may come in the future. It is here, it is deep, and no end is in sight. Nevertheless, the Federal Reserve continues to tighten the monetary noose.

We had 9.3 percent unemployment in Indiana in January, the third highest in the Nation. In the Anderson area 9,800 people were out of work which is 16 percent of the labor force. Anderson is not a Chrysler community. It is a General Motors community. Motor vehicle production in the United States fell to about 58 percent of last year's level in January.

Now the reason for this is not hard to find when consumer credit costs are at record highs. What is happening is that not only are people not able to buy homes and autos, but business cannot finance investments which they need to survive over the next few months. What is going on is particularly adverse to small business enterprises that used to be able to obtain financing from local banks at reasonable rates of interest. However, now independent businessmen simply cannot afford to borrow at present rates.

The recession is here, yet the Federal Reserve Board continues to raise interest rates by adhering to their monetary targets which won't have much impact on reducing inflation for several years. In the meantime, they are greatly aggravating inflation because interest rates not only impact on the consumer price index, but also affect the cost of everything we buy and everything that has to be refinanced.

The impact of high interest rates is immediate. Unlike in previous recessions, money does not dry up creating an immediate recession. Instead the price of money goes out-of-sight, intensifying the inflation which ultimately will cause an even deeper recession. That is why people are really scared.

Back in October, we were told that there was going to be a new type of monetary policy. The Fed was going to concentrate on limiting the supply of money rather than stabilizing interest rates. As a result, interest rates have skyrocketed to all time highs.

Now I would like to see monetary policy conducted by stabilizing monetary growth rather than having the Federal Reserve put on the brakes 1 month and step on the accelerator the next. Unfortunately, I think the policy has already been sufficiently restrictive to guarantee the recession the Federal Reserve seems so intent on creating. Its present policy only aggravates the recession and aggravates the rate of inflation going into it.

I have opposed creating recessions to fight inflation in the past and I continue to do so. They reduce productivity, halt new investment, and cause budgetary deficits of enormous proportions. Fiscal restraint is not designed to create a recession, but to provide an alternative to present monetary policies which threaten to engulf our economy with high unemployment, high interest rates, high inflation, and stagnation.

I believe that in view of the congressional willingness to balance this budget, that the Federal Reserve has good reason to back off its severe stance and allow fiscal restraint to play a larger roll in controlling inflation rather than the meat ax of monetary policy.

What present Federal Reserve policy insures is that the inflation rate going into the recession will be higher than it otherwise would be and that it will emerge from the recession at unacceptably high levels of inflation.

I join in this resolution because I believe the Fed has already overreacted to short run energy price increases. It is the energy component of the index which has driven up inflation rates to 18 percent annually in January and February. What the Fed is doing is adding fuel to the fire by driving up interest costs.

When combined, the consumer price index is going to embed these energy and interest charges in social security benefits, employment contracts, consumer prices, and the underlying inflation rate. Because inflation is so hard to bring down once begun, these additional increments will be paid for dearly over a long period of time in the future.

Therefore, I urge the Fed to carefully examine the current trends in housing, auto production, and business investment, and weigh the double costs its present policies will have on both inflation and recession against whatever potential benefits it anticipates receiving in the future.●

MESSAGE FROM THE HOUSE ON HOUSE CONCURRENT RESOLUTION 309 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message from the House of Representatives on House Concurrent Resolution 309 be held at the desk pending further disposition.

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

UNANIMOUS-CONSENT AGREEMENT—SENATE RESOLUTION 374

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday, April 1, at 1:50 p.m., the Senate proceed to the consideration of Calendar No. 672, Senate Resolution 374, on which there is a time agreement; that upon the expiration of the time for debate or the yielding back of the time, the Senate proceed to vote on the resolution; that following the disposition of the resolution, the Senate then return to consideration of S. 1946, the then pending business, the rail deregulation bill.

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

MESSAGE FROM THE HOUSE ON HOUSE JOINT RESOLUTION 520 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as a message from the House on House Joint Resolution 520 arrives in the Chamber, it be held at the desk pending further disposition.

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

ORDER FOR CONSIDERATION OF FIRST CONCURRENT BUDGET RESOLUTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the reconvening of the Senate following the Easter holiday, on Tuesday, April 15, following the recognition of the two leaders under the standing order, the Senate proceed to the consideration of the first concurrent budget resolution, if it is available at that time.

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

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session, for not to exceed 2 minutes, to consider the nominations on the Executive Calendar, beginning on page 2, with "Department of Defense."

Mr. BAKER. Mr. President, reserving the right to object and I will not object—the reservation is to advise the majority leader that the items identified are cleared on our Executive Calendar and we have no objection to their consideration and the confirmation of the nominations.

Mr. ROBERT C. BYRD. I thank the distinguished Republican leader.

Mr. President, I ask unanimous consent that the nominations be considered en bloc and confirmed en bloc, that a motion to reconsider the votes en bloc be laid on the table, that the President be immediately notified of the confirmation of the nominations, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

William Eldred Peacock, of the District of Columbia, to be an Assistant Secretary of the Army.

THE JUDICIARY

Robinson O. Everett, of North Carolina, to be a judge of the U.S. Court of Military Appeals.

(New Reports)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Cesar A. Perales, of New York, to be an Assistant Secretary of Health, Education, and Welfare.

DEPARTMENT OF THE TREASURY

Curtis Alan Hessler, of the District of Columbia, to be an Assistant Secretary of the Treasury.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senator from North Carolina (Mr. HELMS) is recognized.

THE POOR JUDGMENT OF U.S. AMBASSADOR WHITE

Mr. HELMS. Mr. President, the assassination of Archbishop Romero in El Salvador by an unknown assassin has brought the political climate in that embattled nation to the brink of explosion.

In this tense atmosphere, the new Ambassador to El Salvador, Robert White, has seen fit to add to the confusion, tension, and suspicion now running rampant in El Salvador by the Ambassador's very unwise press statement, distributed yesterday by United Press International.

Mr. President, only 2 days after the administration in Washington announced to Congress that Fidel Castro's Cubans were involved in large-scale gun running and subversion in El Salvador, Ambassador White has seen fit to circulate rumors, unconfirmed by any other American official, about the alleged hiring of a small band of anti-Castro Cubans to wage war against the left in El Salvador. Ambassador White also carelessly implied, apparently without providing any evidence, that the killing of Archbishop Romero was the work of what he described as a rightwing plot along the lines of "The Day of the Jackal," in France.

Mr. President, one wonders what Ambassador White is trying to accomplish by airing in the news media such unconfirmed speculation on the eve of the Archbishop's funeral.

Such statements by the U.S. Ambassador will be assumed to be based on more than idle speculation or rumor. It will be assumed that the Ambassador's comments would not have been made without verification by U.S. intelligence agencies or equally reliable sources. Ambassador White's remarks will inevitably add to the atmosphere of tension, violence, and suspicion now pervading in El Salvador.

Moreover, Ambassador White's comments about the rumored involvement of "anti-Castro Cubans," as he identifies them, will provide a propaganda bonanza for the Communists and other far-left elements in El Salvador. They will claim that Castro's large-scale gun running and terrorism are entirely justified in view of the charges by the U.S. Ambassador that anti-Castro Cubans are waging war against the left in El Salvador.

Mr. President, perhaps someone can explain why Ambassador White has been repeating charges of this nature at such a critical, crucial moment. Perhaps someone can explain why no other American official has thus far been able to confirm the charges circulated by Ambassador White. Perhaps someone can explain how Ambassador White's public speculation, and that is all it is, public speculation, about the assassination of Archbishop Romero and the involvement of "anti-Castro Cubans" served American interests in any way. Perhaps someone can explain how Mr. White's statement to the press served any purpose whatsoever other than to add to the explosive atmosphere in El Salvador on the eve of the archbishop's funeral.

Mr. President, I am today sending a letter to Secretary of State Vance requesting an explanation, and I ask unanimous consent that this letter, together with a copy of the original United Press International account of Ambassador White's comments be printed in the RECORD at the conclusion of my remarks, along with an assessment of Ambassador White's performance by a major Paraguayan newspaper on the eve of his departure from his last ambassadorship.

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

(See exhibit 1.)

Mr. HELMS. I thank the Chair.

Mr. President, Ambassador White's conduct in his new position has demonstrated very questionable judgment and dubious professionalism.

As Senators may recall, the Senator from North Carolina was apprehensive about Ambassador White at the time of his nomination. That is why I opposed his confirmation.

I thank the Chair and I yield the floor.

EXHIBIT 1

U.S. SENATE,
Washington, D.C., March 27, 1980.

Hon. CYRUS R. VANCE,
Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: I am greatly concerned by remarks to the press made yesterday in El Salvador by Ambassador Robert White.

Ambassador White apparently disclosed to the press that he had received reports— which other members of the American Government say are unconfirmed—that anti-Castro Cubans have been hired by the right to wage war against the Salvadoran leftists, and that a professional killer had been retained to assassinate Archbishop Romero.

Ambassador White proceeded to compare the Archbishop's assassination with the Day of the Jackal episode. Even if the Ambassador did not mean to suggest that the right wing was responsible for the killing—as was the case with the French comparison—the careless analogy will certainly draw others to such a conclusion, and add to the tension and suspicion in San Salvador on the eve of the Archbishop's funeral.

However, in discussions yesterday with officials in the White House, State Department, and other agencies of the U.S. Government, my associates and I were unable to find even one officials who had certain knowledge as to the identity of Archbishop Romero's assassin, or had seen reliable evidence about the hiring of anti-Castro Cubans. Some officials speculated that the assassination was, in fact, the misguided work of a right wing fanatic. But others believed it likely that the killing was a provocation by the far left in El Salvador with the hope of creating a martyr, adding to local unrest, and discouraging the American Government from providing security assistance to the Government of El Salvador.

Regardless of what the facts may subsequently prove to be, I am appalled at Ambassador White's lapse of judgment. And I have several questions in connection with this episode:

1. Did Ambassador White have knowledge of the involvement of anti-Castro Cubans, or was he simply circulating rumors?

2. Does Ambassador White know who killed Archbishop Romero, and if so, has he conveyed this information to his colleagues in the U.S. Government?

3. What American interest was served by Ambassador White's lending official credibility to reports of involvment of anti-Castro Cubans in El Salvador—only one day after official American confirmation of large scale interference and gun running in El Salvador by Castro?

4. Did Ambassador White use good judgment in airing these opinions, especially at a volatile time in El Salvador?

I enclose a UPI report on Ambassador White's remarks. UPI officials in New York advise that they stand by their story.

Sincerely,

JESSE HELMS.

REPORTS OF ANTI-CASTRO CUBAN TERRORISTS, SALVADORAN FORCES PLACED ON ALERT

(By Juan D. Tahayo)

SAN SALVADOR, EL SALVADOR.—U.S. Ambassador Robert E. White said Tuesday he had reports anti-Castro Cubans have been hired to wage war against Salvadoran leftists and that a professional killer assassinated human rights advocate Archbishop Oscar A. Romero.

White, in an unusually candid interview, also said the Salvadoran Government ordered its 15,000-man armed forces on full alert and is considering an overnight curfew to crush any violent reaction to Romero's assassination.

But thousands of Salvadorans, rich and poor, marched peacefully through a Capital still rocking from terrorist bombs to pay a tearful homage to the assassinated Archbishop.

White said a Salvadoran Government official he would not identify told him a "small group" of anti-Castro Cubans, hired by Salvadoran rightists, were in the violence-torn Central American nation and may be responsible for part of a string of 27 high-explosive bombs that went off early Tuesday throughout the country.

The U.S. Ambassador, who came to El Salvador to take up his post only three weeks ago, also said the ruling military-civilian junta was considering clamping an overnight curfew and ordered all 15,000 troops on "full alert" because of Romero's assassination Monday night.

There were widespread fears the slaying of Romero, a steadfast defender of human rights who was nominated for the 1979 Nobel Peace Prize, would trigger massive anti-Government protests throughout the largely poor nation of 4.8 million.

White said he had been told by experts that Romero's slaying—with an explosive 22-bullet in the heart—was the work of a "paid, professional marksman."

"This seems to be a 'Day of the Jackal'-type assassination," White said, referring to the novel by Frederic Forsythe in which a professional assassin tried to kill the late French President Charles DeGaulle.

In Washington, Secretary of State Cyrus Vance reaffirmed American support and aid for El Salvador's centrist junta despite the "criminal assassination" of a leading religious critic and human rights advocate.

"We hope this tragic event will not throw things off the track and derail the positive and constructive progress the junta has been making," said Vance.

An estimated 5,000 people joined a procession carrying Romero's body from the Polyclinic Hospital to the Sacred Heart Basilica. Another 3,000, mostly peasants, waited outside the Basilica where the popular Archbishop had given his packed Sunday homilies that invariably demanded an end to repression.

EL SALVADOR ASSESSES AMBASSADOR WHITE'S PERFORMANCE

Mr. White's diplomatic mission in Paraguay ended along with the seventies, and he withdrew at the beginning of the eighties. He served as U.S. ambassador for just 2 years, but in that time, he got involved in episodes full of incidental controversies and heated polemics whose effects will probably endure until his successor manages to make us forget them. This was the reason for his promotion to the post of ambassador to El Salvador, where this jump ahead in his career—as an American historian said—will be marked by the scares which he undoubtedly will experience every day in that convulsed country, where his presence is more necessary than ever, not only to guide El Salvador's revolutionary junta, but also to preserve the legitimate interests of the United States. In this worthwhile and different task we honestly wish Mr. White the success he was unable to attain in our country.

At the beginning of this commentary we spoke of decades and not years because during the decade we got to know a number of U.S. ambassadors who came here, observed, worked and mingled with the official, political, social and cultural circles of the country and left with the sense of a job well done and surrounded by the affection, the regard and even the admiration of those who had the pleasure of knowing them. It would suffice to mention White's predecessor, George W. Landau, who was also his antithesis and this is why White's new diplomatic style—which caused his promotion into El Salvador's volcano—was so shocking to our idiosyncrasy.

Mr. White, who is an exceptional and intelligent diplomat, knew very well that he had not awakened any enthusiasm among us, only in the minute world of the mini-opposition. Thus, when he prepared the agenda for Mr. Eaton, deputy assistant secretary inter-American affairs of the State Department, he took special care to include a working luncheon with the members of the national accord, providing—on the basis of his own friendly preferences—four seats for the Authentic Radicals and only two each for their equals and associates, the Febreristas and the Christian Democrats.

In addition, he accepted Mr. De Lara Castro's invitation to attend the only reception (vino de honor) arranged to bid him farewell, since he could hardly miss it, being the acknowledged expert in human rights. He hardly concerned himself with the opposition recognized by the JEC (Central Electoral Board) and represented in both chambers of the Congress, and only as a formality invited a few of its members to the reception in honor of Mr. Eaton, an occasion of which he took advantage to bid farewell socially to some government officials and members of the diplomatic corps, but especially to the opposition as a whole. The Radical Liberal and Liberal leaders felt snubbed and decided to protest their exclusion from the working luncheon. However, they mistakenly protested to Mr. Eaton—who, upon his arrival, had found ceremonies already prepared and invitations issued—and not to Mr. White, who had arranged the agenda.

In any case, Mr. White is gone! He left in a simple and austere manner in the midst of general indifference, that is, without saying goodbye as other ambassadors have done and as did George Landau, who said farewell to Paraguay fully satisfied and happy at having attained a degree of success which no other U.S. ambassador had ever attained and surrounded by the affection, the friendship and the regard of all social and political circles of the country, including the mini-opposition which monopolized Mr. White's attention and concern for 2 years. This is why we feel nothing in connection with his departure. We owe him so little! A mere acquaintance of a formal social or diplomatic nature and a marked decline in the formerly exceptionally friendly relations between our two countries. Nevertheless, and although he did not care to say goodbye to us, we want to tell him politely: Goodbye, Mr. White, and better luck in El Salvador!

The PRESIDING OFFICER. The Senator from Massachusetts (Mr. TSONGAS) is recognized.

Mr. TSONGAS. Thank you, Mr. President. I also wish to thank the Senator from West Virginia for taking the chair.

THE RESEARCH REVITALIZATION ACT OF 1980

Mr. TSONGAS. Mr. President, I recently introduced the Research Revitalization Act of 1980, S. 2355, which can help rebuild an eroding foundation of the American economy. This legislation creates a cost-effective mechanism to encourage research with practical applications in business and industry. It is a vital antidote to economic stagnation and declining productivity.

The Research Revitalization Act provides an incentive for the private sector to invest in research and development on university campuses. The incentive mechanism is straightforward—a nonrefundable credit for 25 percent of the amount contributed in cash to a tax-exempt research reserve. The maximum credit is 5 percent of the business's income. A deduction is allowed for payment from the reserve if it is used for research by colleges and universities. There are penalties if reserve funds are used other than for basic research and if funds are retained in the reserve for more than 4 years.

This legislation faces up to current research conditions. During the 1960's and 1970's, there has been a gradual shift of university efforts away from industrial needs. The Federal Government now funds 70 percent of university research. Washington effectively controls the direction of much of the basic research done in the United States. Federally funded research has failed to lead to commercialization of enough productivity-enhancing developments.

The Research Revitalization Act will promote greater industry involvement in the basic research done at universities. It will restore some of the cooperation between industry and academia due to low return on investment. The bill recognizes that the benefits of innovation spread throughout an industry, and that it is in the national interest to encourage them. Federal spending on research and development, as measured in constant dollars, is falling. We have a national obligation—and opportunity—to do more.

During the Vietnam war and previous conflicts, defense spending served as a major Federal stimulant on technology, much of which had civilian applications. Now we need to stimulate research and development under a more positive condition—peace. The Research Revitalization Act creates a simple, straightforward mechanism to move in this important direction.

This is an effective first step toward revitalizing research and development in order to increase innovation and productivity. Our compounding economic problems indicate that the time is overdue. The current trade deficit is about $25 billion annually. Internationally, America's competitive edge is disappearing. U.S. productivity stopped growing in 1978, and dropped 3 percent last year. Without more productivity, the standard of living for Americans cannot climb. If productivity is allowed to atrophy, it will besiege us in a vicious circle: Profits and wages will shrink, foreign trade will stagnate, and inflation will loom even larger.

Mr. President, the research revitalization Act of 1980 can catalyze research and development in areas most likely to pay off practically. Representative VANIK has introduced it in the House of Representatives as H.R. 6632. I urge my colleagues to consider its simple, efficient approach to the urgent problem of lagging innovation.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move that the Senate stand in recess until 12 o'clock noon tomorrow.

The motion was agreed to and at 4:54 p.m. the Senate recessed until tomorrow, Friday, March 28, 1980 at 12 meridian.

CONFIRMATIONS

Excutive nominations confirmed by the Senate March 27, 1980:

DEPARTMENT OF DEFENSE

William Eldred Peacock, of the District of Columbia, to be an Assistant Secretary of the Army.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Cesar A. Perales, of New York, to be an Assistant Secretary of Health, Education, and Welfare.

DEPARTMENT OF THE TREASURY

Curtis Alan Hessler, of the District of Columbia, to be an Assistant Secretary of the Treasury.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify be- the Senate.

THE JUDICIARY

Robinson O. Everett, of North Carolina, to be a judge of the U.S. Court of Military Appeals for the remainder of the term expiring May 1, 1981.