HOUSE OF REPRESENTATIVES—*Monday, September 8, 1980*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. WRIGHT).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 5, 1980.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Monday, September 8, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

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

O Lord, who rules in the heavens above and yet lives in the hearts of people, we thank You for a new day with opportunity to serve those about us. Be present, O God of wisdom, and bless this assembly, enabling those gathered here to be effective instruments of peace and understanding. Grant us awareness to search for the truth that will best serve the common good, and teach us always to go about our work respecting those who differ from us. Give us the unity to focus on those goals and ideals that give health to the Nation and fulfillment to your people. In Your holy name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

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

H.R. 2111. An act to extend the service area for the Sacramento Valley Canals, Central Valley project, California, and for other purposes.

NORTHWEST ENERGY BILL DANGEROUS AND HIGHLY CONTROVERSIAL

(Mr. WEAVER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEAVER. Mr. Speaker, the Interior Committee has just passed out the northwest energy bill with 14 dissenting votes. The Eugene Water and Electric Board, my home utility, the largest public utility in Oregon, is strongly opposed to this bill. The board of the Eugene Water and Electric Board, including a conservative Republican pronuclear member, is unanimously and adamantly opposed to the passage of this bill. The reason: It would destroy local community control, destroy local initiative in developing new energy sources, and eventually would destroy the utility itself. I believe it necessary to do everything in my power to prevent passage of this dangerous, highly controversial legislation.

THE HONORABLE CLAUDE PEPPER'S 80TH BIRTHDAY

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, a magnificent Member of Congress, to wit, the gentleman from Florida, Mr. CLAUDE PEPPER, will be celebrating his 80th birthday today. The gentleman from Massachusetts, Father DRINAN, the gentleman from Florida, Mr. FASCELL, and other Members of Congress have arranged for a special order this afternoon. I think it is under the name of Mr. FASCELL. I just want to point this out to the Members here now so they might want to extend their remarks or make some observations on Mr. FASCELL's special order tonight.

Mr. PEPPER is a man I have known through most of our respective lives. He is called by many the most outstanding man of our era, certainly in the State of Florida, in preserving human rights and working to make things better for mankind. It is my pleasure to call this to the attention of the House, and maybe some of us would like to join the gentleman from Florida, Mr. FASCELL, this afternoon in paying tribute to the gentleman from Florida, Mr. PEPPER.

AMERICAN AGRICULTURE AND FAMILY FARMER IN STRUGGLE FOR SURVIVAL

(Mr. GINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINN. Mr. Speaker, it is no news that American agriculture and the family farmer are locked in a desperate struggle for economic survival. It is also no secret that the outcome of that struggle will foretell the future prospects of our entire economy. If the farmer can survive and maintain a plentiful and inexpensive supply of food and fiber, then the American economy can survive the trials of high-priced foreign oil and the ravages of inflation.

But unfortunately, I must report today that the prospects for our farmers are dark, and getting darker. Piled on top of the problems of skyrocketing farm operating costs and declining prices, our Nation is now gripped in a drought period that is likely to be recorded as one of the most severe in our history.

The drought has been particularly acute in my own State of Georgia. We face a crop loss exceeding $700 million and the full impact of the drought will no doubt far exceed that figure.

There is no magic solution to this crisis, but I am today introducing legislation, cosponsored by Representative DOUG BARNARD, which we believe will help. This bill will establish a 7-percent loan program for a 40-year period for farmers who wish to install or expand farm irrigation systems.

The loan money could be used to install new irrigation systems, repair or expand old ones, dig deeper irrigation wells, construct ponds, or other work designed to improve a farm irrigation operation.

Now, I will be the first to admit that our farmers are already faced with a huge operating debt, and we do them no great favor in passing new loan programs to let them try to borrow their way out of that burden of debt. But in this case, the need for irrigation equipment is so compelling that I believe it is essential for survival.

In Georgia, we have learned that irrigation is no longer a luxury. It is essential to the viability of a working farm, and without it, the average family farmer is playing Russian roulette with a fully loaded revolver.

I urge my colleagues to review this bill with care. I will be seeking cosponsors to the legislation this week, and I would greatly appreciate your support.

HIGH PRAISE AND THANKS TO MEN OF AMERICA AS CLOSE OF SELECTIVE SERVICE REGISTRATION DRAWS NEAR

(Mrs. HOLT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. HOLT. Mr. Speaker, as the Nation and our farmers continue to reel under the blows of inflation and recession at home, while we suffer declining prestige and mounting challenges abroad, we may be very proud of our young men. Not nearly enough has been said about the figures released last week indicating that 93 percent of all eligible men have registered for Selective Service. This turnout is far higher than had been predicted by the Anti-American groups and shows the patriotic, law-abiding spirit of our younger generation. They are making a real contribution to our preparedness effort.

There are still about a quarter of a million affected men who have yet to sign up. I believe that they will, as the close of the registration period draws near.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

I offer my highest praise and my sincere thanks to the men of America who have answered the lawful call of their Nation.

THE CARTER ADMINISTRATION'S OUTRAGEOUS BREACH OF SECURITY

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, since the Ford administration, information about the highly classified "stealth" bomber program has remained top secret and only sketchy unconfirmed rumors about the program have ever publicly surfaced before now.

Now the Carter administration has unnecessarily provided the Soviet Union and other hostile powers a virtual gift of this top secret military information, which has certainly damaged our national security interests.

For several decades, our intelligence agencies have worked hard to prevent the disclosure of such highly classified secrets at even the lowest level, and the disclosure of much less vital secret information has landed violators behind bars.

President Carter and his top officials have shown themselves to be irresponsible and reckless by revealing the most intricate secret security matters for what appears to have been a political ploy to advertise their concern for defense after 4 years of negligence.

As the Washington Post noted editorially this past weekend, this was an abuse of office for political gain.

THE PRESIDENT'S HYPOCRISY

(Mr. DICKINSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKINSON. Mr. Speaker, at 2:15 this afternoon there is a scheduled exhibition at the White House where the President will sign into law the so-called Nunn-Warner amendment to increase the cost-of-living allowances for our enlisted men particularly. Just recently the President was on board the *Nimitz* and announced to those who were returning from 144 days at sea that he was going to support the cost-of-living increase, and they all believed it. As soon as he got back, he rescinded this and said he would not support this because it was not in his budget, and it would lead to an unbalanced budget. Senator HOLLINGS, a Democrat from South Carolina, said that this was hypocrisy and was made as a political ploy on the part of the President.

Mr. Speaker, I would say that this afternoon at 2:15 when the President goes through the motions of signing this bill, a bill which he opposed and now he is trying to get credit for, that this is politics at its highest and hypocrisy at its worst.

THE PRESIDENT'S DECISION TO LEAK "STEALTH" INFORMATION IS TREACHERY

(Mr. WINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WINN. Mr. Speaker, the editor of the Armed Forces Journal, who revealed to the American people the President's decision to leak for political purposes some of the most highly classified weapons technology information since the Manhattan project, has called that decision "irresponsible." I submit that it is more than irresponsible, it is treacherous. The highly sophisticated Stealth technology, an aircraft that presumably would be able to avoid radar detection until on top of its target, would if deployed render virtually obsolete the entire antiaircraft system of the Soviet Union. It would, of course, radically alter the military balance in this Nation's favor, at least until the 1990's, at which time it would be ready for use. By its action, the Carter administration and its shamefully politicized Department of Defense has now given the Kremlin a 10-year headstart on development of a system to counter this technology, and for what purpose? For none, apparently, other than for a brief splash of newspaper headlines in the desperate hope of reviving the President's failing reelection campaign. I would like to take this opportunity to make known my deepest concern for the loss of this military advantage, for the role it could play in the defense of the American people. And I would express my concern as well for this Nation that its defenses are left in the hands of an administration that for such fleeting political advantage will exploit the very systems by which this Nation survives. The survival of this society, I need not remind my colleagues, is nothing to be toyed with in so cavalier a manner, and it is nothing if not treacherous on the part of those who do.

□ 1010

CONCLUDING THE WORK OF CONGRESS AS SCHEDULED

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, it has now been 4½ weeks since the leadership indicated that it does not intend to schedule a vote on the 1981 budget until after the election. In reaction, a number of us voiced the opinion that a lameduck session was really a cynical attempt on the part of the leadership to deny the voters the opportunity to judge how their Congressman stands on issues like inflation, unemployment, taxes and defense spending. Little has happened in the last 4½ weeks to prove us wrong. Aside from the Reconciliation Act, there has been no attempt on the part of the majority to move the budget process along. And, looking at this week's agenda, once again I see no mention of the second budget resolution. Still, we have 4 weeks to go before the scheduled date of adjournment on October 4—and that is more than enough time to act on next year's budget if the leadership wants to. But in the event that this does not happen, I am confident you will find strong support on this side of the aisle for staying in session until the budget is completed. Mr. Speaker, we feel it is more important to stay here and do our job than to spend October in our districts campaigning to save our jobs. However, given the majority party's record over the last 25 years, it appears its leadership has come to a different conclusion.

A NEW SECURITY CLASSIFICATION

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. LAGOMARSINO. Mr. Speaker, a report in yesterday's Los Angeles Herald-Examiner, attached, indicates the Carter administration is considering adding a new category of secret information classification to the existing system of confidential, secret, and top secret. Unnamed administration sources say the new classification will be called "royal."

Other published reports said the system will cut off most congressional, military, and other governmental officials, and would protect politically sensitive or embarrassing information from disclosure.

I submit that "royal" would certainly be an appropriate term for this new system of classification. Indeed, we would probably have to look back to George III or even Louis XVI to discover similar examples. And, of course, we all know what happened to Louis the XVI. He lost his head.

Perhaps someone should remind President Carter that we are a democracy (with a small "d"), and that he has not yet been crowned king.

WHAT IS A "ROYAL" SECRET?

WASHINGTON.—A new system of tightening access to highly secret information—including a supersecret designation "royal"—is being developed by the Carter administration, administration sources said last night.

The sources, who asked not to be identified, said the "royal" designation does not supersede the existing "confidential," "secret" and "top secret" categories, but is instead part of a system designed to manage an increasing volume of intelligence information originating from extremely sensitive methods or sources.

Other published reports said the system will cut off most congressional, military and other government officials and would make the classification "royal" above even "top secret." The reports quoted unnamed sources as saying "royal" would protect politically sensitive information that could embarrass President Carter.

Alfred Friendly Jr., a spokesman for Zbigniew Brzezinski, Carter's national security adviser, termed such a characterization of "royal" as "an outrageous fabrication."

LAMEDUCK SESSION A FURTHER EROSION OF PUBLIC CONFIDENCE

(Mr. LUNGREN asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, over the last two decades we have experienced a steady decline in the percentage of our citizens who turn out at the polls to participate in national elections. In fact, voter turnout in the United States now trails that of many of the Western democracies.

Political scientists point to this development as an alarming indication that public confidence in our representative institutions is on the wane.

At a time when we should be taking care to bolster that public confidence, the leadership of the majority proposes that we laugh in the face of the electorate by holding a lameduck lawmaking session.

During the 1932 debate on the 20th amendment to the Constitution, Representative Lozier of Nebraska made this point quite clear:

The American people when they express themselves at the ballot box have the right to have their will represented and reflected in legislation. According to the genius and spirit of our institutions the people have the right to demand that their representatives meet speedily and translate their mandate into legislation.

If the Members of the House do submit to a session of lameduck lawmakers this November, they will be helping to further the apparent erosion of public confidence in our democratic institutions.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would like to announce that this is the day for the consideration of bills under suspension of the rules. Pursuant to the provisions of clause 3(b), rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV. Such rollcall votes, if postponed, will be taken on tomorrow, Tuesday, September 9.

CRIMINAL PROCEDURE AND EVIDENCE RULES AMENDMENTS

Mr. DRINAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7817) to amend or disapprove certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence proposed by the Supreme Court, and to amend chapter 231 of title 18, United States Code (relating to probation), as amended.

The Clerk read as follows:

"(B) any offer to plead guilty or nolo contendere; or

"(C) any statement made in connection with and relevant to—

"(i) any of the foregoing pleas or offers; or

"(ii) any discussion which the defendant reasonably believes to be a plea discussion, and which does not result in a plea of guilty or nolo contendere, or results in a plea of guilty, later withdrawn, or a plea of nolo contendere;

is not admissible in any civil or criminal proceeding if offered against the person who made the plea, offer, or statement. However, evidence of a statement made in connection with and relevant to any plea of guilty later withdrawn, plea of nolo contendere, or offer to plead guilty or nolo contendere is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.".

(B) Rules 17(h), 26.2, and 32.1 of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall not take effect.

(C) Rule 44(c) of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall take effect as proposed and transmitted, except that the sentence beginning "Unless it appears" shall not take effect.

(D) Rule 410 of the Federal Rules of Evidence as amended by the amendments so proposed and transmitted shall take effect as amended to read as follows:

"Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

"Except as otherwise provided in this rule, evidence of—

"(1) any plea of guilty, later withdrawn, or plea of nolo contendere;

"(2) any offer to plead guilty or nolo contendere; or

"(3) any statement made in connection with and relevant to—

"(A) any of the foregoing pleas or offers; or

"(B) any discussion which the defendant reasonably believes to be a plea discussion, and which does not result in a plea of guilty or nolo contendere, or results in a plea of guilty, later withdrawn, or a plea of nolo contendere;

is not admissible in any civil or criminal proceeding if offered against the person who made the plea, offer, or statement. However, evidence of a statement made in connection with and relevant to any plea of guilty, later withdrawn, plea of nolo contendere, or offer to plead guilty or nolo contendere is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.".

(b) Rule 32(f) of the Federal Rules of Criminal Procedure is repealed.

SEC. 2. Chapter 231 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3657. Termination of probation

"At any time before the expiration of a period of probation, the court may, on its own motion or on motion of the defendant or the Government, terminate such probation if the court is satisfied that the conduct of the defendant and the interests of justice warrant such termination.

"§ 3658. Modification of probation

"At any time before the expiration of a period of probation, the court may, after opportunity for a hearing at which the defendant is entitled to assistance of counsel, modify the period and conditions of such probation.

"§ 3659. Summons and warrant for violation of probation

"(a) If a defendant is alleged to have violated a condition of probation in a material respect—

"(1) a probation officer may issue a summons for such defendant to appear at a preliminary hearing under section 3660 of this title; or

"(2) the court may issue a warrant to retake the defendant.

"(b)(1) A summons or warrant under this section shall be issued as soon as practicable after discovery of the alleged violation. Imprisonment of the defendant shall not be deemed grounds for delay of such issuance, except that, in the case of a defendant charged with but not convicted of a Federal or State offense, issuance of a summons may be suspended pending disposition of the charge.

"(2) If a defendant is serving a sentence of imprisonment for a Federal or State offense, a summons or warrant under this section may operate with respect to such defendant as a detainer.

"(c) A summons or warrant under this section shall be accompanied by a written statement setting forth—

"(1) the conditions alleged to have been violated;

"(2) the time, place, and purpose of the preliminary hearing;

"(3) the defendant's rights under section 3660(c) of this title; and

"(4) the action which the court is authorized to take under section 3661 of this title.

"§ 3660. Preliminary hearing and revocation hearing with respect to alleged violation of probation.

"(a)(1) If a defendant is alleged to have violated a condition of probation, the court with jurisdiction over the defendant or, upon order of such court, a court reasonably near the place of the alleged violation shall conduct a preliminary hearing without unnecessary delay to find if there is probable cause to believe that such a violation has occurred. Upon a finding of probable cause, the court may—

"(A) order a revocation hearing under subsection (b) of this section and order that the defendant be incarcerated pending such hearing;

"(B) order a revocation hearing under subsection (b) of this section and temporarily restore the defendant to probation pending such hearing—

"(i) if incarceration of the defendant is not warranted by the frequency or seriousness of the alleged violations;

"(ii) if the defendant is likely to appear for future proceedings; and

"(iii) if the defendant is not a danger to any person; or

"(C) order that the proceedings relating to the alleged violation be terminated without a revocation hearing if such action is in the interest of justice.

"(2) Conviction of a Federal or State offense committed after the defendant is placed on probation constitutes probable cause under this section.

"(b) Not later than sixty days after the date on which an order is entered under subsection (a)(1)(A) or (B) of this section, the court shall hold a revocation hearing. Such hearing may be held at the same time and place as the preliminary hearing.

"(c) At a preliminary hearing and a revocation hearing, the defendant shall have the opportunity—

"(1) to be represented by counsel;

"(2) to be apprised of the adverse evidence and to confront and cross-examine adverse witnesses; and

"(3) to appear and testify and to present witnesses and relevant evidence.

"(d) The defendant may waive the right to a preliminary hearing and to a revocation hearing.

"§ 3661. Action concerning violation of probation

"(a) If the court, after a revocation hearing, determines by a preponderance of the evidence that the defendant has violated a condition of probation, the court may—

"(1) continue probation unchanged;

"(2) reprimand the defendant;

"(3) modify the conditions of probation; or

"(4) revoke probation and impose any sentence that the court was authorized to impose at the time of initial sentencing.

"(b) In carrying out subsection (a) of this section, the court shall consider—

"(1) if the defendant has been convicted of a Federal or State offense, the seriousness of such offense; and

"(2) the frequency and seriousness of other violations of the conditions of probation.

"(c) If the court—

"(1) revokes probation and imposes a new sentence involving payment of a fine; or

"(2) modifies probation by increasing any monetary obligation of the defendant;

any money paid by the defendant pursuant to a condition of probation shall be credited toward any monetary obligation imposed upon the defendant as a part of the new sentence or as a result of the modification of probation.

"(d) If the court revokes probation and imposes a sentence of imprisonment—

"(1) any time served in confinement during probation shall be counted toward that term of imprisonment; and

"(2) any time served on probation without a violation of the conditions of probation may be counted toward that term of imprisonment.

"(e) If the court modifies probation by extending the period of such probation or by increasing the period of confinement provided in connection with such probation—

"(1) any time served in confinement in connection with the probation shall be counted toward the modified period of confinement; and

"(2) any time served on probation without a violation of the conditions of probation may be counted toward the modified period of probation.

"(f) A determination under this section shall be made on the record not later than twenty-one days after the date on which the revocation hearing is concluded and shall include a statement of the reasons for such determination.

"(g) The power of the court to revoke probation for violation of a condition, and to impose another sentence, extends beyond the expiration of the period of probation for any period reasonably necessary for the adjudication of matters arising before the expiration of such probation if, before such expiration, a summons or warrant is issued under section 3659 of this title on the basis of an allegation of the violation.

"§ 3662. Arrest of probationer by probation officer

"If, at any time during the probation period, a defendant violates a condition of probation, and such violation—

"(1) occurs in the presence of a probation officer; and

"(2) constitutes a Federal or State offense;

such probation officer may arrest such defendant.

"§ 3663. Searches by probation officers

"Upon the request of a probation officer, a court shall issue a warrant for such an officer to search for or seize property that is evidence that a defendant on probation—

"(1) has violated a condition of probation; or

"(2) has committed a Federal or State offense;

if the probation officer seeking the warrant establishes reasonable and articulate grounds to believe that such defendant has violated such a condition or has committed such an offense.".

SEC. 3. (a) Section 3651 of title 18, United States Code, is amended by striking out the undesignated paragraph beginning "The court may revoke".

(b) Section 3653 of title 18, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu therof the following new section heading:

"§ 3653. Report of probation officer and transfer of jurisdiction";

(2) by striking out the undesignated paragraph beginning "At any time"; and

(3) by striking out the undesignated paragraph beginning "As speedily as".

SEC. 4. The table of sections of chapter 231 of title 18, United States Code, is amended—

(1) by striking out the item relating to section 3653 and inserting in lieu thereof the following:

"3653. Report of probation officer and transfer of jurisdiction.";

and

(2) by adding at the end thereof the following new items:

"3657. Termination of probation.
"3658. Modification of probation.
"3659. Summons and warrant for violation of probation.
"3660. Preliminary hearing and revocation hearing with respect to alleged violation of probation.
"3661. Action concerning violation of probation.
"3662. Arrest of probationer by probation officer.
"3663. Searches by probation officers.".

SEC. 5. This Act and the amendments made by this Act shall take effect on December 1, 1980.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. DRINAN) will be recognized for 20 minutes and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. DRINAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in April 1979, several proposed amendments to the Federal rules of criminal procedure and the evidence were promulgated, pursuant to the Rules Enabling Act. They were to have taken effect on August 1, 1979. However, there were significant objections to some of those proposed amendments, so Congress delayed their effective date until December 1, 1980, in order to permit Congress the sort of thorough review that is contemplated by the Rules Enabling Acts. These amendments will now take effect on December 1 unless Congress takes action to modify them.

The Subcommittee on Criminal Justice held 2 days of hearings, and received testimony and statements from a wide variety of groups, including the Judicial Conference, the Department of Justice, the American Bar Association, private practitioners, law professors, the ACLU, the Federal Public and Community Defenders, and the National Legal Aid and Defender Association. Based upon the testimony and statements received, the subcommittee made certain changes in the proposed amendments. These changes are embodied in H.R. 7817, which was reported by a voice vote by the Judiciary Committee on August 27.

There are four matters covered in H.R. 7817. First is probation revocation procedures; second, joint representation of defendants; third, discovery of witness statements; and fourth, plea discussions.

First, probation revocation procedures. A new rule, 32.1, was proposed that changed the law to take account of recent constitutional pronouncements by the U.S. Supreme Court. The matter of probation revocation was addressed in detail by the Subcommittee on Criminal Justice and the full Committee on the Judiciary during their work on H.R. 6915, the criminal code legislation recently approved by the committee. The provisions in the criminal code bill were carefully considered by the subcommittee and committee.

They parallel the parole provisions recently enacted in the Parole Commission and Reorganization Act of 1976. H.R. 7817 replaces the proposed new rule with these provisions. Because probation revocation is a substantive, not a procedural, matter, H.R. 7817 places these provisions in title 18 of the United States Code, rather than in the Federal Rules of Criminal Procedure.

Second, joint representation of criminal defendants: Proposed new rule 44 (c). That proposal requires a trial court fully to advise defendants who are represented by the same lawyer that they have a constiutional right to the effective assistance of counsel, including separate counsel. It also permits the court to compel a defendant to obtain separate counsel, even if the defendant objects. The subcommittee approved the part of the proposed rule requiring advice of rights, but it disapproved that part of the rule permitting defendants to be compelled to obtain separate counsel. The constitutionality of this procedure is questionable, and the subcommittee decided that the better course of action is not to enact any rule on the subject until the courts have more fully addressed the issue.

Third, discovery of witness statements: Proposed new rule 26.2. The proposed new rule provides for production of defense witness statements. There is a great deal of opposition to this rule. The American Bar Association, for example, opposes the proposed rule as unconstitutional.

In light of this opposition, the Judicial Conference has advised that it does not oppose rejection of the proposed rule. The Judicial Conference is satisfied that the case of United States against Nobles, which provides for Government discovery of defense witness statements under certain circumstances, is still the law.

H.R. 7817 rejects proposed new rule 26.2. This will in no way affect the status of the Nobles case.

Fourth, plea discussions.

The present rule was enacted by Congress in 1975. The purpose of the rule is to promote disposition of cases without need for a full trial. This is accomplished by providing that statements made during plea negotiations are not admissible at a trial. Thus, the present rule in criminal cases is parallel to the rule in civil cases (Federal Rule of Evidence 408), which protects settlement negotiations in a like manner.

The proposed amendments would change the current rule by making statements made during plea negotiations inadmissible only if the statements

were made to an attorney for the Government. This would be inconsistent with the legislative history of the rules and was vigorously opposed by a wide variety of groups, including the American Bar Association. If a defendant believes that plea discussions are taking place, even though the discussions are with a Government official other than an attorney, they should be inadmissible. However, a rule drafted too broadly is open to abuse. Therefore, H.R. 7817 disapproves the proposed amendments but amends the present rule to provide that only those statements that the defendant reasonably believes to be plea discussions are inadmissible.

H.R. 7817 is the result of careful consideration and balancing of a wide spectrum of interests. I urge my colleagues to support it.

□ 1220

Mr. Speaker, I reserve the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I too rise in support of H.R. 7817. The bill deals with six amendments proposed by the Supreme Court to the Federal Rules of Criminal Procedure, as has been stated, and the Rules of Evidence which the Congress found so controversial last year that it delayed their effective date until December 1, 1980.

When the Congress so acted last year, it was responding to concerns expressed by a broad range of the practicing bar, including the American Bar Association, that these amendments should receive legislative attention from elected officials. The Congress felt that while the Enabling Acts permitting judicial promulgation of procedural amendments may serve a salutary purpose, they were never intended to prevent the Congress from looking at the substance of the promulgations.

Those who believe in the propriety of legislative veto or congressional veto, which is so popular in this House, over executive regulations, would seem logically to be found to support a similar effort of congressional oversight when the judicial branch is involved.

We have some indications that some Members of the House object to the procedure whereby the House has accepted this attempt to delay the implementation of these rules; and further to, on this occasion, attempt to change some of them and disapprove others. There is an additional view in the report of the committee to that effect. Some of the signers of those additional views I believe to be supporters of congressional veto. I have difficulty—great difficulty—in reconciling those two positions.

H.R. 7817 disapproves of two proposed amendments to the rules and provides alternative language for the other four. It was drafted fully a year after the amendments proposed by the Court had been delayed by the Congress, thus permitting time for the controversial dust raised by the original promulgation to settle, and allowing issues and problems to be carefully delineated. The gentleman from Massachusetts, Father DRINAN, has outlined the changes that would be made in the four instances.

I would particularly direct the attention of the Members to the disapproval of rule 26.2, which is rejected outright in this bill. The rule is rejected because it adds little to the substantive process of a trial, while on the other hand raising substantive questions. While U.S. against Nobles and its reciprocal rights of discovery, as are delineated in that case, will continue to be the law, our rejection of 26.2 is I believe a necessity which will permit the Judicial Conference to redraft and again propose a rule change which would be more acceptable.

I would urge that H.R. 7817 indeed be dealt with promptly. We have a time limit facing us. Those who would say that it ought to be brought up under the usual procedure with a rule, may also want to bear in mind that it would be difficult for this matter to be brought before the House before the adjournment on October 4. After the election, if there is indeed a lame duck session, we would be facing a December 1, 1980, time limit, at which time these rules would otherwise go into effect without any legislative input with respect to their content.

So. Mr. Speaker, I would urge an affirmative vote on H.R. 7817, and reserve the balance of my time.

Mr. KAZEN. Mr. Speaker, would the distinguished gentleman from Massachusetts yield to me for a question?

Mr. DRINAN. I would be happy to yield to my friend from Texas.

Mr. KAZEN. Mr. Speaker, I have heard from one of my Federal district judges that somewhere in the Congress there is a bill or provisions in bills to the effect that parties to a lawsuit can exercise a peremptory challenge to the presiding judge; in other words, that even if a judge is in no way disqualified, the parties can ask that he be removed for no cause whatsoever.

Is there anything like that in this bill?

Mr. DRINAN. There is nothing like that in this bill, I can assure the gentleman. That is the subject of a separate bill on which my subcommittee held hearings, and I can assure the gentleman from Texas and his friend the judge that that is not going to move, at least in this session of the Congress.

The American Bar Association is very favorably disposed to that legislation, and it indicates that in areas of judicial districts with more than four judges, an individual would be able to exercise one peremptory challenge against a particular Federal judge. I thank the gentleman for his inquiry, but there is nothing even approaching that in this bill whatsoever.

Mr. KAZEN. Let me further ask the gentleman this: Does he foresee the possibility of that bill coming to the floor this year?

Mr. DRINAN. There is no possibility.

Mr. KAZEN. I thank the gentleman for his answer.

Mr. DRINAN. Mr. Speaker, I am happy to yield such time as he may consume to the distinguished gentleman from North Carolina (Mr. GUDGER).

Mr. GUDGER. Mr. Speaker, I thank the gentleman from Massachusetts for yielding.

Mr. Speaker, the Rules Enabling Acts contemplate a thorough review of any proposed amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence. The Subcommittee on Criminal Justice, of which I am a member, and the Judiciary Committee, fulfilled its responsibilities under these acts by considering the proposed amendments before us today and by making changes in them where they were necessary.

The Subcommittee on Criminal Justice heard from a wide variety of witnesses, representing all sides of the criminal justice system. H.R. 7817 was the result. It is a balanced bill, approving some of the proposed amendments, disapproving some of them, and amending some of them. H.R. 7817 is supported by a wide spectrum of practitioners, law professors and groups such as the American Bar Association.

The first proposed rule, rule 44(c), wisely requires a trial court to advise defendents who are represented by the same lawyer of their rights of effective assistance of counsel, including separate counsel. But the rule would also have permitted the court to require the defendants to obtain separate counsel even if they object, and want to continue to be represented by the same lawyer. Several witnesses objected that this rule may be unconstitutional. This is an issue that has not been fully addressed by the courts. H.R. 7817 disapproves of giving the courts this authority until they more definitively resolve the issue.

Second, proposed rule 11(e)(6) protects the statements of parties who are engaged in plea negotiations from disclosure at trial. Plea bargaining is a fact of life in the criminal justice system; its main purpose is to resolve cases without trial. The proposed amendment would have limited the protection of the rule to only those plea negotiations between the defendant and a Government attorney. It would have made plea discussions with law enforcement agents admissible in all circumstances, unless they are coerced or involuntary. A variety of groups, including the American Bar Association, testified that law enforcement officers do engage in plea negotiations, and that the proposed amendment would be unfair to defendants who in good faith reasonably believe that they are negotiating with law enforcement officers.

But H.R. 7817 protects against possible abuse by a defendant who in bad faith, or unreasonably claims that an agent was plea bargaining. The defendant's belief must be reasonable for such discussions to be protected. In addition, since the defendant is a voluntary participant in the plea discussions these statements by their very nature are not coerced or involuntary. The effect of the proposal would be to leave a defendant's plea bargaining totally unprotected a large amount of the time. This would of course lead to an increase in trials as defendants stop trying to negotiate pleas.

H.R. 7817 also disapproves proposed rule 26.2, which would have required production of defense witness statements to the Government under a wide variety of circumstances. According to the Judicial Conference, the proponent of the

rule, it is supposed to effectuate the Supreme Court case of United States against Nobles. But the Nobles case is much narrower than the proposed rule. Because it is much narrower, it does not present the constitutional problems that rule 26.2 does. Several witnesses, including the American Bar Association, criticized the rule as unconstitutional on fifth and sixth amendment grounds.

They also testified that the rule would violate the attorney's work product privilege. These issues have not been considered by the Supreme Court and there has been little lower court interpretation of the Nobles case. Congress should not promulgate a rule that is probably unconstitutional on a variety of grounds. It should at the very least allow the courts to interpret the Nobles case more fully. The Judicial Conference has said that it is satisfied that Nobles remains the law and that it does not need rule 26.2.

H.R. 7817 also substitutes for proposed rule 32.1 the provisions of H.R. 6915, the proposed Federal criminal code, on probation revocations. These provisions were carefully drafted by the subcommittee and the committee, and more fully and clearly set forth the rights and obligations of probationers and the courts during probation revocation hearings.

As noted earlier, the subcommittee heard from representatives of all viewpoints of the criminal justice system. It carefully considered the proposed amendments and the opposition to them. H.R. 7817 is a balanced bill, that takes into account a wide variety of interests and I urge my colleagues to support it.

□ 1030

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the very able and amiable gentleman from Michigan (Mr. SAWYER).

Mr. SAWYER. Mr. Speaker, let me say to my colleagues that I sparingly take the well of the House, as I am sure they are all aware, and never unless I think that I have something to contribute.

This bill, H.R. 7817, should be resoundingly defeated. This bill comes from my subcommittee and my committee. Let me tell the Members what it does, particularly what rule 11(e)(6) provides. Contrary to what the Supreme Court and the Judicial Conference of the United States proposed, after extensive hearings—probably far more extensive than what we have done legislatively, and participated in by sitting Federal judges and bar associations—we, by vote in the subcommittee, and carried through in committee, have put restrictions on the admissibility of admissions or confessions or statements that might be made in the way of plea bargaining.

With that nobody disagrees. We have the same rule in civil procedure, that settlement discussions, are not admissible. But this language proposed in rule 11(e)(6) by the Supreme Court and by the Judicial Conference provides that to enjoy the privilege of being inadmissible it be made in conversations with an attorney for the Government; namely, someone who is authorized to bind the Government in a plea bargain. This bill would extend this privilege to statements made to a deputy sheriff on the street, the police officer on the street, or whoever, so that they would all be barred. And it says, "If the defendant reasonably believed that he was engaged in plea bargaining."

To any of the Members who have ever had experience in defending criminal cases or in prosecutorial roles—and I have had both—I can tell you that every single admission against interest and every confession made by a criminal will be asserted to be privileged when he has counsel, by claiming that the accused reasonably believed this statement was made in this course of plea bargaining.

The accused is given Miranda instructions right away when he is arrested. We, unfortunately, in the legal profession have the habit of naming our milestones after criminals. The medical profession calls a new advance the Salk vaccine or whatever we call it the Esposito rule or the Miranda rule, naming it after the criminal who was involved instead of calling it the Justice Warren rule or the Justice Douglas rule.

But be that as it may, the accused is told that whatever he says may be used against him in a court of law. He is not required to say anything, he is entitled to have counsel, and if he is unable to provide himself with counsel, the people will provide him with counsel free of cost to himself. The accused is told that when he is arrested.

Now, in most criminal cases guilt is proved by admissions and confessions. If one has a guilt complex and he knows he has done something wrong and somebody comes up and asks a few questions, he says to himself "My gosh, they've got me," and his desire is to be cooperative. His thinking probably goes along plea bargaining lines. He thinks that "If I am cooperative and I tell these guys everything, somehow or other they are going to be nicer to me."

So we are going to get this argument, that whenever they make admissions of fact when confronted with evidence, they can reasonably believe they were plea bargaining with a policeman on the beat, with a deputy sheriff out at the jail, or whoever, someone who has absolutely no authority to bind the Government in a plea bargain. And to my knowledge, I have never heard of a case where enforcement officers claimed authority to plea bargain. That has to be done by an attorney for the Government.

If we open this door, we are opening Pandora's box and we are destroying a well-considered rule by all the Federal judges who sit on these matters in the United States functioning as the Judicial Conference. If we shoot from the hip here in Congress, and if we change something this drastically and this quickly, it will be a serious impediment to our criminal law enforcement. Goodness knows, with the rate of criminal activity we have, we need more prosecutorial help, certainly not more obstacles.

I hope that we have a bigger closed circuit audience than we have here in the Chamber, and I would again say to the Members that I do not take this well to urge positions when I do not know whereof I speak. I say that if we undertake here in the Congress, with scant consideration, to undo what the entire Judicial Conference of the United States and a unanimous Supreme Court decided, namely, to limit the sanctity of discussion to those talks had with attorneys with the United States who have authority to bind the Government, we will deal a serious blow to enforcement of the criminal laws of the United States.

Mr. Speaker, I urge a no vote on this bill.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. LUNGREN), the gentleman of the sunny disposition as well as the sunny State of California.

Mr. LUNGREN. Mr. Speaker, I am, as is the previous speaker, a member of the subcommittee and the committee before which this matter was considered, and I have to say that, contrary to some assertions that have been made on this floor, I do not think we gave this matter very serious consideration, certainly not extensive consideration.

The period of time we gave this legislation in subcommittee was 2 days of hearings, and we heard the testimony of only about a half dozen witnesses, some of whom were talking to us about another matter, that is, the question of peremptory challenge which we decided we would not place in this bill.

□ 1240

So we did not get a great deal of input with respect to the substance of the bill before us.

If the Members of the House would look at the report that came out of our committee, they will see that there are three dissenting opinions. Interestingly enough, a number of those opinions are signed on by a number of different Members, sometimes in more than one case. The reason why you have three dissenting opinions is that there are so many parts to this one small bill. There are so many different rules we are talking about. And it seems to me that it certainly is not the better part of judgment to bring before this body a bill which contains a number of different aspects to be dealt with on the Suspension Calendar where we cannot even utilize the amendment process for dealing with the differences.

If I could address myself to one of those proposed rules that we have rejected, that is, the court's proposed rule 26.2, essentially all this rule does is to provide a uniform procedure for effectuating a policy which the Supreme Court unanimously established some time ago in the Nobles case. It is nothing that novel. But it is an attempt to try to establish a uniform procedure so that it is carried out around the country and is utilized in the same way throughout all of the courts.

I would suggest to my fellow Members that this is the wrong way to go about dealing with this type of legislation. Those of us who believe in the legislative veto and yet disagree with this, I think disagree in part because of the way in which it is presented here. It is here before us on the suspension calendar. We cannot give the careful consideration that is absolutely necessary.

Let us look at another particular rule that we are asked to change from what

was brought to us by the court. This is the rule that goes to the question of plea bargaining. I had an amendment which was adopted in the process which puts in the word "reasonably," that is, that the particular individual involved must reasonably believe that the Government person to whom he is talking to be involved in plea negotiations. I put that in because the rule that we had was far more expansive, I thought, than what was brought to us by the court. But I am not necessarily satisfied with what we did even with my particular amendment. I think all that does is point up the problems that we have with this bill as it is brought before us and the inability we have on the Suspension Calendar to even consider amendments.

Mr. Speaker, I would ask for a no vote on this particular bill.

Mr. DRINAN. Mr. Speaker, I yield myself 3 minutes so that I may engage in a colloquy with the gentleman from California.

Mr. Speaker, the gentleman would concede that all support for proposed rule 26.2 evaporated during our hearings. And even the Judicial Conference, which had originally proposed 26.2 as a codification of the Nobles decision now says that they are prepared for its withdrawal.

We are not changing law. They wanted to change law. All of the experts that we had and the members of the subcommittee and the full committee said that the proposed rule goes beyond the Nobles decision. We say let the Nobles decision remain there rather than provoke a lot of litigation in the courts about the precise meaning of 26.2. We are doing what careful lawyers do; namely, postponing the effective date of things until we know there is consensus. We would be stirring up litigation in the courts, throwing the rights of the litigants and defendants into question. I would urge upon the gentleman that 26.2 goes beyond the Nobles decision and that, contrary to Nobles—for example, 26.2—requires the court to preclude a witness from testifying if the defense refuses to produce the witness' statement. On the other hand, Nobles approved preclusion of a witness' testimony if the court, in its discretion, felt it was appropriate.

I would, therefore, suggest that the gentleman has oversimplified the matter. The committee recommends the postponement of 26.2 and a reconsideration by all parties involved.

Mr. LUNGREN. Does the gentleman wish me to respond?

Mr. DRINAN. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I would say to the gentleman that, unfortunately, there is some misunderstanding between our subcommittee and the Department of Justice. In fact, the Department of Justice was not afforded the opportunity to make their presentation before us, and the Department of Justice, I think, has a very serious concern in this matter. The Department of Justice at this point in time still supports the rule as it originally came to us. I think those of us who wish to have the rule as it originally came to us are concerned about the fact that too often particularly those of us who are practitioners of the art of the law recognize that when we get in a courtroom situation we look upon it as just a contest in which we are out there dealing for our side versus the other side representing their particular interests, and the idea about really getting to the essential truth is sometimes lost. And it seems to me the fact that someone on the defense side is allowed to make a presentation, is allowed to testify under oath with respect to matters that that individual has already made statements on, that that information should come forward so that we can find out the truth rather than going around some of the rules that we attorneys construct, in some ways for a very, very good reason but in other ways which act not to try to find out exactly what happened, with all constitutional protections, but yet seem to go around the idea of getting to the truth of the matter.

I understand the sincerity of the gentleman's position, but I suggest that there are just as sincere positions on the other side, and I would suggest that, because we have this controversy, it is not appropriate for us to bring this particular bill before us on the suspension calendar where we cannot make the careful determination between the different rules.

Mr. DRINAN. I thank the gentleman for his comments, and I reserve the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. I should like to wish the Speaker pro tempore a very happy birthday today.

The SPEAKER pro tempore (Mr. PEPPER). The Chair thanks the gentleman.

Mr. HYDE. Mr. Speaker, I have very mixed feelings about this legislation. It comes very swiftly, and it is complex. I do not in any way wish to criticize the Subcommittee on Criminal Justice led by the gentleman from Massachusetts (Mr. DRINAN) and the gentleman from Ohio (Mr. KINDNESS). No committee, no subcommittee, has worked as hard as this subcommittee about the business of their assigned jurisdiction, and I salute them and compliment them. But, nonetheless, I feel uncomfortable about this legislation.

Rule 26.2 has to do with the variation of the Jencks Act. Every lawyer who has ever tried a case and had a witness testifying on the other side has wanted to have access to prior inconsistent statements if they are relevant and germane and concern substantial issues involved. And while the defense can get those under the Jencks Act and the Jencks case, the prosecution now has great difficulty getting access to those prior statements which may or may not be inconsistent.

A trial ought to be a search for truth. We ought not to continually tilt the procedural rules in favor of the defense. At some point, society ought to get some evenhanded treatment.

But, nevertheless, I understand there are problems with this rule. Many times the defense attorney acts as the investigator and, therefore, he would have to testify in a hearing concerning the production of statements which may or may not exist and may or may not be inconsistent with statements made by the witness on the stand.

Then you get into a problem of defense counsel possibly having to withdraw from the case and all of these resulting complications. I do think it is a subject that has to be studied and we need a resolution for it. If defense attorneys can afford a secretary, they ought to be able to afford an investigator and not put themselves into this dual position.

This subject deserves a lot more thorough treatment than it has received.

Mr. KINDNESS. Mr. Speaker, may I inquire of the Chair as to the amount of time remaining on each side?

The SPEAKER pro tempore. The gentleman from Ohio (Mr. KINDNESS) has 5 minutes remaining, and the gentleman from Massachusetts (Mr. DRINAN) has 5 minutes remaining.

Mr. DRINAN. Mr. Speaker, I am happy to yield my 5 minutes to the distinguished gentleman from Ohio (Mr. KINDNESS), but I will take 30 seconds to say, Mr. SPEAKER, that I join the thousands of friends in wishing you a happy 80th birthday.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The gentleman from Ohio (Mr. KINDNESS) is recognized for 10 minutes.

□ 1250

Mr. KINDNESS. Mr. Speaker, I thank the gentleman from Massachusetts for yielding the additional time. I do not believe it will be necessary to employ that much time, but I would like to add my expression of wishes for great joy and happiness on the birthday today of the gentleman from Florida (Mr. PEPPER) who is acting as Speaker today.

Mr. Speaker, there is running through the debate that we have had on this bill today a concentration of concern on one part, and that is rule 26.2. I will grant that the gentleman from Michigan (Mr. SAWYER) has addressed himself largely to rule 11(e), but we must note that everyone seems to be looking at rule 26.2 and saying, in effect, there is dissatisfaction or concern about it.

Those who argue against the bill have said there is a difference of opinion. There is cause for concern about it. It is my concern, in response to that, that we not pass up the opportunity to delay rule 26.2 from going into effect. That is the whole point with respect to rule 26.2.

Some have said, for example, that this action comes very swiftly. It does not. A year ago the Congress delayed for 1 year the effective date on these rule changes that we deal with here today.

It has been said that there were only 2 days of hearings. Let us bear in mind that there has been 1 whole year for people to submit their concerns and their views and their differences with respect to these rules. There has been very ample opportunity afforded for every point of view to be expressed.

With respect to the Department of

Justice, it has been said that there was an unfortunate mixup as a result of which the Department did not testify on this occasion. Well, the position of the Department of Justice has not changed, apparently. Obviously it would not change, because the Department of Justice would like to have every prosecutorial tool available to it that they could have.

Now, regardless of the position of the Department of Justice, we are concerned primarily with the promulgation, the formulation of a rule 26.2 in the future that will protect the rights of individuals under the Constitution. Their right to effective counsel can be drastically affected by rule 26.2 as it is presently structured. I do not think it is worth letting a rule go into effect on December 1, 1980, just because we think it might be all right. As the gentleman from Massachusetts, Father DRINAN has said, let us be careful, and if you will, conservative, if I may use that expression, about the promulgation or the finalization of such a rule. Let us not do it, in other words. Let us pass H.R. 7817 resoundingly.

I would urge there be very firm support for H.R. 7817 so that we may have an orderly process of these rules being changed, delayed, or in the case of rule 26.2, a whole reworking is in order and is very much needed.

Mr. Speaker, I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Speaker, I thank the gentleman for yielding. I commend him for his comments and concur completely.

In a matter like this, I think that we are all as lawyers very conservative, because the rights of the accused and the defendants are involved.

I commend the gentleman for understanding the complexity of these issues and explaining them so adequately.

Mr. Speaker, just a few points about what has been said.

With regard to proposed rule 11(e)(6), that rule is an attempt to change existing law. No showing was made to the subcommittee of abuses in the present rule. We are not dealing in this rule with deputy sheriffs and officers on the beat; we are dealing with highly trained Federal law enforcement officers. It is not uncommon for them to attempt, in the interest of judicial economy, to talk to defendants about disposition of the case. Usually such negotiation comes to fruition and a plea agreement is entered into. In those instances where it does not, should the discussions, when entered into in good faith and reasonably, be admissible in evidence? The current rule says "no." The civil rules say "no." There has been no showing that there are abuses under the current rule. In the absence of such a showing, no change is called for.

With regard to proposed rule 26.2, it is clear that the proposal goes beyond what was intended by the Judicial Conference and raises serious constitutional questions. The intent was to codify the decision in the Nobles case. The proposed rule goes far beyond that. Should the proposed rule be rejected, the present law, set forth in Nobles, will remain in effect. The best course of action, therefore, would be to follow what my distinguished colleague Representative KINDNESS, has suggested—let the Judicial Conference try again. Rather than let a badly drafted proposal take effect, we should disapprove it and let the Judicial Conference redraft it.

Mr. Speaker, I have no additional requests for time. I yield back the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. DRINAN) that the House suspend the rules and pass the bill, H.R. 7817, as amended.

The question was taken.

Mr. SAWYER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. DRINAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7817, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PROVIDING FOR ORDERLY DISPOSAL OF CERTAIN FEDERAL LANDS IN NEVADA AND FOR ACQUISITION OF CERTAIN OTHER LANDS IN THE LAKE TAHOE BASIN

Mr. PHILLIP BURTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7306), as amended.

The Clerk read as follows:

H.R. 7306

SECTION 1. (a) The Congress finds that—

(1) the Bureau of Land Management has extensive land ownership in small parcels interspersed with or adjacent to private lands in urban areas of Clark County, Nevada;

(2) for orderly development of the communities in that county certain of those lands should be sold by the Federal Government;

(3) the Lake Tahoe Basin is a closed basin two-thirds of which is located within the State of California and one-third within the State of Nevada;

(4) the environmental quality of the Lake Tahoe Basin is seriously jeopardized by overdevelopment of sensitive land areas;

(5) a majority of the acreage developed within the Lake Tahoe Basin and the potential for further development of sensitive land areas is within California;

(6) further tourist oriented development within the basin encourages significant permanent development of other kinds as well as tourist visitation; and

(7) the unique character of the Lake Tahoe Basin is of national significance deserving of further protection and management.

(b) The purpose of this Act is to provide for the orderly disposal of Federal lands in Clark County, Nevada, and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin.

SEC. 2. (a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized and directed to dispose of lands under the jurisdiction of the Bureau of Land Management in Clark County, Nevada, as shown on the map numbered 7306A, dated May, 1980, and entitled "Las Vegas Valley, Nevada, Land Sales Map", which map shall be on file and available for public inspection in the offices of the Bureau of Land Management. Such disposal shall be in accordance with regulations developed jointly by the Secretary and the affected local governmental jurisdictions and shall be consistent with the provisions of the Federal Land Policy and Management Act and other applicable law except to the extent necessary to expeditiously carry out the provisions of this Act.

(b) No more than seven hundred acres per calendar year may be offered for sale by the Bureau of Land Management in Clark County.

(c) Notwithstanding section 1(b), the Secretary and the affected local governmental jurisdictions shall jointly select lands to be offered for sale under this Act. The Secretary may not offer any land for sale if in his judgment such land has not been appropriately classified in accordance with adjacent land use by the local governmental jurisdiction. In the event agreement cannot be reached on joint selection, no lands shall be offered for sale.

(d)(1) Except as otherwise provided in this subsection, the revenues from the sale of public lands under this subsection within Clark County, Nevada, shall, notwithstanding any other provision of law, be deposited annually, in the general fund of the Treasury of the United States.

(2) Five per centum of the annual revenues referred to in paragraph (1) shall be returned to the State of Nevada annually for use in the general education program of the State.

(3) Twenty per centum of the net annual revenues referred to in paragraph (1) shall be returned annually directly to the county or municipality within the boundaries of which such land sale occurred to be used for the purpose of acquisition and development of recreational lands and facilities. The total annual revenue returned under this paragraph to each such county or municipality shall be an amount proportional to the amount of revenues generated under this section from sales under this section of Federal land located within each such county or municipality. The preceding provisions of this paragraph shall cease to apply on October 1, 1982, unless, on or before such date, the States of Nevada and California have submitted to Congress for ratification amendments to the Tahoe Regional Planning Compact which amendments have been approved by both States.

(e) The revenues deposited in the general fund of the Treasury of the United States under subsection (d) are deemed to be in the nature of repayment for those authorizations set forth in section 3 of this Act. The Secretary, in cooperation with the Secretary of Agriculture, shall submit an accounting report biannually of income and expenditure provided for by this Act to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(f) The Secretary shall, subject to the provisions of subsection (c), make the first land

sale offering of Clark County, Nevada, land no later than one year after the date of enactment of this Act.

(g)(1) The Secretary of Agriculture is authorized and directed to make annual payments to the governing bodies of each of the political subdivisions any portion of which is located in the area depicted on the final map filed pursuant to section 3(a). Such payments may be used only for water pollution control, soil erosion mitigation, or acquisition by local government authorities of lands and interests in lands within the Lake Tahoe Basin, or for any combination of the foregoing purposes.

(2) The total amounts appropriated for payments pursuant to this subsection shall be allocated proportionately among such political subdivisions in any fiscal year on the basis of the relative amounts of acreage acquired under this Act in each such political subdivision.

(3) In addition to the amounts authorized to be appropriated to carry out the provisions of section 3 of this Act, there is authorized to be appropriated for making payments under this subsection a sum equal to 15 per centum of the amount appropriated under such section 3.

(h) In addition to the amounts authorized to be appropriated to carry out the provisions of section 3 of this Act, there is authorized to be appropriated a sum equal to 5 per centum of the amount appropriated under such section 3 to be used by the Secretary of Agriculture only for purposes of preventing, controlling, or mitigating water pollution associated with national forest system lands in the Lake Tahoe Basin and for managing acquired lands within the Lake Tahoe Basin. Such sum shall be in addition to any other amounts available to the Secretary of Agriculture for expenditure in the Lake Tahoe Basin.

(i) The provisions of section 3 of the Act of October 20, 1976 (31 U.S.C. 1601), and the provisions of subsections (a) through (c) of section 106 of the Act of March 27, 1978 (16 U.S.C. 790), shall apply to lands acquired by the Secretary of Agriculture under this Act in the same manner and to the same extent as such provisions apply to lands owned by the United States and referred to in such section 106. For purposes of applying such provisions, any reference in such provisions to the lands referred to in such section 106 or to the National Park System shall be treated as including reference to the lands acquired by the Secretary of Agriculture under this Act.

SEC. 3. (a)(1) The Secretary of Agriculture is authorized to acquire by donation, purchase with donated or appropriated funds, or otherwise, lands and interests in lands which were unimproved as of September 8, 1980 (except as provided in subsection (c)), and which are environmentally sensitive land within the meaning of paragraph (2). The funds used for acquisition of such lands and interests in lands shall be the funds authorized to be appropriated pursuant to this Act, and no such funds may be expended until the final map has been filed in accordance with paragraph (2)(B). Such funds shall be in addition to any other amounts available to the Secretary of Agriculture for expenditure in the Lake Tahoe Basin.

(2)(A) The Secretary of Agriculture, in consultation with the governments of Nevada and California and with local governments, including the appropriate planning and regulatory agencies, after notice and opportunity for public hearing, shall prepare a map of the lands to be acquired pursuant to this subsection.

(B) The Secretary of Agriculture shall, on or before December 31, 1980, and after notice and opportunity for public hearing, file with the United States Senate Committee on Energy and Natural Resources and the United States House of Representatives Committee on Inerior and Insular Affairs a map which in the Secretary of Agriculture's judgment best achieves the objectives set forth in this Act and includes the environmentally sensitive land defined in subparagraph (D) of this paragraph.

(C) the estimated acreage of the area depicted on the map filed pursuant to subparagraph (B) which is subject to acquisition under this subsection shall not exceed the acreage of the area depicted as environmentally sensitive land on the map entitled "H.R. 7306", numbered 1, and dated May 1980.

(D) For purposes of this paragraph, the term "environmentally sensitive land" means lands with respect to which human occupancy and use is resulting in, or if developed could result in, unacceptable environmental disturbance to water quality, soil, vegetation, wildlife, or visual or cultural resources. Such term includes—

(i) stream environment zones which are—

(I) areas generally located within the 100-year-flood plain;

(II) areas containing soils which are associated with high run off or high water tables;

(III) areas of riparian vegetation types, or

(IV) minimum protective buffer areas for the areas referred to in subclauses (I) through (III);

(ii) high hazard lands which are characterized by steep slopes and a fragile environmental balance or with a high erosion potential;

(iii) unimproved lands previously modified by man which are causing unacceptably high rates of sedimentation;

(iv) lands in the foreground view which are visually important to maintaining the natural character of the Lake Tahoe Basin; and

(v) shore zone areas which are sensitive to cliff erosion, beach erosion, and near-shore instability.

(E) The map filed pursuant to subparagraph (B) shall be prepared at such scale as to clearly identify the affected land tracts by ownership and shall designate such tracts for acquisition or non-acquisition.

(3) Before initiating acquisition proceedings for any lands under this subsection, the Secretary shall consult annually with State and local government agencies as to the necessity for such acquisition, the potential impacts on State and local government, and other appropriate aspects of the acquisition.

(4) Lands within the boundaries of the area subject to acquisition under this section which are owned by any State or local government may be acquired only by donation.

(b) Lands acquired under this section shall be administered as a part of the United States National Forest System; except that the Secretary of Agriculture, acting through the Chief of the Forest Service, may, in the case of lands (1) which are not contiguous to other lands within the National Forest System or (2) which are unsuitable for forest service administration, transfer such lands or interests therein to an appropriate unit of State or local government with appropriate deed restrictions to protect the evnvironmental quality and public recreational use of the lands concerned.

(c)(1) Except as provided in paragraph (2), with respect to that portion of the Lake Tahoe Basin, as defined as of the date of the enactment of this Act by the Secretary of Agriculture, which lies within the boundary deed restrictions to protect the environment of the State of California, as in effect on the date of the establishment of the Tahoe National Forest (October 3, 1905), the Secretary of Agriculture may require improved lands or interests in improved lands with the consent of the owner thereof or upon a finding by the Secretary of Agriculture that such lands are being used, or that an imminent threat exists that they will be used, in a manner detrimental to the preservation of the existing air, water, or visual qualities of the basin.

(2) No single family dwelling which is improved land (as defined in this subsection) may be acquired under the provisions of this subsection without the consent of the owner thereof unless the Secretary of Agriculture finds that (A) a change in the use of such dwelling has occurred subsequent to the date of enactment of this Act or that such a change in the use is threatened, and (B) in the case of a single family dwelling having a change or threatened change in use but maintained as a single family dwelling, such change or threatened change will result in a detriment to the preservation of the existing air, water, or visual qualities of the Basin.

(3) At such time as the Tahoe Regional Planning Agency has adopted final requirements for the protection of the air, water and visual qualities of the Basin, the Secretary of Agriculture shall make the findings provided for in section 3(c)(1) and 3(c)(2) herein in a manner consistent with such requirements.

(4) For purposes of this Act, the term—

(A) "improved land" means any land on which there is located a single family dwelling or other residential or commercial building, the construction of which commenced before September 8, 1980, together with so much of the land on which such building is located as is reasonably necessary to the use and enjoyment of such building; and

(B) "unimproved land" means any land other than improved land.

(5)(A) The owner or owners of any improved land acquired by the Secretary of Agriculture under this Act may retain a right of use and occupancy of such land for—

(i) a definite term of not more than twenty-five years from the date of the enactment of this Act, or,

(ii) a term ending at the death of the owner or owners of such land.

The owner shall elect the term to be reserved, except that if the owner is a corporation, the term shall not exceed twenty-five years from the date of the enactment of this Act. Unless the improved land is wholly or partially donated, the Secretary of Agriculture shall pay to the owner the fair market value of the improved land on the date of its acquisition, less the fair market value on that date of the right retained by the owner. For purposes of applying the preceding provisions of this subparagraph, ownership shall be determined as of the date of acquisition, except that in applying clause (ii) ownership shall be determined as of May 1, 1980.

(B) A right retained by the owner pursuant to this paragraph shall be subject to termination by the Secretary of Agriculture upon his determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon notification by the Secretary of Agriculture to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.

(d) Lands and interests therein may be

acquired by the Secretary of Agriculture in accordance with this section without the consent of the owner thereof only where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed.

(e) The fair market value of the land or interest in land to be acquired by the Secretary of Agriculture under this section shall be determined by an independent appraisal made, where practicable, on the basis of comparable sales at the time of such acquisition. For purposes of the appraisal of any property to be acquired under this section, in determining the comparability of other property sales, the independent appraisal shall take into account the utilities, services, and facilities associated with the property concerned. Any change after the date of the enactment of this Act in the value of any property to be acquired under this section shall not be taken into account for purposes of determining the fair market value of such property to the extent that such change is attributable to the enactment of this Act.

(f) In acquiring any property under this section, the Secretary of Agriculture and the owner of the property to be acquired may agree that the purchase price will be paid in periodic installments over a period that does not exceed ten years, with interest on the unpaid principal balance thereof at a rate which is not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining period of maturity comparable to average maturities on the installments.

(g) There is hereby authorized to be appropriated, for the purposes of this Act, from the Land and Water Conservation Fund, $10-000,000 for the fiscal year 1981, and $20,000,-000 for the fiscal year 1982. In addition there is hereby authorized to be appropriated for these and subsequent fiscal years an amount equal to the amount of revenue obtained by the Federal Government from the sale of federally owned lands in Clark County, Nevada, after October 1, 1978, reduced for any fiscal year by the amount appropriated, pursuant to this sentence, in the prior fiscal years. Amounts authorized to be appropriated under this subsection shall remain available until expended. Authorizations of moneys to be appropriated under this Act shall be effective October 1, 1980. Authority to enter into contracts and agreements and to make payments under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. SEBELIUS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. PHILLIP BURTON) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. SEBELIUS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. PHILLIP BURTON).

Mr. PHILLIP BURTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7306 reflects an intense effort over a period of the last 24 months. This effort was designed to couple two rather significant problems. The first problem, from my point of view, was to provide some mechanism for protecting Lake Tahoe from further degradation. Lake Tahoe straddles the California-Nevada border.

□ 1300

It is the largest alpine lake in the Western Hemisphere. By definition, its ecosystem is very fragile. Because of its extraordinary beauty there has been what I perceive to be uncontrollable pressures for overdevelopment, and we felt that some protective mechanism was needed, hence this bill. This bill provides a significant element in that regard.

The second significant problem that confronted us, a problem I think that becomes all the more clear if you visit Clark County in Nevada. The Federal Government and the Bureau of Land Management own millions of acres in the State of Nevada, and own significant acreage in Las Vegas (Clark County), and even own property in downtown Las Vegas. Property that the committee decided, particularly at the insistence of our distinguished colleague from Nevada (Mr. SANTINI), should be put to productive use rather than remaining vacant. It is property that I would submit under the current and conventional values should be returned to the private tax rolls.

The gentleman from Nevada (Mr. SANTINI) brought this urgent problem to my attention 2 years ago or more, and the bill we have today reflects the rather intense discussions and negotiations that have followed that earlier plea. Our distinguished colleague from California, (Mr. FAZIO), introduced a bill that would have made the entire Lake Tahoe Basin, in effect, a national recreation area. This proposal, I would submit, was a reasonable one and one that, if I had my druthers, I would have preferred.

But the art and the challenge of the legislative process is to find some common ground, if there be any—and normally there is—to reconcile what appear to be irreconcilable differences.

So it is with a great deal of pride that I joined as a coauthor with the coarchitect and seminal source of this proposal, the lead author of the legislation, our distinguished colleague from Nevada (Mr. SANTINI).

For those of my colleagues who have not had the occasion to work with the gentleman from Nevada (Mr. SANTINI) firsthand, let me forewarn you, even if your objectives are compatible but your approach is different, you will be exposed to an extraordinary intellectual, philosophical, and political experience. JIM SANTINI's tenacity is only exceeded by diligence and intelligence.

This product is a good one, it is a thoughtful one, it is a reasonable one, and it is designed, among other things, to recognize that Lake Tahoe is a "national treasure." This legislation, in my view, is legislation that will go a good way toward solving and resolving the problems confronting this great heritage.

Mr. Speaker, H.R. 7306 provides for the orderly disposal of Federal lands in Clark and Washoe Counties, Nev., and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin, California and Nevada.

I am pleased to offer this legislation which is designed to help solve two significant problems in the States of California and Nevada; the protection of the Lake Tahoe Basin and aid the planned growth of urban areas of Clark County, Nev., through controlled sales of federally owned land. These are difficult isues that have required a great deal of time of myself and our colleague from Nevada, JIM SANTINI.

I am greatly impressed by and wish to commend Mr. SANTINI for his efforts on this bill. His long months of work, inventiveness, attention to detail and determination to develop a good policy serving the needs of the people of Nevada and the Nation is a credit to him and this institution.

The bill, as reported by the Committee on Interior and Insular Affairs subsequent to hearings held in Sacramento, Calif., Reno, Nev., and Washington, D.C., reflects amendments by the committee in consideration of the concerns of the local people while establishing measures to protect the Lake Tahoe Basin. The bill reflects the need for local participation with the U.S. Forest Service in preparing a map of the unimproved environmentally sensitive lands which may be acquired by the Secretary of Agriculture. The local governmental agencies, particularly the Tahoe Regional Planning Agency, are afforded special consideration in providing input and guidance to the Secretary of Agriculture.

Mr. Speaker, the bill specifically does the following:

Section 1 sets forth the findings and purposes of the legislation.

Section 2 establishes a mechanism for the orderly disposal of certain Federal lands managed by the Bureau of Land Management in Clark County, Nev. Subsection (a) directs the Secretary of the Interior, acting through the Bureau of Land Management, to dispose of certain Federal lands in urban areas of Clark County by map reference. Subsection (b) places a limitation on land sales pursuant to this act. No more than 700 acres per year may be sold under the act in all the local government jurisdictions combined in Clark County. Subsection (c) requires that a joint decision by the Secretary of the Interior and the affected local governments be made to determine parcel selection prior to sales. Subsections (d) and (e) are the provisions of the bill which stipulate disposition of revenues generated by land sales pursuant to this act. Subsection (f) directs the Secretary of the Interior to begin the first sale officially in Clark County no later than 1 year after the bill passes. Subsection (g) provides for the Secretary of Agriculture to make payments to local jurisdictions in the Lake Tahoe Basin for the purposes of correcting problems of water pollution, soil erosion, and land acquisition. These payments are to be allocated based on the amount of appropriations available to the Secretary of Agriculture. Subsection (h) provides for additional appropriations to the Secretary of Agriculture for pollution and erosion control on lands administered by the U.S. Forest Service. Subsection (i) provides for the highest

level of in-lieu taxes permitted by existing law to be paid to the local jurisdictions in the Lake Tahoe Basin.

Section 3(a) authorizes the Secretary of Agriculture to acquire unimproved property and interests in unimproved property in environmentally sensitive areas in California and Nevada, according to map designation to be prepared by the Secretary of Agriculture in cooperation with the local governmental agencies, and after public hearings. The map is to identify unimproved environmentally sensitive lands as defined and is to be completed by December 31, 1980. Subsection (b) requires that any lands acquired shall be administered as part of the National Forest System. Subsection (c) establishes authority for the Secretary of Agriculture to acquire improved property within the Lake Tahoe Basin in the State of California with the consent of the owner or if use in certain cases or a change in use of such property would be detrimental to the existing air, water, or visual qualities of the basin. Special provisions are included to assure this authority will be used in a manner consistent with, once TRPA adopts final requirements, said requirements.

Improved lands are defined and rights of occupancy if the authority is exercised, are established. Subsection (d) requires the Secretary of Agriculture to expend all reasonable efforts to acquire lands by negotiation. Subsection (e) stipulates the process by which the Secretary of Agriculture shall establish fair market value for the lands to be acquired. Subsection (f) permits the Secretary of Agriculture to pay the seller for lands acquired in installments over a 10-year period. Subsection (g) provides for authorization for appropriations. This authorization limits appropriations to $10 million in fiscal year 1981, $20 million in fiscal year 1982 plus the income from the sales of lands in Nevada as set forth in the bill. The last sentence of subsection (g) is controlling as it relates to any authorization or appropriations provided for in this act.

Mr. Speaker, with regard to section 3(e) of the bill, it is our intent that special care be exercised by the U.S. Forest Service, when establishing fair market value, to determine and to set forth the amount of bonded indebtedness could be considered a lien against the land acquired. Many parcels within the Lake Tahoe Basin have a burden of bonded indebtedness against them for such items as sewers. Such amounts as may be involved should be collected by the agency administering the bonds. The U.S. Forest Service also should notify all of the agencies which administer bonded services and which might be affected by a land purchase, at the earliest possible time as to the proposed schedule of acquisition.

Finally, I wish to compliment James Bruner and all the members of the League To Save Lake Tahoe for their unrelenting efforts to preserve the beauty of this outstanding national treasure.

Mr. Charles Warren, an old and dear personal friend, who formerly was chairman of the Council on Environmental Quality, provided outstanding support in assisting myself and the committee work out the many difficult problems associated with the bill.

Lastly, the long hours put in by Mary Lou Cooper of JIM SANTINI's staff and committee staff, members, Dale Crane, Judy Lemons, Jowanda Shelton, Gary Ellsworth, and Clay Peters is greatly appreciated.

Editorial support is included below:

[From the San Francisco Examiner, June 6, 1980]

A BOOST FOR TAHOE PRESERVATION

President Carter's announcement last week about Lake Tahoe reflected a forward-looking policy decision that will be welcomed by that large and growing legion of people who are deeply concerned about the basin's fate.

It has been obvious for far too long that only a strong federal presence can prevent further deterioration of the fragile Tahoe environment. The joint effort by California and Nevada, upon which so many hopes rested in the early 1970s, proved vastly disappointing. Expansion-minded, hard-line Nevada casino interests, building demands on both sides of the state line and population pressures continued to over-tax the basin's natural resources.

Now the feds, like the cavalry of old, have come galloping to the rescue.

What Carter said was this:

1—He will instruct federal agencies to create a coordinating council to assure that no federal activity contributes to further pollution. Thus, the Environmental Protection Agency could cut off funds for new sewer connections and federal funds could be denied for some highway projects.

2—The president supported the Burton-Santini bill to sell federal properties in the Reno and Las Vegas areas and use the proceeds, approximately $150 million, to buy environmentally sensitive tracts of land in the Tahoe Basin.

If Carter should be re-elected (make your own forecast), he would be in a position to follow up on these declarations. If not, the Federal Government at least will have been launched on a constructive rescue operation which, if not perfect, nonetheless is bound to be more protective than any measures seen in the past.

The need for stringent controls becomes more evident all the time. A total of 47,000 people now inhabit the lake basin year-round. The population reaches 185,000 or more at the tourist peak. No wonder Mother Nature groans with the strain.

Some opponents of the Federal role protest that the people who live at the lake are best qualified to decide how it should be protected. That's nonsense. They had their chance and they muffed it. We welcome the more positive Federal intervention and only wish that it were stronger—and had come quite a lot sooner.

[From the Tahoe World, May 21, 1980]

SUPPORT TAHOE BUYOUT BILL

(By Tom Martens)

Lake Tahoe is at a turning point.

How can you tell?

Witness the green algae clinging to rocks in the Lake off the Coast Guard Station at Lake Forest. Sink your feet into the sediment ooze at the beach at Kings Beach. Observe the bright green algae along the Lake Tahoe Shoreline near Crystal Bay.

Such sediment and algae didn't get into the lake by accident. It pollutes Lake Tahoe as the result of years of poor development, road building and soil management practices.

It's about time to turn around such pollution.

We think the so-called Burton-Santini land swap bill is the key to future preservation efforts for Lake Tahoe.

We support the compromise. And think you should do the same.

The measure, a compromise numbered House Resolution 7306 and co-authored by Rep. Phillip Burton, D-San Francisco, and Rep. James Santini, D-Nevada, proposes the federal government sell land near Reno and Las Vegas and use the money to buy out environmentally sensitive land in the Tahoe Basin.

The measure also proposes that the federal government authorize that $10 million be spent in 1981 and $20 million in 1982 for Lake Tahoe environmental protection. That money would come from the Land and Water Conservation Fund, under the bill.

The bill authorizes the Secretary of Agriculture to buy land at Tahoe which may be used to the "detriment of existing air, water or visual qualities of the basin."

No detached single-family residential dwelling may be bought, according to the bill, unless a change in dwelling (made after the bill's passage) results in a detriment to air quality in the Tahoe Basin.

Under this condition, the owner of the property would be permitted to live in the dwelling for not more than 25 years.

Some would have Lake Tahoe residents believe that this revision means home owner would be forced to leave. With the buyout language, we think the bill provides the necessary authority to buy the environmentally sensitive land yet give bill teeth for dwellings that radically change after passage.

We think the bill is the key to any future erosion control in the Tahoe Basin. Any of the far-reaching plans—whether creation of a National Scenic Area or the State Water Resources Quality Control Board's 208 recommendations—should deal with financing for the misplaced Tahoe property owner.

The $25 state bond before the voters in November won't provide enough money. We think the land swap is the answer. And we think it should be ushered through Congress while there's still national interest in preserving Lake Tahoe.

[From the Sacramento Bee, May 21, 1980]

THE TAHOE COMPROMISE

With each passing day, it seems more likely that Congress will approve the California-Nevada compromise bill to curb residential and commercial growth at Lake Tahoe. The measure authorizes more than $150 million in federal land purchases at Tahoe over the next 10 years to slow down pollution and commercialization. Financing of these acquisitions of private property would be tied to sales of federal lands in the urban-growth paths of Reno and Las Vegas.

The measure sailed through the House Interior Committee and is ready for action by the entire House membership. A Senate version of the bill, with California Sen. Alan Cranston and Nevada Sen. Paul Laxalt as co-authors, will be introduced any day now.

The only reported opposition in the House is coming from two California representatives who have the most reason to support the measure on behalf of the majority of their constituents. Rep. Harold T. Johnson, who represents the North Shore of Tahoe and Rep. Norman Shumway, who represents the southern part of Tahoe, have come down on the side of the construction industry and the developers at Lake Tahoe. Johnson opposes a key provision which would give federal officials authority to acquire improved property on the California side if the owners planned additional construction that could harm the environment in the Tahoe Basin. Shumway opposes the bill generally and accuses Rep. Phillip Burton, one of the bill's authors, of trying to "ramrod legislation through at the eleventh hour."

The position of Johnson and Shumway does not serve their constituents well. Thousands of Lake Tahoe landowners who bought subdivision lots on the California side of the lake only to find out, too late, that they can't build homes on the property because of environmental protection rules, will be bailed out if the bill is passed. The people in the valley who don't own Tahoe lots, but who enjoy visiting the lake, are ill-served by Johnson's and Shumway's opposition to the compromise bill because the only way the scenic beauty of Lake Tahoe will be preserved is for the federal government to buy environmentally fragile land on both sides of the lake to slow down further growth and development.

The measure deserves the support of California's congressional delegation. Not only is it designed to protect the environment at Lake Tahoe and to compensate landowners who cannot build on their lots, but it is also a significant step toward forging an agreement between California and Nevada to preserve the scenic aspects of the mile-high lake.

[From the Los Angeles Times, Apr. 20, 1980]

A STEP TOWARD SAVING TAHOE

Democratic Reps. Jim Santini of Nevada and Phillip Burton of California are working together on legislation that could hold the line on pollution and congestion at Lake Tahoe through federal purchase of potential sites for commercial and residential development.

Although we still think creation of a national recreation area on one or both sides of the California-Nevada border is the best hope of halting the Tahoe urbanization, Nevada is dead set against that approach and has the clout to block it in Washington.

But if Santini and Burton, who chairs the House national parks subcommittee, can reach final agreement—and if Congress approves the legislation—an important step will have been taken toward reducing the excessive and inappropriate development that now threatens the magnificent alpine lake.

The measure would authorize the annual sale of up to 700 acres of federal holdings on the outskirts of Reno and Las Vegas to private investors. The receipts would be spent by the government to acquire parcels in the Tahoe basin that might otherwise become construction sites.

The concept of exchanging federal holding in urban areas for lands of high scenic and recreational value seems reasonable, and should prove attractive to Nevada, where the Sagebrush Revolution for the opening of more federal lands is very much alive.

The Santini-Burton measure assumes that the major potential for pollution and lakefront erosion exists in California, which has three-fourths of the land base. For that reason, the section of the basin within California would be subject to stricter land-use controls than would property in Nevada.

In exchange for that concession, Santini apparently has agreed to firm assurances, which might be written into the legislation, that his state's moratorium on new casino construction would remain in effect. Santini also is said to be amenable to prompt federal purchase of "environmentally sensitive" properties within his state.

California and Nevada have been warring over Tahoe for many years, and the lake itself had become the principal casualty of runaway development on both sides of the border. Along with the Brown Administration and the Sierra Club, we believe that the federal government, which already owns two-thirds of the basin, should have the dominant role in regulating future growth.

But that approach is anathema to Nevada's congressional delegation and the Santini-Burton compromise apparently is not, at least at this stage of the negotiations. It is the only concept that has a chance this year, and we favor its enactment.

Time would tell whether the new plan would effectively halt future environmental damage to Tahoe; if it did not, federal management would remain the best, and perhaps only, answer.

[From the Sacramento and Fresno Bee, Apr. 19, 1980]

A COMPROMISE TO SAVE TAHOE

A proposed bill by Reps. Jim Santini, D-Nev., and Phillip Burton, D-San Francisco, to create a national scenic recreation area on the California side of Lake Tahoe is a positive, although necessarily restrained, federal response to the failure of California and Nevada to agree on a save-Tahoe compact.

The measure, initiated by Nevada, recognizes that a continuing source of federal funds is necessary to buy private land at Tahoe that might otherwise be converted into residential or commercial uses. The money would come from annual sales, authorized by the bill, of up to 700 acres of federal lands near Las Vegas and Reno. Moreover by setting up a national recreation area on the California side of the lake only, the bill also supports Nevada's contention that California, not Nevada, is responsible for most of the overdevelopment at the lake. Staff members of the House National Parks Subcommittee made a study of the Tahoe Basin and found that, indeed, most of the pollution of the lake comes from California and that much of the land on the Nevada side is already under public ownership.

The sticking point here is pollution caused by the presence of huge gambling casinos on the Nevada side. Unless a way is found to halt the proliferation of the casino-hotels, limiting commercial development on the California side, while highly desirable, will have a limited effect on reducing air and water pollution in the entire basin. Common sense dictates that the bill contain some sort of provision to assure that Nevada's recent ban on new Tahoe casinos cannot be repealed and that definite limits are set on expansion of existing casinos. This is still to be worked out, but those in close touch with the preparation of the bill are optimistic that the final draft will contain such restrictions.

Although the Santini-Burton bill falls short of conservationists' desire for a national scenic area on both sides of the lake, having a federally controlled area on the California side would be a hopeful thrust toward a federally managed Tahoe-Basin where land use ultimately would be controlled by the U.S. Forest Service or the Department of the Interior.

Rep. Vic Fazio, D-Sacramento, has introduced such a measure creating a basinwide federal scenic area, but it has little chance of passing as long as the Nevada representatives oppose it. Fazio sees the possibility, however, that he, Burton and Santini may find common ground and unite behind one bill.

Although the Santini-Burton bill still needs refining and strengthening, the proposal puts flesh on skeletal hopes for saving both sides of Lake Tahoe. Under Nevada sponsorship, and with California backing, it has a decent chance of approval by Congress.

[From the Valley Times, Aug. 10, 1979]

SANTINI PLAN TO SAVE TAHOE JUST MIGHT WORK

The Nevada Legislature fumbled with it.

Gov. Bob List dropped the ball.

And the California Legislature declined to accept it.

Thus a bi-state compact to save Lake Tahoe from further environmental degradation was lost this year.

The legislatively-imposed building moratorium at the lake has run out and Mr. List has decided that he won't extend the building freeze.

So the building boom on the shores of beautiful, but fragile, Lake Tahoe goes on.

What can be done to prevent them from paving the lake to put in a parking lot?

Congressman Jim Santini has a plan and it just might work. We applaud his efforts in this direction.

The plot calls for the sale of federally-owned land in and around Las Vegas, the proceeds of which would be put into a trust for public buy-outs of private Lake Tahoe property.

The land exchange idea has been presented to California Congressman Phil Burton, chairman of the House Subcommittee on National Parks, who will be in town Monday to meet with Santini and look over the Las Vegas lots now owned by the federal government.

It should appeal to all factions, environmentalists and developers alike.

Private property owners at Lake Tahoe could sell their land to Uncle Sam at a fair market value and not have to worry about complying with environmental regulations on building.

About 70 percent of Tahoe land is already in the hands of state, local and federal governments. Forestry officials would like to see this increased to 85 percent to insure public access and use of this important scenic and recreation area.

As far as the BLM-controlled Las Vegas land goes, you can hardly call it fragile. Much of it is checker-boarded in the city and county and opening up these building lots to developers would be to the public benefit.

It's a good way to start getting urban federal lands into private hands, because the Sagebrush Rebellion could drag on for years.

And at least it's a step in the right direction to slow the bulldozers at Tahoe and keep most of the lake in the public domain so we can all enjoy it.

Mr. PHILLIP BURTON. Mr. Speaker, at this time I yield such time as he may consume to the author of the legislation our distinguished colleague from Nevada (Mr SANTINI).

Mr. SANTINI. Mr. Speaker, it is with pride that along with my esteemed California colleague, the Honorable PHILLIP BURTON, I bring H.R. 7306 to the floor for consideration by the House. I believe H.R. 7306 offers a completely new and creative approach to two different land management problems—

First. The overdevelopment of fragile lands in the Lake Tahoe Basin which results in declining water quality of the lake; and

Second. The lack of orderly development and planning in the Las Vegas Valley, Nev., area because of urban Federal land holdings.

The general concept of H.R. 7306, selling certain Federal "checkerboarded" lands in the Las Vegas Valley and considering the proceeds repayment for acquisition of private environmentally sensitive land in the Lake Tahoe Basin was born 3 years ago. Since that time, Mr. BURTON and I have labored arduously to turn a creative concept into a viable legislative product. It has been a long, hard road, but I believe we have succeeded in our endeavors.

I would like to express my personal gratitude to my very able colleague, Mr. BURTON. We have discussed this measure, debated it and yes even argued about it in an attempt to balance a wide variety

of concerns. At all times, his commitment to the goals we set out to achieve was unwavering. His personal expenditure of time and energy went far beyond the call of duty.

Mr. Speaker, the bill before you is not a perfect bill. Some will say it goes too far. Others will say is does not go far enough. I believe the truth lies somewhere in the middle. H.R. 7306 is a moderate aproach to some very tough, challenging problems.

I would like to take a moment to briefly describe the nature of those problems. Lake Tahoe, as many of you know, is an Alpine Lake which lies high in the Sierra Nevada Mountains of California and Nevada. Centuries ago it was used as the summer home of the Washoe Indians. Later, agriculture development came to the Lake Tahoe Basin, and by the 19th century timber from the basin was used for Comstock mining ventures. Gradually a few large estates and resorts came to Lake Tahoe. By the end of World War II, development in the area began to accelerate. Summer resorts increased in popularity, ski areas came, then gambling, then expanded residences, vacation homes, and heavy commercial development. All of these activities, and others have contributed to the pollution of one of America's most beautiful treasures.

At the same time land and water problems grew at Lake Tahoe, the Las Vegas, Nev., area also experienced growing pains. The urban areas of southern Nevada literally became islands in the middle on a federally owned area. Urban growth cannot be properly planned in the urban Las Vegas Valley because small parcels of Federal land are interspersed or "checkerboarded" with private land. The Bureau of Land Management even owns 150 acres of land on the Las Vegas Strip. Planning for urban growth is complicated and frustrated by scattered enclaves of vacant, unmanaged Federal land used in some cases for trash dumps and abandoned car lots.

The Santini-Burton proposal before you now represents an effort to provide a workable remedy for two very serious land management problems.

Mr. Speaker, at this time I would like to discuss some of the proposals reflected in the committee amendment to H.R. 7306. Following bill introduction, three hearings were held on the bill, one in Washington, D.C., and two in the field. By and large I have been most impressed by the sincere and substantive comments made by well over 100 witnesses and hundreds of letter writers. Almost everyone agreed with the bill in concept, but many people offered specific suggestions for improvement.

After these hearings, Mr. BURTON and I went back to the drawing board and spent many hours trying to devise amendments which would as far as possible accommodate private property interests in the Tahoe Basin and yet still retain the heart and purpose of the bill. Resolving these problems was not easy, but I do think we offered the Interior Committee a series of changes which go a long way toward a fair and proper balance. The committee amendment relates to such things as the Tahoe land acquisition map, consultation with State and local governments, modified condemnation, fair market value and soil erosion from highways and roads.

Mr. Speaker, at this time I would like to clarify the meaning and purpose of certain sections of the bill.

TAHOE ACQUISITION MAP AND PROGRAM

As a result of testimony at public hearings, the House Interior Committee was persuaded to discard the original land acquisition map (entitled H.R. 7306, numbered 1 and dated May 1980) which originally accompanied H.R. 7306. In its place, the committee has substituted language which requires the development of a new land acquisition map to be filed with the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs by December 31, 1980.

As you know, the reason I proposed the language to create a new map is to insure a carefully drawn, refined product which is of such a scale that owners of parcels will be able to see clearly whether or not their property is subject to acquisition.

And, although pursuant to section 3 (2) (c) we have stated that the new Lake Tahoe acquisition map will depict no more acreage as environmentally sensitive than was depicted on the original H.R. 7306 land acquisition map, our intent, of course, is that the land acreage designated as environmentally sensitive shall, insofar as possible, match anticipated appropriations authorized by this bill.

By way of further explanation, I would like to note that the committee added language which gives a precise definition of "environmentally sensitive." The reason we did so was to give the Secretary of Agriculture very strong guidelines with regard to the portrayal of environmentally sensitive lands on the new Tahoe acquisition map. I fully expect the new Tahoe acquisition map to be a much more precise and refined document.

One final word on the Tahoe acquisition map is in order here. I am very pleased that the committee saw fit to incorporate consultation and review by State and local governments and the general public in both the map preparation and in the actual acquisition process. And, in addition, the committee provided for consultation on map development with appropriate planning and regulatory agencies. We mean by this language to include consultation with the Tahoe Regional Planning Agency as well as other appropriate planning and regulatory agencies.

It is my belief that review and consultation with State and local governments and their planning and regulatory agencies would be usual Forest Service procedure, but these provisions certainly go a long way to insure input by people who know the area best and in the end will result in a much improved acquisition map and program.

BONDED INDEBTEDNESS

Mr. Speaker, in public hearings on H.R. 7306, it was brought to my attention by representatives of groups such as general improvement districts (GID's) that they were very concerned that passage of our bill would leave these GID's with outstanding bond obligations which subsequently could not be retired because of revenue losses from assessments on property removed from private ownership and placed in Federal ownership.

I would like to clear up any remaining doubt on this subject. It is our intent that any bonded indebtedness on specific parcels acquired by the Secretary of Agriculture pursuant to H.R. 7306 will be paid at the time of acquisition.

□ 1310

I would like to insert into the RECORD at this time a letter from the chief of the U.S. Forest Service, Mr. Max Peterson, which sets forth their usual procedure with regard to bonded indebtedness. It is our intent that the procedure so outlined be used as the basis for extinguishing bonded indebtedness on property acquired pursuant to H.R. 7306. Our clarifying remarks should be considered amplification of the Forest Service's usual procedure.

Mr. PHILLIP BURTON. Mr. Speaker, will the gentleman yield?

Mr. SANTINI. I will be happy to yield to the chairman.

Mr. PHILLIP BURTON. I thank the gentleman for yielding. It is also our intention wherever possible that in the course of noticing to the property owner the amount that owner will receive, there will be separately stated the amount ascribed to the bonded indebtedness to the end that there can be more full and understandable disclosure in that respect.

Mr. SANTINI. I think the chairman's observations are very well taken.

The letter is as follows:

U.S. DEPARTMENT OF AGRICULTURE,
Washington, D.C.

Hon. JIM SANTINI,
Washington, D.C.
House of Representatives,

DEAR CONGRESSMAN SANTINI: This responds to Ms. Cooper's request for information on how bonded indebtedness is handled in the Forest Service appraisal process.

The Provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1890, require that the Federal Government offer landowners not less than fair market value in all purchase transactions.

Determination of fair market value is based on appraisals of the land to be purchased and is made by competent, trained land appraisers. The appraisals are made following accepted appraisal premises, practices, and approaches that are recognized by professional appraisal societies and the courts. They are based on the current private real estate market transactions for the vicinity in which the individual property being appraised is located.

On occasion, we have found it necessary to appraise properties that are encumbered with bonded indebtedness. A sewer bond is one example of this type of indebtedness that we have encountered. In the instances we have been involved with, the sewer service is an improvement to the land. In past cases, we have considered the sewer assessment as a contribution to the land value in the total amount of the assessment.

We have no indication that the availability of sewer connections may enhance the property value more than the actual assessment. Lacking any indications contrary to allowing the total assessed value as an improvement to land, we will continue to treat properties with outstanding sewer assessments in the same manner when they are appraised for acquisition.

Following is an example of how a bonded indebtedness may be handled in an appraisal:

1. Value of a property without sewer service—$15,000. Assume no bonded indebtedness. Market value of property is $15,000 and landowner would be offered this amount.

2. Assume the same property as above is provided sewer service through a bonded indebtedness. The bond is $5,000. Because the property now has sewer service, the market value has increased. Appraised market value is now $20,000, and this amount would be offered to the landowner.

In the example above, the property is now worth $20,000. However, there exists a debt of $5,000 for the sewer service which is owed to a third party by the owner. The debt is a lien (legal claim for payment) on the property and must be satisfied by the owner prior to acquisition by the United States in order for the owner to convey an unencumbered title to the land.

There may be instances where properties have sold with the bond indebtedness included in the selling price. These sales may then be used as direct comparisons to a property being appraised that is subject to a sewer bond assessment, since any enhancement due to the sewer availability would be included in the selling price of the transaction.

Sincerely,

R. MAX PETERSON,
Chief.

LAND SALES AND LAND SALES MAP

Mr. SANTINI. I will turn for a moment, Mr. Speaker, to that portion of our bill which deals with Bureau of Land Management land sales as directed by H.R. 7306. There are two matters which I would like to clarify. First of all, the current land sales map referred numbered 7306 A, dated May 1980, and entitled "Las Vegas Valley Nevada land sales map" for various reasons fails to include for the most part checkerboarded public land within the city limits of the city of Las Vegas and the city of North Las Vegas, Nev. As currently drafted, the Las Vegas Valley Land Sales Map shows approximately 7,000 acres of checkerboarded Federal land in urban Clark County, Nev.

It is the intent of the sponsors of the bill that the public lands sales map of H.R. 7306 will include an additional 3,000 acres of Federal land "in small parcels interspersed with or adjacent to private lands" which must lie entirely within the city limits of the city of Las Vegas, Nev., and the city of North Las Vegas, Nev. This acreage will be added to the current map pursuant to joint selection by the Bureau of Land Management and the city of Las Vegas and North Las Vegas, Nev. It is our intent that the total acreage for potential sales in the land sales map to accompany H.R. 7306 will not exceed 10,000 acres of land and that it be BLM land which is "in small parcels interspersed with or adjacent to private lands." The Las Vegas Valley land sales map which will accompany our bill, furthermore, shall clearly delineate the boundaries of three urban governments in the Las Vegas Valley—Clark County, the city of Las Vegas, and the city of North Las Vegas.

The second issue I would like to address with regard to the public lands sales procedures established by H.R. 7306 relates to section 2(a) and 2(c) of the bill. I want to make very clear that the regulations we are directing the Secretary of Interior and the affected local governmental jurisdictions to develop to carry out the purposes of the act should in no way detract from the normal BLM lands sales procedures relating to public comment.

That concludes my remarks on the bill. I urge the support of my colleagues.

I thank the indulgence of the chairman of the committee for my time.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. SANTINI. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the gentleman for yielding. I just wondered whether or not this bill in any way expanded the gentleman's colonial empire which I read about in today's paper. The gentleman might use this as an occasion where "the empire strikes back."

Mr. PHILLIP BURTON. If the gentleman will yield, I consulted with the gentleman from Nevada (Mr. SANTINI) in that respect, and it is surprising how territorially unlike the rest of us the gentleman from Nevada is with reference to his State. So I fear that no matter how much it may be deserving, the gentleman from California's contribubution will not be permanently noted.

Mr. BAUMAN. If the gentleman will yield further, I would just observe for the record that we have not done too terribly well with Presidents lately; perhaps an emperor is in order, and the gentleman would be most congenial in that role.

Mr. PHILLIP BURTON. I thank the gentleman very much.

Mr. SANTINI. I would like to make a further observation. I do think it is relevant that the Delegate from Guam (Mr. WON PAT) will be serving as mayor of Las Vegas on January 2, 1981.

Mr. PHILLIP BURTON. The only thing I cannot understand is why they took the 3,000 islands in the Pacific Trust Territories out of the domain of our distinguished subcommittee. I accused the gentleman from Oregon (Mr. DUNCAN) that perhaps he played some role in that respect, but he denies it.

Mr. BAUMAN. If the gentleman will yield further, there is no provision in this bill to rectify that situation, thus reexpanding the empire?

Mr. PHILLIP BURTON. Not yet. Not yet. There is only one title to this bill, believe it or not.

Mr. SEBELIUS. Mr. Speaker, I yield 6 minutes to the eminent ranking member of the Committee on Interior and Insular Affairs, the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, as many of the Members know, when the Lake Tahoe bill was first reported from the Committee on Interior and Insular Affairs, I raised some very serious reservations in our minority remarks, along with some of our colleagues from California, regarding the hurried procedure that was being followed as well as the merits of the legislation itself. Since that time the committee has held 2 full days of field hearings, one of which I was able to attend in Reno, and has spent many long hours attempting to work out the best possible solution. To my knowledge, there are some 12 to 14 perfecting amendments that were adopted as a result of the input that came from that Reno hearing. For that reason I want to commend the gentleman from Nevada (Mr. SANTINI), our chairman, the gentleman from California (Mr. PHILLIP BURTON), as well as the gentlemen from California (Mr. JOHNSON, Mr. SHUMWAY, and Mr. FAZIO), for their willingness to cooperate and to work with us in the direction of perfecting this product.

As a result of these efforts, the legislation has been amended to address some of the major objections raised by the local officials, residents of the Lake Tahoe Basin, and the Members whose districts are affected, and has gained additional support, at least in concept.

Mr. SHUMWAY played a particularly important role in this process. He provided the committee with an extensive list of concerns expressed on behalf of the residents of the basin. The bill before us, I believe goes a long way toward accommodating his requests.

Mr. Speaker, after I listened to my friend, the gentleman from Nevada (Mr. SANTINI) explaining the basic provisions of the bill, it reminded me of a similar situation that we went through in the committee back in 1970 when I had the responsibility of directing what in effect was a new concept, namely, the King Range Conservation Area.

We had a similar situation involving the checkerboarding of Federal ownership and private lands. In the act establishing the King Range Conservation Area in my congressional district we provided for an exchange of lands for Bureau of Land Management lands outside the area to remove areas within the boundaries from private ownership.

Since the establishment of the King Range Conservation Area, we have enacted the BLM Organic Act designed to improve the agency capability of managing public lands under their jurisdiction.

In the Lake Tahoe situation, we are dealing with U.S. Forest Service lands intermingled with private lands. The bill before us allows for the exchange of these lands as one of several options available to the agency.

Of particular concern throughout this process has been the question of condemnation authority and the different applications of that condemnation authority with respect to Nevada as well as California. The legislation allows for acquisition of improved properties in California by way of condemnation, while limiting this authority in Nevada to unimproved lands. We addressed this problem specifically in our final markup of the legislation. A majority of the committee agreed that the condemnation authority was too broad and adopted two very significant amendments. While they

fall short of removing the condemnation authority altogether, they do help to clarify when and how it can be used. It became clear during the course of the hearings that full condemnation was not acceptable, but there seemed to be a case that could be made for some limited condemnation, and, of course, that is what we have tried to do.

First, an amendment that was offered by my colleague, the gentleman from California (Mr. LAGOMARSINO), was adopted which addresses those lands in which a single-family dwelling is located and limits acquisition authority to only those instances where a "change in the use of such dwelling has occurred" subsequent to the passage of the bill or a change in use is threatened. It must be determined that the change in use or threatened change "will result in a detriment to the preservation of the existing air, water, or visual qualities of the basin."

Second, the committee recognized the important role of the Tahoe Regional Planning Agency in the adoption of the final requirements for the protection of the air, water, and visual qualities of the basin. The bill was amended, in an amendment that I offered to provide that once TRPA has developed a set of standards, the acquisition of lands will be made in a manner consistent with the requirements set by TRPA. In this way local input will be maximized and landowners will have a clearer understanding of their rights. The California Legislature did in its closing days formally reestablish TRPA, and I am hopeful they will move quickly in developing the necessary guidelines. If the California provisions had been amended to allow acquisition only by exchange, donation, or negotiated purchase, I believe the legislation would have little opposition. However, the limitations placed on the condemnation authority does certainly help give the landowners some of the assurances they desire and should prevent overly zealous actions on the part of the Department of Agriculture, its Secretary and personnel.

Everyone agrees that the Lake Tahoe Basin is a unique national treasure, a gem in the landscape of the Sierra Nevada Mountains, and must be preserved and protected.

□ 1320

We believe that this legislation, as amended extensively, by the committee goes a long way toward accomplishing that objective. Therefore, I ask my colleagues to support it and advance the bill to the Senate for further consideration and, hopefully, adoption by this Congress.

Mr. SEBELIUS. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. LAGOMARSINO), a member of the committee.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 7306 as amended. The bill provides needed protection for the Lake Tahoe Basin which is a magnificent resource important not only to the States of California and Nevada but to the Nation as well.

I would like to compliment the chairmen of the National Parks Subcommittee (Mr. BURTON, Mr. SANTINI, and Mr. SHUMWAY) for their willingness to listen to the concerns of local citizens in the Tahoe Basin and for their efforts to formulate a legislative solution which is sensitive to their needs while providing a strong degree of protection for the environment.

The committee amendment in the nature of a substitute which is before us today, has made several important improvements over the original version of H.R. 7306. Significant protections against condemnation have been added for owners of single family dwellings on the California side of the Lake Tahoe Basin. Section 3(c)(2) of the bill clearly states that no single family dwelling may be acquired by the Secretary of Agriculture without the consent of the owner unless a change in the use of that dwelling takes place or is threatened after the date of enactment of this act. Moreover, if a change in use does take place but the structure remains a single family dwelling nonetheless, the Secretary cannot acquire the property without the owner's consent unless that change is detrimental to existing air, water, or visual qualities of the basin.

These provisions make it very clear that owners of single-family dwellings can make changes in the use of their property without fear of condemnation so long as they are reasonable and not detrimental to the environment.

Furthermore, section 3(c)(3) provides that at such time as the Tahoe Regional Planning Agency has adopted final requirements for the protection of air, water, and visual qualities in the basin, the Secretary must make the findings which are prerequisite to condemnation of any improved property—including single family dwellings—in a manner consistent with the TRPA requirements. This section is intended to give property owners a clear set of standards, established by local government, by which changes in use can be judged and allowed without invoking the threat of Federal acquisition.

I am also pleased that the amendment makes funds available to political subdivisions within the States of California and Nevada under section 2(g) for water pollution control and soil erosion mitigation.

In summary, I believe H.R. 7306 as amended contains significant safeguards for the private landowners of the Tahoe Basin, while providing an appropriate degree of balance between Federal and State interests.

The Federal Government has a responsibility and an important role in protecting the public lands within the region as well as the unique qualities of the Interstate Basin. At the same time, the States of California and Nevada have an equal interest in protecting the rights, property, and environment of their respective citizens. This bill strikes a balance in which the interests of each are protected through a coequal partnership of authority and responsibility.

For these reasons, I urge my colleagues to join me in supporting passage of this legislation.

Mr. SEBELIUS. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. JOHNSON).

Mr. JOHNSON of California. Mr. Speaker, I rise to speak in opposition to passage of H.R. 7306 under suspension of the rules.

This legislation, which would provide for sale of Federal lands in the State of Nevada and the acquisition of other lands in the Lake Tahoe Basin, has some serious flaws. It is not a simple measure and needs to be given more careful and critical examination.

The bill would set up a double standard for land acquisition in the Tahoe Basin, and is not equitable in this important regard. In the California portion of the Tahoe Basin, it would provide for condemnation of lands improved by the construction of residential or commercial buildings, including private, single-family homes. However, in the Nevada portion of the Tahoe Basin, no condemnation of any kind would be authorized.

This section of the bill has been worked over several times by the committee since the measure was originally reported. But the basic inequity concerning acquisition authority is still there.

This different treatment of lands in the California and Nevada sections of the Tahoe Basin is carried through into provisions dealing with the way acquisition would be handled. It seems clear that a map would be completed by December 31, 1980, showing the unimproved lands in Nevada which are to be acquired by donation, purchase, or like means,

On the other hand, no map is required and no fixed date is established for deciding which improved lands in California are to be acquired by condemnation. In short, California landowners would have the threat of condemnation hanging over their heads for an undetermined period of years.

Another concern is with those provisions of H.R. 7306 that relate to the role of State and local government in land acquisitions within the basin. These provisions raise a number of questions that should be given careful study by all of those who might be affected.

The bill only requires that the Secretary of Agriculture, or the Forest Service, acting as his agent, consult with State and local governments before taking action to acquire lands. There is no mechanism established which would do more to encourage or stimulate consent agreements. Such a mechanism might at least set up a formal procedure for State and local government recommendations and Federal review and comment, as well as formal Federal explanations where State and local plans are not to be honored.

Mr. Speaker, legislation as sensitive and as complicated as this should not move so fast that it cannot be fully analyzed before it comes to a vote. Yet H.R. 7306 has not been available in final form so that those affected—the people of the Tahoe Basin—can study it, con-

sider how it would affect their community, and give us their judgments.

Mr. SEBELIUS. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. SHUMWAY).

Mr. SHUMWAY. Mr. Speaker, as many of my colleagues know, I have the good fortune to represent the southern portion of California's share of Lake Tahoe and as a result I maintain an active interest in this legislation and even though I am not a member of the subcommittee, I did attend the meeting held by the National Parks Subcommittee in Reno, Nev., on June 13, 1980.

Lake Tahoe represents a very beautiful asset in America but one which presents very difficult problems at the same time. Perhaps because of its bistate nature, these problems have been very challenging to those of us in Congress and in the State governments. Recent proposals for the preservation of the environment in that basin have ranged all the way from H.R. 6338, to create a national scenic area administered by the Forest Service, to doing nothing. In this setting and because to me it represents a potentially better solution than either one of these other extremes, I am lending my qualified support to H.R. 7406. I think this bill is novel insofar as it might assist in solving two problems at once. One, of course, is the excess Federal land problem we have heard about in the State of Nevada and the other is the need to generate more revenue for the purchase of additional land in the Lake Tahoe Basin.

□ 1330

As the bill was originally introduced, I had considerable reservations about it. Particularly after the hearing we held in Reno, those reservations appeared to be insurmountable. I am happy to report now, because of a series of amendments adopted by the committee following the efforts of my colleagues who are very interested in this bill, many of those problems have been abated. Even though I still have some serious difficulties with a few provisions in the bill, I do think it has run its full course in the House. I understand that when it reaches the Senate it will gain more public participation, and because of this prospect I am happy to lend my support to the bill.

The feature of the bill which gave the greatest difficulty to all of us was the eminent domain authority. Because of the continuing controversy regarding condemnation, I frankly would like to see section 3 stricken in its entirety. I do not think it is necessary. Studies have not demonstrated the need for that acquisition procedure.

However, if it is deemed to be necessary because of the tax advantages, I think it should be used with these particular qualifications:

First, that it not be used for a period of time, for example, 5 years following the enactment of the bill. I think this would effectively reserve its use for the more difficult cases.

Second, that it be used for the acquisition of unimproved property only.

Third, that it be applied with equal force and effect in both California and Nevada.

Fourth, that it be applied only in cases where there is a direct and legally definable pollution such as might be declared a public nuisance.

I am hopeful that as the bill is subjected to the refinements of further public hearings in the Senate, perhaps appropriate amendments will be added. Upon that condition, I lend my support to the bill.

Mr. SEBELIUS. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr FAZIO).

Mr. FAZIO. Mr Speaker, I thank the gentleman for yielding, I will be very brief. I simply wish to lend my strong support to this piece of legislation which I think, in tandem with a revised bistate compact, which I think the Nevada Legislature is about to adopt and which should be before us for final approval in the next year; the Presidential Executive order which will for the first time coordinate all Federal activities in the basin; and hopefully, the passage of a $85 million bond issue in California on the November ballot, will name this a great year for Lake Tahoe.

I would like to give particular credit to the chairman of the subcommittee, the gentleman from California (Mr. PHILLIP BURTON) who put aside his own personal views and indications in this area to engage in a very strenuous and combative bargaining session which resolved, I think, the problem of dealing with the degradation of Lake Tahoe to the satisfaction of almost every Member of Congress. He and Mr. SANTINI deserve the thanks of not only Nevadans and Californians, but of all Americans who will value the many aspects of Lake Tahoe in the future.

Mr. SANTINI is a particularly courageous individual who took the trouble to enter into a very, very difficult thicket, one that is extremely sensitive in Nevada. As a result of his efforts, he has done his State a tremendous service, particularly the people of Las Vegas and the people of Clark County.

Mr. Speaker, our colleagues Mr. SANTINI of Nevada and Mr. BURTON of California have worked extremely hard on this to sell Federal lands in Clark County, Nev., and to simultaneously buy lands in the Lake Tahoe basin. H.R. 7306 represents a concrete, constructive approach to a pair of issues that often lead advocates and opponents astray into emotional and impractical tangents.

I am the author of another bill, H.R. 6338, which aims at a comprehensive solution to the problem of overdevelopment at Lake Tahoe but I strongly support this legislation. The lake is one of the most precious gifts nature has bestowed upon this country, a unique, very large, very deep, crystal clear, alpine lake, nestled in a basin of snowy peaks high in the Sierra Nevada Mountains. For many reasons governmental efforts to fulfill our obligation to preserve this resource have failed in the past 20 years. Part of the problem has been the sheer complexity of negotiating between the local, State, and national interests. This difficulty has been compounded because the lake lies in two States, Nevada and California. Another part of the problem has simply been understanding the way the basin's ecosystem works, and the roles that proliferating jurisdictions play in helping or hindering the natural mechanism. Given all this confusion the economic incentives to overdevelop the basin increment by increment have proven irresistible. Much damage has been done; much more damage is easily foreseeable unless we devise a governmental mechanism to stop it.

H.R. 6338 was an attempt at such a mechanism. It sought to rely as its basis on the considerable Federal presence already in the basin. The U.S. Forest Service owns 72 percent of the area, and we have spent over $50 million in the last decade buying large tracts of lands in order to preserve them from development. The trouble is that these purchases have been made part of the Forest Service's traditional policies of land acquisition, and have not seriously zeroed in on the lands where development is most economic, most harmful, and most imminent.

Further, while the Federal Government has been spending millions to preserve the basin, the Government has been spending equal amounts providing the essential public works projects to underwrite growth on private lands, nearly $50 million during the same period.

On the premise that truly effective efforts to handle growth in the basin would continue to elude local and State political officials—despite the sincerity of a number of them—and in recognition that the Federal Government has been as much the problem as a solution, H.R. 6338 sought to create a national scenic area whereby Federal actions would be coordinated among themselves and local actions would be coordinated with the Federal under a Federal master plan. The master plan would take as its basis the well-documented finding that the natural system of the Tahoe basin are now at a point of overload and irreversible degradation is accelerating.

This represented a strong approach to the basin's ills, but one which seemed necessary enough given the lessons of history that 42 Members of Congress agreed to cosponsor the legislation.

However, the political realities are such this year that the national scenic area approach embodied in H.R. 6338 probably is premature. Since its introduction the two States have renegotiated a bi-State compact for land use controls in the basin. California has agreed to it, Nevada apparently will soon. It should be before the Congress for ratification during the next year. the President by Executive order has also announced steps to coordinate Federal programs in the basin, and to place them under the primary test of preserving it.

In the context of these events, the Santini-Burton bill would make a very real contribution to a multifaceted problem that can hopefully be contained by these various new approaches. So I would like to commend Mr. SANTINI and Subcommittee Chairman BURTON for taking an approach that will significantly help

the basin even if it does not garner them enthusiastic support from antagonistic groups at the ends of the spectrum. This sort of leadership is what the basin has truly needed.

As I view H.R. 7306, it tackles the basin's most difficult and dangerous problem head on: What should we do about the thousands of vacant single family lots approved years ago, but not built upon for one reason or another? Construction on many, if not most, of these lots. Together with efforts to raise amounts of sedimentation down the slopes of the basin and into the lake.

The Santini-Burton bill makes money available at no net loss to the American taxpayer to buy the most dangerous of these lots. Together with efforts to raise $85 million in bond money on the November ballot in California, we may solve another of the injustices that has become a fact of life at Tahoe. That is the thousands of lots are owned by thousands of individuals, who have had their money tied up for years in a situation that for them seemed impossible until this bill emerged.

However, Mr. Speaker, I would like to make one point. Key to the truly effective use of this money is the direction and authority this Congress must give to the Forest Service to move effectively on this problem. By that I mean, the Forest Service must have the ability to acquire by eminent domain a few parcels from speculators unwilling to sell. This power should be used only when necessary and only as a last resort. The Interior Committee has included provisions in this recent version of the bill which guard against the unwarranted or irresponsible use of this authority. The people are protected against abuse and the lake must also likewise be protected against continued abuse.

Mr. SANTINI and Mr. BURTON should be credited for the efforts they have taken to strike this careful balance. It is a balance if—and there is some reason to fear this might be the case—amendments are made to this bill in the Senate that deprive the Forest Service of tools to protect the lake by implementing a truly effective acquisition program, the bill's balance will have been lost and it will not be worth the surrender of lands owned by all Federal taxpayers to those in Clark County, Nev.

A land acquisition program must be organized; there must be a strategy to it. The strategy must be buttressed by eminent domain authority so that in the few instances where that power is necessary the whole fabric can be protected. Otherwise the Forest Service will be diverted into the same sorts of acquisition programs that have not sufficed in the past.

It takes some political courage on the part of our colleague from Nevada to recognize and act on this fact. I am most hopeful that the House will support the lake by supporting him and by maintaining this careful and constructive balance. In conjunction with the new bistate compact and with the President's Executive order, the Santini-Burton bill can do a lot, and it deserves our strong support. I hope very much that this tripart approach to the lake is sufficient to halt the degradation. If not, I will be anxious to move quickly to bolster it in the future where necessary. But clearly this is an excellent step which we can take this year and we should do so.

Mr. SEBELIUS. Mr. Speaker, I yield my final 2 minutes to myself.

Mr. Speaker, this bill constitutes an effort at the Federal level to directly apply some medicine and band-aids to the Lake Tahoe Basin, which is sick and ailing from overdevelopment.

Most of the credit for the fashioning of this bill must go to the chairman of our subcommittee, the Honorable PHIL BURTON, and to our colleague from Nevada, the Honorable JIM SANTINI. Had it not been for their initiatives and joint efforts, this bill would not be before the House today.

Lake Tahoe and its immediate environs constitutes a nationally significant resource—on that there can really be no argument. It is an extremely beautiful place. It also constitutes one of the best examples in the entire Nation of the inability of local government—and also of State government—to adequately protect from man's ruination, a magnificent resource.

The forces responsible for those adverse influences and impacts are so great and so far advanced by this time however, that even the Federal Government cannot singlehandedly solve the problem—the costs to do so and the political muscle to do so cannot possibly be mustered.

Consequently, this bill is but a part of the solution; the other parts of the solution must come forth from the cooperative efforts of the California and Nevada State governments, along with the multitude of other jurisdictions which have authorities and jurisdictions at Tahoe.

This bill represents a rather convoluted and piecemeal solution, but I do believe that under the difficult circumstances of the times it can be of help.

I think it is essential that the two Secretaries involved—Agriculture and Interior—and the Senate and House authorizing and appropriating committees all monitor all facets on the implementation of this bill very closely, as I am of the opinion that there will soon prove to be a need for legislative adjustment to various parts of this act.

Of primary importance is that this bill, when enacted, not jeopardize or curtail the good work that has been accomplished in recent past years by the U.S. Forest Service in its acquisition program. It is not intended that the bill will in any way work against that effort, but rather will augment it through its various different provisions.

Mr. PHILLIP BURTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from California (Mr. PHILLIP BURTON) that the House suspend the rules and pass the bill, H.R. 7306, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to insert their remarks in the RECORD on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

INDIAN HEALTH CARE PROGRAMS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6629) to amend the Indian Health Care Improvement Act (90 Stat. 1400) to reauthorize appropriations for the various programs therein, as amended.

The Clerk read as follows:

H.R. 6629

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 102 of the Indian Health Care Improvement Act (90 Stat. 1400), hereinafter referred to as the "Act", is amended by striking the last sentence in subsection (c) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,300,000, $2,600,000, $3,000,000 and $3,500,000, respectively.".

(b) Section 103 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,600,000, $1,800,000, $2,100,000, and $2,400,000, respectively.".

(c) The first sentence of section 757(a) of the Public Health Service Act is amended by striking the phrase "and for each of the succeeding fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting, in lieu thereof, the following: "$9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 for the fiscal year ending September 30, 1984.".

(d) Section 105 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $990,000, $1,140,000, $1,310,000, and $1,510,000, respectively.".

SEC. 2. (a) Section 201(c) of the Act is amended by adding the following sentence to paragraph (1) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $20,250,000, $23,000,000, $26,500,000, and $30,500,000, respectively, and such further additional positions are authorized as may be necessary.".

(b) Section 201(c) of the Act is amended by adding the following sentence to paragraph (2) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $6,400,000, $7,350,000, $8,450,000, and $9,700,000, respectively, and such further additional positions are authorized as may be necessary."

(c) Section 201(c) of the Act is amended by adding the following sentence to paragraph (3) thereof: "For fiscal years 1981,

1982, 1983, and 1984, there are authorized to be appropriated $1,875,000, $2,150,000, $2,500,000, and $2,875,000, respectively, and such further additional positions are authorized as may be necessary.".

(d) Section 201(c)(4) of the Act is amended by—

(A) adding the following sentence to subparagraph (A) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,500,000, $2,875,000, $3,300,000, and $3,800,000, respectively, and such further additional positions are authorized as may be necessary.";

(B) adding the following sentence to subparagraph (B) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $750,000, $870,000, $1,000,000, and $1,150,000, respectively, and such further additional positions are authorized as may be necessary.";

(C) by adding the following sentence to subparagraph (C) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,350,000, $2,700,000, $3,100,000, and $3,600,000 respectively, and such further additional positions are authorized as may be necessary.";

(D) by adding the following sentence to subparagraph (D) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $460,000, $525,000, $600,000, and $690,000, respectively, and such further additional positions are authorized as may be necessary."; and

(E) by adding the following sentence to subparagraph (E) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $250,000, $285,000, $325,000, and $375,000, respectively.".

(e) Section 201(c) of the Act is amended by adding the following sentence to paragraph (5) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $15,000,000, $17,250,000, $19,840,000 and $22,800,000, respectively.".

(f) Section 201(c) of the Act is amended by adding the following sentence to paragraph (6) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $5,000,000, $5,750,000, $6,600,000, and $7,600,000, respectively, and such further additional positions are authorized as may be necessary.".

(g) 201(c) is amended by striking all of paragraph (7) thereof.

SEC. 3. Title III of the Act is amended by inserting a new section 305 as follows:

"SEC. 305. For fiscal years 1981, 1982, 1983, and 1984, funds necessary to carry out the purposes of section 301 and 302 of this Act may be appropriated pursuant to authority contained in the Act of November 2, 1921 (42 Stat. 208), as amended by the Act of October 12, 1976 (90 Stat. 2233); and the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267).".

SEC. 4. Section 506 of the Act is amended by adding the following sentence at the end thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $18,750,000, $21,500,000, $24,725,000, and $28,500,000, respectively.".

SEC. 5. Section 4(c) of the Act is amended by adding at the end the following: "For purposes of titles II and III of this Act, such terms include Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State of California.".

The SPEAKER pro tempore. Is a second demanded?

Mr. CLAUSEN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes, and the gentleman from California (Mr. CLAUSEN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I am pleased to bring before the House the bill (H.R. 6629) reauthorizing funds for the various initiatives and new programs established under the Indian Health Care Improvement Act of 1976.

Many years ago, the United States assumed the obligation to provide health care to Indian citizens living on or near Indian reservations. If the United States did not provide health services to Indians, they would have no health services available.

Yet, Mr. Speaker, the health gap between the Indian people and the rest of the Nation is abysmal. By all standards, the Indian people and communities lag 20 to 30 years behind in health status.

The 1976 act sought to establish a 7-year, incremental program, beginning in 1978, to raise the poor health standards of the American Indian and to close the gap between the Indian community and the rest of the Nation. The act provided specific funding authorizations for fiscal years 1978 through 1980, but reserved for later enactment the funding levels for fiscal years 1981 through 1984. H.R. 6629 provides that reauthorization.

Title I of the act provides for the development of health professions manpower to serve Indian communities. Programs are provided for health professions recruitment among Indians; compensatory scholarships; graduate scholarships in medical professions; an extern program. A total of $68,950,000 is authorized for these programs for the next 4 fiscal years.

Title II of the act gives congressional direction to the Indian Health Service in the field of patient care. Appropriations for patient care is authorized by other statutes on a continuing basis. Title II is intended to require appropriations over and above the basic authorization and appropriation. A total of $252,893,000 is authorized for the 4 fiscal years.

Title III of the act provides additional money for the construction of Indian health facilities. H.R. 6629 provides that appropriations for such facilities would revert to the existing authorization.

Title V of the act provides for the establishment and funding of urban Indian health outreach programs. H.R. 6629 authorizes a total of $93,475,000 over the next 4 fiscal years for these programs.

Since the authority for fiscal year 1981 is included in this bill, it is important that it be enacted in this Congress.

Mr. Speaker, I urge the passage of this bill.

Mr. CLAUSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to rise in support of H.R. 6629, and further to associate myself with the remarks of our distinguished chairman, Mr. UDALL, of Arizona, and to urge its passage by the House under suspension of the rules.

H.R. 6629 is a noncontroversial yet very important piece of legislation whose purpose is to reauthorize funds for the programs initially established by the Indian Health Care Improvement Act of 1976 for the fiscal years 1981 through 1984.

Enactment of the Indian Health Care Act followed extensive congressional oversight hearings by our committee which documented severe Indian health problems and deficiencies in the Federal programs to provide health care to Indians. The magnitude of these problems and deficiencies led Congress to provide for an incremental, 7-year program to provide the resources necessary to meet Indian health manpower, services, and facilities construction needs. The 1976 act authorized specific appropriations through fiscal year 1980, and provided that authorization for the next 4 years be by separate legislation after an assessment of the progress under the act during the first 3 years.

□ 1340

The Committee on Interior and Insular Affairs reviewed the work that has gone forward under the act to date and found that considerable progress has in fact been made. Accordingly, H.R. 6629 represents a continuing commitment to the goals of the 1976 act, those, of course, to improve on the health and health care programs of the Indian community of America.

I am pleased to note that the bill contains an amendment prepared in conjunction with the Committee on Interstate and Foreign Commerce to insure that Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State are eligible for assistance provided in titles II and III of the act.

By a 1958 act of Congress, numerous small Indian rancherias in California were terminated from Federal recognition. Included among the conditions of termination was a requirement that the Indian Health Service bring certain community sanitation facilities up to standard. In many cases, however, this and other conditions were not fulfilled. In addition, the U.S. district court held that due process was denied dependents of terminated Indians in the termination act, and that these Indians should be eligible for Indian services. This amendment clarifies their eligibility.

Mr. Speaker, if I could have the attention of the chairman of the committee for just a brief moment, I want to clarify that those who were terminated under the rancheria program are in fact now qualified and eligible for coverage under this Indian health care legislation. Is the answer to that question in the affirmative?

Mr. UDALL. Yes. Mr. Speaker, if the gentleman will yield, that is the effect of the amendment to which the gentleman referred.

Mr. CLAUSEN. Mr. Speaker, I thank

the gentleman from Arizona (Mr. UDALL).

H.R. 6629 continues the congressional commitment of the 1976 act to meet the national policy goal of providing the highest possible health status to Indians and to provide existing Indian health services with the resources necessary to effect that policy. As my colleagues will remember, the 94th Congress adopted that policy goal by a vote of 310 to 9. The work should be continued to meet that goal.

Mr. Speaker, I therefore urge my colleagues in the House to pass H.R. 6629 without delay.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. CLAUSEN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Speaker, could we get into a little discussion of the cost of this legislation? What are we talking about in terms of cost?

Mr. CLAUSEN. Mr. Speaker, the overall amount—and I would ask for verification of this from the committee chairman—is $435 million. That is the authorized amount.

Mr. ASHBROOK. That is almost a half a billion dollars?

Mr. CLAUSEN. Almost a half billion dollars spread out over a 4-year period.

Mr. UDALL. Mr. Speaker, will the gentleman yield to me?

Mr. CLAUSEN. I am happy to yield to the committee chairman.

Mr. UDALL. Mr. Speaker, I want to make the point again that this is over a 4-year period, as shown on page 8 of the report. For 1981 the total is $87 million, it is $100 million in the next year, and in the peak year it is $132 million. In the fourth year it is $132 million.

Mr. ASHBROOK. Mr. Speaker, if the gentleman will yield further, may I ask, where does this money come from?

Mr. CLAUSEN. These are general fund authorizations.

Mr. ASHBROOK. General fund authorizations.

Mr. Speaker, I thank my colleague, the gentleman from California (Mr. CLAUSEN).

● Mr. CARTER. Mr. Speaker, I support H.R. 6629 which reauthorizes funding for programs under the Indian Health Care Improvement Act (Public Law 94–347) that would otherwise expire this fiscal year.

As you may recall this act was enacted in 1976 as a result of congressional oversight hearings which disclosed severe Indian health problems and deficiencies in Federal programs designed to provide health care to Indians.

That legislation was considered by the Interior Committee and by the Commerce Committee's Health and Environment Subcommittee on which I serve as ranking minority member. In order to address the wide range of Indian health problems we agreed to establish seven titles in the bill to provide a comprehensive and coordinated Federal effort.

These titles included programs to address the following needs:

Health manpower, including the need for a sufficient cadre of trained Indian health professionals;

Patient care;

Construction of hospitals and other health care facilities;

Elimination of unsafe water supplies and unsanitary waste disposal systems; and

Improved access to health resources for urban Indian organizations.

In sum, the Indian Health Care Improvement Act provided a framework for a sustained Federal effort to improve the status of Indian health.

And although improvements have been made significant problems still remain which support the need for continuing these authorities.

For example, if we compare the age-adjusted mortality rate for Indians and Alaskan Natives in 1978 with that of the U.S. population for all races in 1977 for various diseases we find that the Indian population has consistently higher rates.

For example, the age-adjusted mortality rate for Indians dying from 1.1 times as high as the comparable rate for the U.S. population.

For cirrhosis of the liver the Indian mortality rate was 4.8 times as high as that of the U.S. population. Indeed, alcoholism is one of the most serious health problems facing the Indian people today.

Another serious health problem among the Indian population is diabetes mellitus. We find that the age-adjusted mortality rate for Indians dying from diabetes is 2.6 times that of the U.S. population. And of course there are many serious complications that result from diabetes as well including blindness.

And finally, it should be noted that the death rate for Indians from tuberculosis is 6.2 times that of the U.S. population when age adjustments are taken into account.

In conclusion, Mr. Speaker, I would urge my colleagues to support H.R. 6629 so that we may continue our efforts to improve the status of Indian health in this country.

I would point out to my colleagues that the fiscal 1981 authorization level is substantially less than both the fiscal 1980 appropriation and authorization. This reduction was achieved primarily by elimination of title III, construction authority, which was determined not to be necessary any longer.

Finally, I wish to emphasize that the Commerce Committee still maintains its jurisdiction over Indian health legislation and our commitment to insure effective Federal programs in this area.

It was only because H.R. 6629 provided a straightforward extension of existing law, rather than major revision, coupled with the fact that our committee had a very full schedule, that we did not exercise jurisdiction over this reauthorization. A letter to Chairman UDALL from Commerce Committee Chairman HARLEY STAGGERS describing our committee's position appears in the committee report on page 7.

Again I urge favorable consideration of H.R. 6629.●

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CLAUSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 6629, as amended.

The question was taken.

Mr. ASHBROOK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

Mr. BROWN of California. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1250) to promote U.S. technological innovation for the achievement of national economic, environmental, and social goals, and for other purposes, as amended.

The Clerk read as follows:

S. 1250

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 "Stevenson-Wydler Technology Innovation Act of 1980".

SEC. 2. FINDINGS.

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, Federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

(4) Small businesses have performed an important role in advancing industrial and technological innovation.

(5) Industrial and technological innovation in the United States may be lagging when compared to historical patterns and other industrialized nations.

(6) Increased industrial and technological innovation would reduce trade deficits, stabilize the dollar, increase productivity gains, increase employment, and stabilize prices.

(7) Government antitrust, economic, trade, patent, procurement, regulatory, research and development, and tax policies have significant impacts upon industrial innovation

and development of technology, but there is insufficient knowledge of their effects in particular sectors of the economy.

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the Federal Government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(11) The Nation should give fuller recognition to individuals and companies which have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

SEC. 3. PURPOSE.

It is the purpose of this Act to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of centers for industrial technology;

(3) stimulating improved utilization of federally funded technology developments by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging and exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

SEC. 4. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

(1) "Office" means the Office of Industrial Technology established under section 5 of this Act.

(2) "Secretary" means the Secretary of Commerce.

(3) "Director" means the Director of the Office of Industrial Technology, appointed pursuant to section 5 of this Act.

(4) "Centers" means the Centers for Industrial Technology established under section 6 or section 8 of this Act.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 6 or section 8 of this Act that is owned and funded by the Federal Government, whether operated by the Government or by a contractor.

(7) "Supporting agency" means either the Secretary of Commerce or the National Science Foundation, as appropriate.

SEC. 5. COMMERCE AND TECHNOLOGICAL INNOVATION.

(a) IN GENERAL.—The Secretary shall establish and maintain an Office of Industrial Technology in accordance with the provisions, findings, and purposes of this Act.

(b) DIRECTOR.—The Secretary shall appoint a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of title 5, United States Code.

(c) DUTIES.—The Secretary through the Director, on a continuing basis, shall—

(1) determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;

(2) determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological developments in particular industrial sectors worldwide;

(3) identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;

(4) assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and social demands for goods and services and to promote productivity and economic growth;

(5) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

(6) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

(7) publish the results of studies and policy experiments.

(d) REPORT.—The Secretary shall prepare and submit to the President and Congress, within 3 years after the date of enactment of this Act, a report on the progress, findings, and conclusions of activities conducted pursuant to sections 5, 6, 8, 11, 12, and 13 of this Act and recommendations for possible modifications thereof.

SEC. 6. CENTERS FOR INDUSTRIAL TECHNOLOGY.

(a) ESTABLISHMENT.—The Secretary shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be nonprofit institutions and shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) ACTIVITIES.—The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university basic and applied research;

(2) assistance to individuals and small business in the generation, evaluation and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c) REQUIREMENTS.—Prior to establishing a Center, the Secretary shall find that—

(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to inventions conceived or made under the auspices of the Center; and

(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

(5) consideration has been given to any effects upon competition of the activities proposed under the Center.

(d) PLANNING GRANTS.—The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3).

(e) ADDITIONAL CONSIDERATION.—The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request. However, the establishment of a Center, the rendering of an opinion by the Attorney General, or any other activity undertaken or approved under this Act, shall not convey to any person, association, corporation or other business organization immunity from civil or criminal liability, or create defenses to actions under any antitrust law.

SEC. 7. GRANTS AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this Act, including activities performed by individuals. The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program.

(b) ELIGIBILITY AND PROCEDURE.—Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Secretary shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

(c) TERMS AND CONDITIONS.—

(1) Any grant made, or cooperative agreement entered into, under this section shall

be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

SEC. 8. NATIONAL SCIENCE FOUNDATION CENTERS FOR INDUSTRIAL TECHNOLOGY.

(a) ESTABLISHMENT AND PROVISIONS.—The National Science Foundation shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 6(a) through the conduct of activities as provided in section 6(b). The provisions of section 6(e) shall apply to Centers established under this section.

(b) PLANNING GRANTS.—The National Science Foundation is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan, as described under section 6(c)(3).

(c) TERMS AND CONDITIONS.—Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this Act shall be governed by the National Science Foundation Act of 1950 and other pertinent Acts.

SEC. 9. ADMINISTRATIVE ARRANGEMENTS.

(a) COORDINATION.—The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this Act, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development, the Environmental Protection Agency, National Aeronautics and Space Administration, Small Business Administration, Council on Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

(b) COOPERATION.—It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by or could contribute to, the programs established under this Act, should, within the limits of budgetary authorizations and appropriations, support or participate in activities or projects authorized by this Act.

(c) ADMINISTRATIVE AUTHORIZATION.—

(1) Departments and agencies described in subsection (b) are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this Act.

(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this Act.

SEC. 10. EXTERNAL ADVICE.

The Secretary shall require an appropriate advisory committee to review annually the activities of the Office and to advise the Secretary and the Director with respect to—

(1) the formulation and conduct of activities under section 5 of this title;

(2) the designation and operation of Centers and their programs under section 6 of this Act including assistance in establishing priorities;

(3) the preparation of the report required under section 5(d); and

(4) such other matters as the Secretary or Director refers to the Committee for review and advice.

The Director shall make available to the Committee such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

SEC. 11. UTILIZATION OF FEDERAL TECHNOLOGY.

(a) POLICY.—It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive, where appropriate, to transfer federally owned or originated technology to State and local governments and to the private sector.

(b) ESTABLISHMENT OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each Federal agency which operates or directs one or more Federal laboratories shall make available not less than 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. The agency head may waive the requirements set forth in (1) and/or (2) of this subsection. If the agency head waives either requirement (1) or (2), the agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(c) FUNCTIONS OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—It shall be the function of each Office of Research and Technology Applications—

(1) to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the Center for the Utilization of Federal Technology and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry; and

(4) to provide technical assistance in response to requests from State and local government officials.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) CENTER FOR THE UTILIZATION OF FEDERAL TECHNOLOGY.—There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories;

(3) utilize the expertise and services of the National Science Foundation and the existing Federal Laboratory Consortium for Technology Transfer, particularly in dealing with State and local governments;

(4) receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories;

(5) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(4); and

(6) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems.

(e) AGENCY REPORTING.—Each Federal agency which operates or directs one or more Federal laboratories shall prepare biennially a report summarizing the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section. The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.

SEC. 12. NATIONAL TECHNOLOGY MEDAL.

(a) ESTABLISHMENT.—There is hereby established a National Technology Medal, which shall be of such design and materials and bear such inscriptions as the President, on this basis of recommendations submitted by the Office of Science and Technology Policy, may prescribe.

(b) AWARD.—The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) PRESENTATION.—The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

SEC. 13. PERSONNEL EXCHANGES.

The Secretary and the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated to the Secretary for purposes of carrying out

section 6, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985.

(b) In addition to authorizations of appropriations under subsection (a), there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this Act, not to exceed $5,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985.

(c) Such sums as may be appropriated under subsections (a) and (b) shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this Act only such sums may be appropriated as the Congress may authorize by law.

SEC. 15. SPENDING AUTHORITY.

No payments shall be made or contracts shall be entered into pursuant to this Act except to such extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. HOLLENBECK. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. BROWN) will be recognized for 20 minutes, and the gentleman from New Jersey (Mr. HOLLENBECK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that I may have permission to revise and extend my remarks, and that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BROWN of California. Mr. Speaker, I should like to thank the gentleman from Florida (Mr. FUQUA), chairman of the Science and Technology Committee, and the committee's ranking minority member, the gentleman from New York (Mr. WYDLER), for their leadership and assistance during the committee's considerations of S. 1250—a bill "to promote U.S. technological innovation for the achievement of national economic, environmental, and social goals."

I would also like to thank the members of the Subcommittee on Science, Research and Technology and, in particular, Mr. WATKINS, Mr. ERTEL, and the ranking minority member, Mr. HOLLENBECK for their assistance in preparing the bill.

Mr. Speaker, as you well know, technological innovation is a vital component of our country's economic growth as viewed from both domestic and international perspectives. Traditionally, the United States has been a leader in innovation—however, recent trends indicate that the extent of this lead may be diminishing in relation to past U.S. industrial performance and vis-a-vis foreign industrial performance.

Its concern over the current state of technological innovation in the United States has led the Committee on Science and Technology, and specifically, the Subcommittee on Science, Research and Technology to undertake an extensive review of this issue during the 96th Congress. A series of hearings, reports, and recommendations have culminated in the committee's support of S. 1250, now titled the Stevenson-Wydler Technology Innovation Act of 1980.

S. 1250, as amended, provides for a multifaceted approach to improving the environment in which industrial innovation occurs. The bill acts to strengthen the relationships between Government, industry, and academia such that each sector can contribute to the innovation process in a program of shared responsibilities. The resources available in the Federal laboratories are acknowledged and an effort to improve the utilization of this knowledge and expertise is prescribed. Several of President Carter's industrial innovation initiatives are given legislative mandates through this bill.

Overarching thrusts of the bill are: First, to build links between generators of knowledge (universities and Federal laboratories) and users of knowledge (industry and State and local governments); and second, to build into the Federal Government a positive concern for the welfare of industry. It is the committee's judgment that these two matters have not heretofore received sufficient attention from the Federal Government, and the bill is intended to rectify the situation.

The major features of the bill are as follows:

CENTERS FOR INDUSTRIAL TECHNOLOGY (SECTIONS 6 AND 8)

The bill authorizes the Department of Commerce (DOC) and the National Science Foundation (NSF) to support centers for industrial technology. The centers would be similar to existing NSF centers that either focus on a specific technology area (for example, polymer processing) or on training university students to be technological entrepreneurs. The bill leaves fairly broad latitude for center variety. The "generic technology" centers which have been planned by the Department of Commerce would be covered by the bill.

The bulk of the dollars authorized would be authorized for the centers.

OFFICE OF INDUSTRIAL TECHNOLOGY (SECTION 5)

The bill establishes an Office of Industrial Technology in DOC. This would provide a legislative basis for the Office of Productivity, Technology and Innovation (OPTI) which is being formed in DOC. The Office would undertake policy studies and experiments, and would be in charge of centers for industrial technology established by DOC.

UTILIZATION OF FEDERAL TECHNOLOGY (SECTION 11)

The bill declares a policy that Federal technology should be fully used, requires the establishment of Research and Technology Applications Offices in Federal laboratories, and establishes a single center for the Utilization of Federal Technology (CUFT). CUFT is being established by DOC anyway, and the bill would provide a legislative basis for it.

NATIONAL TECHNOLOGY MEDAL (SECTION 12)

The bill establishes a National Technology Medal to recognize individuals making outstanding contributions to technology. The President has announced his intention to have such a medal, and this would provide a legislative basis for it, similar to the legislative basis for the National Medal of Science.

PERSONNEL EXCHANGES (SECTION 13)

This bill requires DOC and NEF to establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Government laboratories.

AUTHORIZATIONS (SECTION 14)

The bill authorizes a total of $285 million over 5 fiscal years (1981–85). No funds are authorized to the National Science Foundation; rather, NSF funds for purposes of the bill would be included in the annual NSF authorization bill.

In addition, the bill provides that one-half of 1 percent of the research and development budget of each agency with a Federal laboratory should be available for technology utilization efforts in the agency.

The bill, as passed by the Senate, included the centers for industrial technology and the Office of Industrial Technology which I described previously. The Science and Technology Committee made no substantive deletions from the Senate-passed version of S. 1250, but did add material on the utilization of Federal Technology, the National Technology Medal, and Personnel Exchanges. The committee also added a role for the National Science Foundation. NSF had no role in the Senate-passed version of S. 1250, except to cooperate with the programs established under this act, as specified in section 9. The Science and Technology Committee gave NSF a role in supporting centers for industrial technology and in supporting personnel exchanges.

In an effort to meet the administration's objections to parts of the bill, we have made some additional changes since S. 1250 was reported by the Science and Technology Committee. I would like to outline the major changes made to accommodate the administration's wishes in what follows:

1. PATENT PROVISION (SECTION 6)

The patent provisions stated in section 6 have been deleted. The administration has argued that these provisions should be deleted because they are inconsistent with its position on Government patent policy reform as articulated in H.R. 6933. Furthermore, the administration has argued that, should a uniform patent

policy bill like H.R. 6933 not pass this Congress, the inclusion of a new patent policy in section 6 will merely add another policy to the 26-odd patent policies under which the Federal agencies operate today. Lastly, the administration has argued that the intent of the patent provisions of section 6 can be met under existing patent policies at NSF and the Department of Commerce. That is, the administration has said that NSF and the Department of Commerce can and will promote the grant of exclusive rights to inventions, including the grant of full title, to industrial innovation centers at which the invention was conceived or under whose auspices the invention was made.

I lean toward the view that the patent provisions of section 6 are far better than most of the patent policies under which Federal agencies are currently forced to operate. However, because the administration has assured us that the intent of section 6's patent provisions will be met without explicit legislative language, the patent provisions have been deleted from the bill before us today.

2. ANTITRUST PROVISION

Section 6 contains a provision which permits NSF and the Department of Commerce to request an opinion from the Attorney General as to whether a proposed joint research activity of a center would violate any of the antitrust laws. The administration requested the inclusion of language that would make explicit that the Attorney General's opinion is only advisory and should not be looked upon as creating an absolute defense to subsequent actions brought under any antitrust law. The requested language has been included in the version of S. 1250 before us. Also, the making of a request for an opinion has been made optional rather than mandatory.

3. NATIONAL INDUSTRIAL TECHNOLOGY BOARD

S. 1250, as reported by the Science and Technology Committee contained a provision in section 9 which established a National Industrial Technology Board to advise the Secretary of Commerce and the Director of NSF with regard to matters within the act's purview. This section has been changed to allow the Secretary of Commerce to assign the functions of the Board, as designated in the act, to an existing advisory committee. Some of the requirements of membership and terms have also been changed. Again, these changes were made at the administration's request.

4. UTILIZATION OF FEDERAL TECHNOLOGY

Section 11 of S. 1250 requires the Federal Government to strive, where appropriate, to transfer federally owned or originated technology to state and local governments and to the private sector. Specifically, the act requires a commitment on the part of all agencies with Federal labs to operate offices of research and technology applications and to allocate a small portion of their research and development budgets (at least one-half of 1 percent) to support the technology transfer function at the agency and its laboratories.

As a result of strong administration opposition to this provision, we have included a waiver provision which permits Federal agencies to waive the budget and staffing requirements of section 11(b) if the agency transmits to Congress a written justification for the waiver with a full and complete explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency. Given the inclusion of the waiver provision, I believe that section 11 now allows each Federal agency the kind of flexibility it may need to meet the objectives of section 11 within the context of differing agency characteristics.

I believe that the present form of the bill does or should meet all of the administration's most substantial objections to S. 1250. I strongly urge my colleagues to join with me in supporting this bill. The Stevenson-Wydler Technology Innovation Act of 1980 is a step in the right direction for the U.S. economy as a whole and for the health of technological innovation in particular. Thank you, Mr. Speaker.

□ 1350

Mr. Speaker, I want to give an opportunity to others who wish to speak on the bill to do so, and I note the approach of the distinguished chairman, whose contribution I have already recognized in this matter. I would be happy to yield to the gentleman from Florida (Mr. FUQUA) for whatever statement he may wish to make.

Mr. FUQUA. Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980.

Every Member of this House is aware of the economic problems the country is facing. Inflation continues unchecked, our balance of trade is deeply in the red, and the increase in productivity of the Nation's work force has stopped in its tracks. We need to do something.

The Committee on Science and Technology has been working throughout the 96th Congress to understand the nature of our problems in innovation and productivity and to come up with solutions. I would like to compliment the gentleman from California, the Honorable GEORGE BROWN, for the leadership he has taken through the Subcommittee on Science, Research and Technology in studying these problems.

While the gentleman from California has conducted dozens of sessions of hearings on innovation and productivity, the full Committee on Science and Technology has also held many sessions. I have had the pleasure of chairing most of them.

I particularly remember the joint hearing we held with the House Committee on Small Business and the Senate Committees on Commerce and Small Business last October. That day we heard from the administration regarding the President's industrial innovation initiatives. The bill before the House now provides a legislative basis for several of the initiatives put forth that day. The principal thrusts of the bill are those of the President's industrial innovation initiatives on which there is agreement between the administration and Congress.

The gentleman from California's statement explains these thrusts, so I will not repeat them. The bill is quite modest in its provisions; we are not busting any budgets. The Committee on Science and Technology will be considering further legislation in the next Congress to help solve our innovation and productivity problems. The President, I should note, took the second step 2 weeks ago in his "economic program for the eighties." We are looking at that program carefully. I am pleased to see the steps the President is proposing.

As I mentioned a moment ago, the bill now before the House, S. 1250, provides for measures on which there is wide agreement. The bill has enjoyed bipartisan support in the Committee on Science and Technology. It has reached the floor of the House without a dissenting vote in subcommittee or committee. I especially appreciate the support for this bill provided by our colleague, the gentleman from New York, the Honorable JACK WYDLER, ranking minority member of the Committee on Science and Technology.

The gentleman from New York, as Members are aware, is retiring from Congress at the end of this session. His retirement is one I am sure his constituents would not have voted for if he had put them to the test.

JACK WYDLER and I were both sworn in for the first time on January 3, 1963, 18 years ago. We both joined the Committee on Science and Astronautics and the Committee on Government Operations. After 16 years we both arrived at the top of our party's seniority list of the Committee on Science and Technology. In our 18 years of common service, the lively debates JACK and I have had in our two shared committees would fill a large book. I will miss the gentleman from New York, and the committees will miss him.

As a tribute to the contributions of the gentleman from New York, in the version of the bill which is before the House now, which is shown in the CONGRESSIONAL RECORD from last Friday, I have proposed to add JACK WYDLER's name to the title of the bill. It is the Stevenson-Wydler Technology Innovation Act of 1980.

Mr. Speaker, the Stevenson-Wydler bill is a good bill and an urgently needed bill. I urge Members to vote for it. We need to get America moving. Thank you.

Mr. BROWN of California. I thank the gentleman very much for his contribution.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Oklahoma (Mr. WATKINS), who has been one of the staunchest members of the subcommittee in his concern for the interests of the health of American business and industry and who has made a substantial contribution to the perfection of this legislation.

Mr. WATKINS. Mr. Speaker, I am happy to rise in support of the bill S. 1250, the Stevenson-Wydler Innovation Act of 1980. I believe this bill can go a long way toward improving the climate for technological innovation in this country and I urge my colleagues to join with me in supporting this bill.

Mr. Speaker, I would like to commend my colleagues on the Science, Research, and Technology Subcommittee, and its chairman, Mr. BROWN, for the excellent job they have done with this bill. I would also like to commend our committee chairman, Mr. FUQUA, and the committee's ranking minority member, Mr. WYDLER, for their leadership and assistance during the committee's consideration of this bill.

I would particularly like to commend my Science Committee colleagues for their support of section 11 of the bill entitled, "Utilization of Federal Technology." This section is especially important to me and I believe it is a critical element of the bill.

Mr. Speaker, it is shocking to realize that, with few exceptions, the vast technology developed by federally funded programs since World War II has not resulted in widespread "spin-offs" of additional applications of practical products, processes, and services in our country's economy. But such "spin-off" applications can make a substantial impact on the Nation's economic growth, industrial productivity, and employment gains. They can also help revitalize our local economies. Thus, transfer and utilization of federally funded technology with a view toward solving critical national and local problems is truly an endeavor which promises great public benefits.

To achieve these public benefits, we need to shift the focus of Federal concern from simply telling local and State governments and commercial users about promising technologies to actually transforming these technical resources into an ultimately useful form. Cooperation and communication between the actual provider and the potential user are essential elements in this process.

Mr. Speaker, section 11, in which I had a major role in writing, should go a long way toward accomplishing the goal of effective technology transfer between the Federal R. & D. enterprise and State and local governments as well as the private sector. Again, I strongly urge my colleagues to join with me in supporting this bill.

Mr. BROWN of California. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. ERTEL), a member of the subcommittee who has also made major contributions to the drafting of this legislation.

Mr. ERTEL. Mr. Speaker, I appreciate the gentleman's yielding and those kind words. I would like to compliment the chairman of the committee and the chairman of the subcommittee for bringing out this important legislation. I think it is important to the Nation.

I would also like to add my words to the chairman of the subcommittee in praising the gentleman from New York (Mr. WYDLER). Although I have only served on this committee for 2 years, I have had a great deal of opportunity to see his work on the committee, and I think he has done an outstanding job. The Republican minority ought to be proud to have such a member as part of their group, and I am sure that the committee will miss his endeavors in the future. He has certainly lent an enlightened view to many of the discussions we have had, and I have certainly appreciated his insights and acumen.

Mr. Speaker, we have heard about the need to improve productivity and innovation in this Nation, but unfortunately we have seen almost no action. This legislation offers us the opportunity to stop talking about our problems and start doing something about them.

There are many ways to approach the problem of declining productivity and innovation, but an important underpinning is bringing industry, Government and academia together to work in concert. This is precisely what this legislation does. We are talking about pooling our resources to make substantive improvements in fundamental industrial and technological processes. Not exotic, high technology hardware, but simple and basic activities such as welding, cement manufacturing, or making better use of the mineral properties of basic raw materials. These are activities which underlie a vast range of manufacturing and industrial processes.

Everyone benefits from improvements in these areas; but small businesses will find critical value in this work. Small businesses most often find themselves in need of improved manufacturing techniques and least able to pay for the necessary research and development. Generic technology centers support the basic tenant that made America's economic system strong to begin with—do it better.

This legislation addresses another area of great importance. How often have we heard that there is little value in the research done in our Federal laboratories? The basis for this statement is that little use is made of the research conducted at these institutions. The failure is not because there are not important applications for the work done in the Federal labs. Instead, there is no incentive to make use of the work. Even when a researcher wants to find applications, no mechanism exists for transferring this work to deal with our problems. That is, there is little or no technology transfer. Instead, the research information collects dust on the shelf. This bill takes an important step in changing this situation.

Quite often, technology transfer is discussed but we see little action. When action is taken, it involves transfers to other countries, while we ignore making use of our research at home. This legislation would create a mechanism within our large Federal laboratories to disseminate the work being conducted and to find applications in the United States. This work would be supported by a small part of the labs' budget—no additional money.

A few cities in this country have experimented with assigning an individual to see if anything the laboratories are doing can solve local problems. These experiments have been extremely successful. But we all know that our cities are facing major financial difficulties. Most do not have the luxury of turning someone loose on the Federal labs. Therefore, we must insure that the labs themselves meet their responsibility to make the fullest possible use of Federal R. & D. activities.

Let me give you an example of how technology transfer should work. Nearly every city has an assortment of records such as deeds. Over time, many of these records fade and can no longer be read. Community development is significantly affected by property ownership; however, if legal questions arise and deeds cannot be read, cities can face serious problems. The city of Philadelphia had such a problem. The city's science adviser had heard that NASA was working on a way to enhance photographs from its Mars missions and he asked if this process could be used on records such as deeds. NASA tried it out and it worked.

This is an example of a clear and important application of Federal lab work. We need to encourage this type of technology transfer; but unless we build in the necessary mechanisms to make it possible, our citizens are not going to be getting a full return on their investments.

Finally, let me say that when the Science and Technology Committee was working on this legislation, concerns were raised about how patents would be treated. The legislation contained a section which dealt with the allocation of patent rights for inventions coming out of the work of the generic technology centers. I supported these provisions, but the committee has been assured by the administration that it already has the authority to implement the policies delineated in that part of the bill and would act in a manner consistent with the intent of the committee.

In addition, legislation is moving toward floor consideration which would create a uniform Federal patent policy. It is more preferable to have one comprehensive policy, than to have a large number of policies as we have today. Consequently, those parts of the bill dealing with patent treatment have been dropped. It is my hope that the administration's assurances will be followed.

This legislation is an important step in an effort to improve innovation and productivity in the Nation. It gives us a chance to stop talking and start acting. I commend the chairmen of the full committee and the subcommittee for their work on this critical issue, and I urge my colleagues to vote for the bill.

□ 1400

Mr. BROWN of California. Mr. Speaker, I reserve the balance of my time.

Mr. HOLLENBECK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980. As a cosponsor of the earlier House version of this bill, at this time I want to pay tribute to my colleague, JACK WYDLER, the retiring ranking minority member of our Science and Technology Committee, for his efforts over the years to assure a strong national R. & D. program. In particular, I would commend his work with NASA in promoting that agency's technology utilization program which seeks to facilitate the spinoff or transfer of federally funded R. & D. to

civilian uses. For many years now he has stood up very strongly for the principle that the results of Federal research should be shared throughout the society and I think it is a fitting tribute that this legislation, when passed will bear his name. I also commended the chairman of the full committee Mr. FUQUA and the subcommittee Mr. BROWN for their efforts in this area.

Mr. Speaker, I do not need to recite the litany of declining U.S. productivity. We can see its effects. I should note that it is particularly serious in some of our older industries; however, there are ominous signs, such as the extraordinarily high quality standards of Japanese electronics computer chips which suggest that even in those industries where the United States is now preeminent, we shortly face very stiff competition from the Japanese.

Mr. Speaker, I do not know how many of my colleagues here read last week's announcement that the Commerce Department is sponsoring three cooperative research centers to undertake research in so-called generic technologies.

These are technologies where the industrywide benefits of basic research would be substantial but where the return to any one company is relatively small so that it is impossible to justify the necessary funding by one company alone. The three centers which the Commerce Department is setting up concern welding and joining, lubrication, and power-metal processing. The Washington Post article noted that only $5.2 million was set aside to start the three centers because of budget restraints by the White House.

Mr. Speaker, these three centers are one example of the Centers for Industrial Technology which would be mandated by section 6 of the bill we are considering today. We would agree that far greater effort should be devoted to this type of activity which would promote a greater degree of cooperative technological innovation between scientists in industry and in universities. This bill is a positive step forward and I hope that by its passage Congress will impress upon the administration the urgency of the task before us. Reinvigorating the economy cannot be solved by penny-pinching grants of $5.2 million or a $20 billion tax cut program such as the President announced a week ago. The tasks are far greater.

The generic technology centers would be sponsored by the National Science Foundation as well as by the Department of Commerce. The National Science Foundation has for a number of years sponsored the famous cooperative industry-university polymer research center at MIT. It is upon that successful example that this bill draws its original inspiration. For this reason our bill, in contrast to the original Senate version, also gives the National Science Foundation a mandate to continue its activities in this area.

Mr. Speaker, I am pleased to see that S. 1250 provides a mandate for the newly created Office of Industrial Technology in the Department of Commerce which would seek to evaluate new technological developments, international technology transfers as well as the performance of U.S. industrial innovation relative to other nations. This office would also identify technical needs and opportunities across industrial sectors. The office would not formulate a national industrial policy which I firmly believe we must have in the future and which the findings of the bill support, but it would at least attempt to identify emerging problems and opportunities in promoting industrial innovation.

Mr. Speaker, I have said here and elsewhere many times that the United States needs a comprehensive national reindustrialization policy at the highest level which would seek to enunciate long-term industrial and economic goals as well as policies to achieve those objectives. I believe it is essential that we consider this process of reindustrialization over a 30- or 50-year lifetime throughout the lifecycle of the coming generation of new technologies. We are one of the few nations who does not have a comprehensive national industrial policy, and I believe the time is coming to mandate such a policy. In the near future I will introduce or cosponsor further legislative proposals to put into effect comprehensive national policies for industrial innovation. In the meantime, the new Office of Industrial Technology would provide a first step by spotting emerging industrial problems and opportunities.

Mr. Speaker, there are a number of specific areas I would like to note which I believe it will be very important for the administration to bear in mind as it carries out this legislation over the coming years. First, I would mention patent policies for inventions and innovations produced by the centers for industrial technology. In view of prospective legislation which may pass the House this year, at the request of the administration, we have eliminated patent provisions which are contained in the committee bill. They would have given a center, which incidentally is a nonprofit, nongovernmental institution, the option of acquiring title to any invention. We know from testimony before our committee that exclusive license or title must be given to an inventor if commercialization is to proceed. Since the whole point of this bill is to stimulate the commercialization of industrial innovations, then we must concede the principle of exclusivity with regard to patent rights if these innovations are to be put into practice. However, in the interest of consistency we have not enunciated a specific patent policy in this legislation.

In our negotiations with the administration they have agreed that within the mandates of the Department of the Department of Commerce and the National Science Foundation, the centers will be given the option to acquire title to any invention made under their auspices as a matter of customary practice. I hope that this policy will be put into practice with a minimum of bureaucratic and administrative redtape and with a minimum of administrative delay for the potential patent holder. Mr. Speaker, I hope that the administration honors this agreement because it represents a very substantial compromise on our part. We firmly believe that if commercialization is to proceed on a wide scale, it is essential that exclusive rights be given to develop the inventions which grow out of this program.

Finally, Mr. Speaker, section 11 of this bill requires that Federal laboratories establish Offices of Research and Technology Applications and that the Department of Commerce establish a Center for the Utilization of Federal Technology. The purpose of these offices within a laboratory is to promote the transfer of inventions and research conducted by each laboratory to State and local governments and to the private sector. The purpose of the Center for the Utilization of Federal Technology is to coordinate programs for the transfer of technology across the Federal Government. I strongly support the provision which requires any laboratory with a budget of over $20 million to assign at least one professional full-time to its Office for Research and Technology Application.

I also strongly support the requirement that Federal agencies designate at least 0.5 percent of their research and development budget for technology transfer. In many cases, these amounts are substantially less than the agencies are carrying out under their own initiative. S. 1250 would give the function of technology transfer a definite mandate for all Federal laboratories, not just for a select few such as NASA.

In some cases, technology is being developed which simply does not have conceivable application to civilian uses or to State or local government. In these and other extraordinary circumstances, an agency would be permitted to waive this requirement upon writing a written justification to the Congress. We do not intend to be inflexible; however, we do feel that this commitment represents at least a minimal goal for the important function of technology transfer at Federal laboratories.

Mr. Speaker, in conclusion I urge my colleagues to support S. 1250 today. Once again let me say that I think that passage of this bill will be a fitting tribute to our distinguished colleague, the ranking minority member of the Science Committee, JACK WYDLER.

Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. CARNEY).

Mr. CARNEY. Mr. Speaker, I, too, stand in support of S. 1250, the Stevenson-Wydler Innovation Act of 1980. As a member of the Committee on Science and Technology, I would like to associate myself with the remarks of both the majority membership and the minority membership who spoke so eloquently about the bill, as well as about the gentleman from New York (Mr. WYDLER), the ranking minority member of the Science and Technology Committee.

As a member of the Long Island delegation where the gentleman from New York (Mr. WYDLER) serves as the caucus chairman, I say without hesitation that the gentleman from New York (Mr. WYDLER) certainly understands the necessity of this bill and how it would help our community back on Long Island. I

believe I share this view with all six Members from that community. I can say that without hesitation that the Long Island community from one end of the island to the other will miss the gentleman from New York (Mr. WYDLER) in the Congress of the United States.

I would just like to add my praise for the 18 years of fine work he has done in the Congress of the United States.

Mr. HOLLENBECK. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. WYDLER).

Mr. WYDLER. Mr. Speaker, I thank the gentleman for yielding.

Of course, it is an unusual experience to any Member to sit on the floor of the House and listen to himself praised. It is also a pleasant experience, however, so it is one that I thoroughly enjoy. I thank all the people that have participated in that praise; the chairman of the committee, the gentleman from Florida; the chairman of the subcommittee, the gentleman from California; the ranking member of the subcommittee, the gentleman from New Jersey; the gentleman from Pennsylvania, and my colleague, the gentleman from New York. I do appreciate their kind words and I think that I am proud in a sense to have my name associated with this legislation. It is important.

I only say in summary of those remarks that I believe our country in the years ahead in looking toward its economic future and what that future will be will come more and more to rely on the development of new technology to keep us as a nation and as a people enjoying the type of standard of living that we have become used to and that we hope to improve upon in the years ahead for our children. We are not going to compete in this world because we have low wages in our country, and I do not think in a true sense we are going to be able to compete because our workers are that much more productive than some of the workers in other countries of the world; but the one area in which the United States can maintain its support in the years ahead would be in technology.

□ 1410

So the development of that technology is something of the highest order and should be of the highest priority for this Congress.

I would only say I hope as we develop that technology and enjoy its benefits—the benefits, of course, would be a greater number of jobs for our people and higher paying jobs for our people—as we develop these new products from the technology that we learn as people to enjoy the benefits of that, and the benefits from that are that we cannot only use these new products ourselves, but sell them to other countries of the world.

To do that we are going to have to mature, in my judgment, very greatly as a people and stop finding one way after another, and one reason after another, to deny ourselves foreign markets in so many places in the world. We have, as I have traveled around the world and looked at the situation, literally raised a myriad of regulations, not regulations in our country against our people, but regulations in every country, foreign country in the world against the introduction of American products and materials in those countries, for one reason or another, some good, some not so good, many questionable, but for one reason after another when one goes to these countries, country after country we find that the United States has managed to find some reason that they do not want to do business with that country, or they are prohibiting the sale to that country of certain types of material from the United States, most of it for noble causes, but most of it, unfortunately, totally ineffective since the countries simply buy the materials from other countries in the world.

In my judgment, if we were to tear down the artificial barriers we have erected as a nation around the world, we would find that we could "double," and I use that word, double the exports of the United States to the world. That would make a dramatic difference in the economic situation in which we find ourselves. If that were to come about a lot of our unemployment problems, a lot of our economic problems, and, yes, indeed, a lot of our inflationary problems would begin to turn back in our favor. We have lost a lot of that advantage, in my judgment, over the last 20 years of our Nation's history because of this constricting of our powerful trade potential that we have created as a problem for ourselves.

So I do hope that the House will, indeed, pass this legislation. It is a small but important step on the road to improving and increasing the technology that we make available to our industry, to make it more competitive, and to make it more productive. In that respect it holds out a great hope for the future betterment of the economic position in which our country finds itself.

Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980. Let me say that I am deeply honored by the initiative of the chairman of the Science Committee, and the chairman of the Subcommittee on Science, Research, and Technology to include my name in the title of this bill. I say this because I believe that the reindustrialization of this country and the very invigoration of technological innovation are among the most pressing tasks facing this Nation for the next generation. I believe this legislation, which would set up an Office of Industrial Technology to evaluate the status of industrial innovation and which would mandate joint university-industry centers for industrial technology, is extremely important to that end. I believe that this bill represents a real step forward in the attempt to try and bridge the difficult gap between government and industry by creating a new form of industry-university partnership in applied research. Somehow we must develop new mechanisms which go beyond the traditional spin-off of research such as has occurred mainly from DOD research. And it is also evident that simply having the Government directly carry out research in its own laboratories is not sufficient. The mere existence of ideas does not lead to their implementation. This is true in Government as well as universities and industry, and this bill is directed at making the university a real third party.

Mr. Speaker, a further extremely important provision added to the original bill introduced by Senator STEVENSON is contained in our section 11. That section would mandate the formation of Research and Technology Application Offices at Federal laboratories as well as a Center for the Utilization of Federal Technology at the Department of Commerce. These offices, as well as the Center, would carry out the promotion of technology transfer from Federal Laboratories and Federal research programs to State, local governments, and to the private sector. Federal agencies would be required to devote one-half of 1 percent of their R. & D. budgets to the function of technology transfer, and Federal laboratories with a budget of over $20 million would be required to have at least one full-time professional working on technology transfer. I think the committee has been extremely reasonable in trying to consider some of the administration's reservations about this provision. In order to give flexibility, we have compromised by allowing any agency to waive the set-aside requirement. The waiver would be by congressional notification, including the agency's plans for conducting its own technology transfer program.

Mr. Speaker, for years now, as I have overseen the activities of the National Aeronautics and Space Administration, I have supported that Administration's technology utilization program. I think in many ways they have done a fine job but I think we can go a bit further. All our national laboratories should reach beyond their traditional departmental or agency missions and within limits serve broader purposes such as improving the productivity of private industry and of State and local governments. This bill would greatly encourage this broader role for Federal research programs as well as for our national laboratories.

Mr. Speaker, let me say that authorizations proposed under this bill are reasonable in relation to the extraordinary need which our society faces over the coming generation to reinvigorate our economy. I believe that the private sector is the primary place where this reinvigoration must occur, but Government can provide an important catalytic role in supporting research and development in certain areas such as so-called generic technologies. In a complementary vein, I was successful in having an amendment adopted to the National Science Foundation authorization for three university-based technology innovation centers. These centers would not only encourage university-industry cooperation in basic research but also train potential entrepreneurs in technology commercialization. To achieve the purposes of this bill will require well-tailored seed money. Even more important is the creation of an innovative climate through appropriate national policies for private sector efforts.

Mr. Speaker, in conclusion, I urge my colleagues to support S. 1250. Once

again, let me say that I am deeply honored to have my name associated with this bill and I wish to thank my colleagues on the Science Committee, Chairman FUQUA, Subcommittee Chairman BROWN, and ranking minority member of the subcommittee, "CAP" HOLLENBECK, for their initiative in honoring me by naming this bill after me. It is a highly worthwhile endeavor and I hope it is but the first of the many steps we must take in the reinvigoration of American technology development.

Mr. HOLLENBECK. Mr. Speaker, I have no further requests for time.

Mr. BROWN of California. Mr. Speaker, let me just summarize very briefly. I think the spirit and content of the bill has been conveyed adequately.

If the gentleman from Ohio were here, I think he would want to know just how much we are honoring the gentleman from New York (Mr. WYDLER) in this legislation. I want him to know that the authorization for the next fiscal year contained in this legislation is $24 million, a substantial part of which has already been requested by the administration for their budget. This is hardly as much as a new Federal building in the gentleman's district would cost, so I think we probably are getting a bargain in this legislation.

● Mr. RITTER. Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980 and compliment my colleagues on the Science and Technology Committee for the outstanding work they have done in bringing this legislation before the full House for consideration today.

I also extend my best wishes to Congressman WYDLER and want him to know of my great admiration and respect for him and the job he has done over the years for the American people. This Congress, and the people we represent, will sorely miss JOHN, for he is a tremendous asset to this Congress.

As I speak in support of this proposed legislation today, I bring a somewhat unique-to-the-Congress background. Being a scientist I have had the opportunity to actively participate in both university and industrial research. In addition, I have had the opportunity to interact with a variety of Federal laboratories which carry out research so valuable to many technological advances. I have also had the experience of small businesses. I know from firsthand experience the importance of bringing research to the product innovation, market stage.

In my view, these entities should share the common goal of encouraging and stimulating technological innovation. I am pleased that the bill before us today encompasses that common objective. Each of these vital elements provide skills and outlooks that must now be focused in support of stimulating greater innovation and productivity. The existence of the centers this legislation would establish for industrial technology is an important step to redirecting the more basic knowledge orientation of the universities toward the more market oriented objectives of industry.

That is what this measure is attempting to do and I applaud the fact that it is under consideration here today and I urge my colleagues to support this action. ●

Mr. BROWN of California. Mr. Speaker, under the circumstances, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. BROWN) that the House suspend the rules and pass the Senate bill, S. 1250, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

EMPLOYMENT OF PERSONAL ASSISTANTS FOR HANDICAPPED FEDERAL EMPLOYEES

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7466), to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status, as amended.

The Clerk read as follows:

H.R. 7466

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees

"(a) For the purpose of this section—

"(1) 'agency' means—

"(A) an Executive agency; and

"(B) the Library of Congress;

"(2) 'handicapped employee' means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

"(3) 'nonprofit organization' means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

"(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties and who shall serve without pay from the agency, without regard to—

"(A) the provisions of this title governing appointment in the competitive service;

"(B) chapter 51 and subchapter III of chapter 53 of this title; and

"(C) section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

"(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion or the travel period involved. Any payment under this subsection to such an individual may be made either directly to that handicapped or by advancement or reimbursement to the handicapped employee.

"(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

"(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

"(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

"(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.".

(b) The item relating to section 3102 in the analysis of chapter 31 of title 5, United States Code, is amended to read as follows:

"3102. Employment of personal assistants for handicapped employees, including blind and deaf employees."

(c)(1) Section 604(a)(16)(A) of title 28, United States Code, is amended by striking out "3102" and inserting in lieu thereof "3102(b)".

(2) Section 410(b)(1) of title 39, United States Code, is amended by striking out "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees)," and inserting in lieu thereof "section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees),".

SEC. 2. Section 7(d)(1) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting "; and" in lieu thereof, and by adding at the end thereof the following new subparagraph:

"(C) such members—

"(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

"(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties."

SEC. 3. The amendments made by this Act

shall take effect sixty days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. LEACH of Iowa. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Colorado (Mrs. SCHROEDER) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. LEACH) will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7466 authorizes Federal agencies to employ personal assistants for employees with severe physical disabilities. By so doing, the bill permits the Federal Government to meet its responsibility for making reasonable accommodation to the special needs of handicapped individuals, as required by the Rehabilitation Act of 1973. Currently, agencies have the authority to hire readers for blind employees and interpreters for deaf employees. H.R. 7466 extends this authority to the employment of personal assistants for employees with severe physical disabilities.

This does not mean that each handicapped employee will have a full-time personal assistant. Most disabled employees are able and prefer to perform virtually all job-related functions by themselves. From time to time, a disabled employee might need someone to change the tape on a dictating machine or someone to push their wheelchair down to the cafeteria or someone to assist them in the bathroom. Since agencies now lack authority to employ for this purpose, handicapped employees must rely on colleagues to volunteer. The volunteer system is, however, unreliable and demeaning. This bill permits agencies to assign employees to perform these functions.

The bill, also, provides for the use of personal assistants who are paid for directly by the disabled employee or who are paid for by voluntary organizations. Further, it allows the Government to pay the costs for a traveling companion who is needed by handicapped employee while on travel. Additionally, H.R. 7466 extends this authority to members and staff of advisory committees.

The Govemment is cheating itself if it does not make use of the talents of our handicapped citizens. While employing disabled citizens reduces the Government's burden to support those who cannot work, the better reason to employ handicapped Americans is because many of them have skills, talents, and expertise that our Government needs. The Federal Government should be in the forefront of efforts to bring handicapped citizens into the mainstream of society. This bill will help in these efforts.

The cost of this legislation should be slight. I ask unanimous consent that the cost estimate of the Congressional Budget Office, which we received too late to place in the comittee report, be printed in the RECORD at this point.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Speaker, I introduced this legislation at the request of the Office of Personnel Management on May 29, 1980. My Subcommittee on Civil Service held 1 day of hearings on August 20. The Committee on Post Office and Civil Service ordered the bill reported on August 27, without dissent.

While this legislation makes only small changes in the law, it is very significant because it reaffirms the commitment of this Congress to bringing disabled citizens into the mainstream of American life. I urge its adoption.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 4, 1980.

Hon. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7466, a bill to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped federal employees both at their regular duty station and while on travel status, as ordered reported by the House Committee on Post Office and Civil Service, August 27, 1980. The bill would not provide any additional budget authority, nor would it change personnel ceilings. It is assumed that costs of implementation would be met from existing agency funds.

Without historical evidence, it is not possible to estimate the precise costs that would be associated with this amendment if it were enacted. Based on a review of this bill and data supplied by the Office of Personnel Management, CBO would anticipate a maximum annual cost of $2.7 million to be associated with enactment of this bill. To the extent that services provided under this amendment are being provided by existing employees, and that employees hired as personal assistants will also perform other, currently funded duties, the costs would be less.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. HARRIS. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I am happy to yield to the gentleman.

Mr. HARRIS. Mr. Speaker, I simply want to take a moment to congratulate the gentlewoman for the work she has done on this bill. This may seem like a small thing to some, but I think it will be of great help to those active, productive handicapped workers with very little cost.

I think one of the confusions on the bill was that people imagined these helpers were going to be full-time helpers. They are not. They are people that are simply scheduled in a supplementary way to give the help and assistance that we receive such a large dividend on.

I want to congratulate the gentlewoman from Colorado (Mrs. SCHROEDER) for her leadership in bringing this bill to us. It is a good bill.

Mrs. FENWICK. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield.

Mrs. FENWICK. I must ask where this leads. Is it correct, as this sheet I have before me states, that some 7 percent of the 2.8 million Federal employees are handicapped? That means 196,000 people.

As I also read, if they want to travel, or if they would need to travel, they would be provided an assistant. Why would it not be wiser to encourage the volunteer activities that are already taking place?

□ 1420

Mrs. SCHROEDER. Those figures are a little bit deceptive. What we are talking about here are Federal employees with severe physical handicaps. When one says "handicaps" in a generic form, it encompasses a broad range.

Mrs. FENWICK. I would like to say this to my colleague: I am sure she knows that the Department of Labor classified at one time—and I hope it has now been changed—alcoholics and drug addicts as handicapped. We have to be careful in this House not to draw up legislation in such a way as to allow interpretations by the agencies far beyond what this House ever intended.

Mrs. SCHROEDER. If I can take some time back, I would like to assure the gentlewoman from New Jersey that we have exempted the alcoholic classification as a handicap. We are talking about severe physical—and I underline "physical"—handicaps, and the agency has the authority to look at whether or not those needs are really, No. 1, the needs of the Government and, No. 2, justifiable.

Mrs. FENWICK. I must ask my colleague if this is the time, with the deficits we have and the national debt we have, to inaugurate these new programs. I remind my colleague—I have only been here 5½ years—that when I came, the interest on the national debt was some $32 billion, and now it is around $70 billion. We cannot continue to inaugurate new programs which are going to hire people who then come on the Federal payroll.

Mrs. SCHROEDER. Again, if I may reclaim my time, we are certainly not starting new programs. This is from the 1973 act, and I think all of us know that there are many, many efficiencies involved in making sure people with handicaps can be gainfully employed rather than just saying we are going to put them all on welfare or on disability retirement. This bill makes a minuscule addition to the current law.

Mrs. FENWICK. What costs is the gentlewoman assigning?

Mrs. SCHROEDER. The maximum amount of costs that the Congressional Budget Office figured it could possibly cost would be $2.7 million. That is absolutely top dollars.

Mrs. FENWICK. Is that not the way we start everything? We started energy aid for the poor at $200 million; it is now

$1.2 billion. We started food stamps at $54 million; they are now $9.5 billion.

Mrs. SCHROEDER. Again, if I may reclaim my time, I think the gentlewoman realizes the other alternative is to put all of these people on disability retirement.

Mrs. FENWICK. It is not.

Mrs. SCHROEDER. We know that the disability retirement system is very expensive.

Mrs. FENWICK. It is not the only alternative.

Mrs. SCHROEDER. I think it is.

Mrs. FENWICK. The alternative is to put them into jobs where they do not have to travel. Not every single Federal employee has to travel.

Mrs. SCHROEDER. Again if I may reclaim my time, we are not talking about every single employee having to travel. In our hearings we heard from people who were injured in the line of Federal duty. They much preferred staying at their desks rather than taking disability retirement. With a very minuscule amount of money we can keep them there and not drain the disability retirement funds. Other people who are perfectly capable to do other things can also be made to fit into this category. I think this makes an incredible, inordinate amount of sense.

Mrs. FENWICK. This is a new program; it should not come to the floor under suspension.

Mrs. SCHROEDER. I would suggest the gentlewoman read the hearings because I think they would answer her questions.

Mr. Speaker, I have no further requests for time. and I would reserve the remainder of my time.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wholeheartedly endorse the provisions of H.R. 7466, which will permit the employment of personal assistants for handicapped employees at their regular duty stations as well as when on travel status, just as readers for the blind and interpreters for the deaf are presently employed.

The Federal Government, if it is to fulfill its role as a model employer must make good its intentions to usefully employ the skills and services of the Nation's handicapped. The employment of an assistant is essential both to fulfill the severely physically handicapped's medical needs and to allow him or her to function as efficiently and independently as possible.

This is not an elaborate, complex bill with many difficult far-reaching problems. It is, rather, a very sound financial and humanitarian approach to help a segment of our society achieve financial independence and, most important, the personal dignity for which we all strive. It does not create a large tax burden on the public; rather, it creates a new class of responsible, employed taxpayers.

This bill will help many severely handicapped people to fulfill the true goals of rehabilitation—to allow the handicapped person to be as economically and physically free as the "normal person in the street."

It should be made clear, in this regard, that it is the intent of the committee members actively involved in this legislation that the additional hires authorized by H.R. 7466 should not be charged against any agency's personnel ceiling. As the author of an amendment to the Civil Service Reform Act of 1978 (Public Law 95–454) which called for a Government-wide limit on the size of the civilian work force, I would like to emphasize that limitations of this nature, imposed by the Congress and administered by the executive branch, should not prejudice programs such as that provided by this legislation.

I urge my colleagues in the House to lend H.R. 7466 their unreserved support.

Mr. Speaker, I have no further requests for time and yield back the remainder of my time.

Mrs. SCHROEDER. Mr. Speaker, I would just like to point out that we do have an estimate from the Office of Personnel Management. They said they could not possibly imagine more than 200 employees ever having to travel with a severe physical handicap during a 1-year period, so I hope that puts some of the concerns that many people have to rest, that this is not opening a loophole. This is trying to serve a very serious need that has been overlooked in the past.

● Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 7466, legislation permitting the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

I commend my colleague, the gentlelady from Colorado (Mrs. SCHROEDER), for her work in bringing this measure before the Committee on Post Office and Civil Service, of which I am a member, and to the House floor.

Mr. Speaker, we are all well aware of the fact, which has been proven in both the private and public sector, that our handicapped citizens, given the opportunity, can make a valuable contribution to society. Indeed, the performance record of handicapped individuals demonstrates a substantial return on those adjustments and considerations provided them in their workplace because of their handicapped status.

H.R. 7466 would expand those current statutes authorizing the employment of or assignment of Federal employees as readers for the blind and interpreters for the deaf, by providing for assistance for other handicapped Federal employees. While the Office of Personnel Management estimates the cost of this measure at $330 000 for travel assistant services and $2,148,000 for assistant services needed on the job, OPM indicates that actual expenditures will be considerably less because many of these services will be provided by the existing work force of health unit staffs and coworkers.

Accordingly, Mr. Speaker, I urge my colleagues to support this important measure providing handicapped Federal employees the incentive and needed assistance to make a substantial contribution to our Nation.●

Mrs. SCHROEDER. Mr. Speaker, I have no further requests for time and would yield back the remainder of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Colorado (Mrs. SCHROEDER) that the House suspend the rules and pass the bill, H.R. 7466, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the bill, H.R. 7466, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

WITHOLDING STATE INCOME TAX FROM CIVIL SERVICE RETIREMENT ANNUITIES

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6372) to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants.

The Clerk read as follows:

H.R. 6372

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8345 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding.

"(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect with respect to different States during any one calendar year.

"(3) An annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the first month beginning after the day on which such request or revocation is received by the Office.

"(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from

a State for services performed in withholding State income taxes from annuities.

"(5) For the purpose of this subsection, 'State' means a State, the District of Columbia, or any territory or possession of the United States.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Michigan (Mr. FORD) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. CORCORAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, this bill is being called up on behalf of the chairman of the Subcommittee on Compensation and Employee Benefits of the House Committee on Post Office and Civil Service, the gentlewoman from Maryland (Mrs. SPELLMAN), who was called away just before we reached the floor for scheduled consideration. I believe that there is no controversy surrounding the bill and that it is supported unanimously by our committee.

Mr. Speaker, this is a very straightforward bill with a very limited purpose. H.R. 6372 will permit civil service retirees to have State income tax withheld from their annuity checks if they so desire.

Under existing law Federal income taxes are deducted from civil service annuity checks. In addition, in 1975 the Congress enacted Public Law 94–166 which authorized the Office of Personnel Management to make allotments from annuity checks for such purposes as the Office determines appropriate. Despite the authority to do so, OPM has refused to provide for allotments for State income tax purposes, and thus there is no mechanism by which civil service retirees can have State income taxes withheld from their annuity checks.

Under these circumstances civil service retirees must make periodic estimated tax payments to the States. These payments, which usually fall due on a quarterly basis, can be very inconvenient for retirees on small fixed incomes. Testimony presented to the Subcommittee on Compensation and Employee Benefits indicates that often retirees must take out short-term high interest loans at tax time in order to meet their State income tax obligations. I should point out that not only will the bill provide a convenient method for the retirees to pay their taxes, it will also facilitate the collection of income taxes by the States and for that reason the bill is supported by the National Association of Governors, the U.S. Conference of Mayors, and the National Association of Counties.

Mr. Speaker, this bill will result in no significant cost. The Congressional Budget Office cost estimate was not received in time to be included in the committee's report, and I ask unanimous consent that it be placed in the record at this point. The estimate indicates that the cost of H.R. 6372 will be approximately one-half million dollars per year. This is a small cost for legislation which will benefit our retirees as well as the several States, and I urge enactment of this legislation.

The Congressional Budget Office cost estimate is as follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 5, 1980.

Hon. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6372, a bill to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants, as ordered reported by the House Committee on Post Office and Civil Service, August 27, 1980.

The bill, if enacted, would require the Office of Personnel Management (OPM) to withhold state income taxes from annuity checks when such withholding is voluntarily requested by the annuitant. The bill does not authorize additional appropriations for an increase in OPM's personnel ceiling.

CBO estimates that costs of approximately $450,000 would be incurred during fiscal year 1981 if this bill were enacted. Expected costs in fiscal year 1982 would be about $530,000. After fiscal year 1982 CBO would anticipate a reduction in costs required to maintain the program. OPM has estimated first year costs of $632,963 and costs of $604,452 thereafter. This estimate was based on the assumption that annuitants from 44 different states would be involved in the program. The CBO estimate reflects the fact that 17 states either have no personal income tax requirement or exempt civil service annuities. The CBO estimate also reflects lower costs in fiscal year 1981 to allow for the time required to initiate the new procedures.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

□ 1430

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Michigan (Mr. FORD) has adequately and accurately described the details of the bill. The bill primarily authorized the Office of Personnel Management to enter into a relationship with those States that provide taxes on the annuities of Federal employees in order to permit a withholding of that State tax.

Mr. Speaker, I rise in support of H.R. 6372, which provides for voluntary withholding of State income tax for civil service annuitants.

Testimony before the Subcommittee on Compensation and Employee Benefits, of which I am the ranking minority member, revealed that many annuitants would like the opportunity to have payroll deduction for State taxes. It would be of considerable benefit to the very elderly who worry over making quarterly tax payments on time, and it would also be helpful to those retirees who travel a good deal of time away from their primary residences.

It is nearly impossible to estimate how many annuitants would elect to have State taxes withheld from their annuity checks. We do know, however, that in approximately 41 States either no tax is levied on annuities or a certain portion of annuity income is exempt from taxation.

Mr. Speaker, this bill will enable many Federal annuitants to meet their State tax obligations in an orderly, timely fashion through payroll deductions. There is a minimal cost to the Government for establishing such a procedure.

As a precedent for this action, Federal tax and deduction of union dues are presently being withheld from annuity checks.

I urge prompt enactment.

Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. DERWINSKI), who is a ranking minority member on the full committee.

Mr. DERWINSKI. Mr. Speaker, H.R. 6372 is a general housekeeping bill which allows for the voluntary withholding of State income tax from Federal annuitants' checks.

This bill will primarily affect those elderly annuitants who are concerned and worry about making quarterly State tax payments on time. It will also benefit those annuitants who are away from their principal residences for long periods of time.

At present, similar withholding is made by the Office of Personnel Management for union dues from annuity checks.

Mr. Speaker, as a practical matter this bill will have minor administrative costs because it will only apply to annuitants who reside in States which tax annuity income. Subcommittee testimony shows over four-fifths of all States either exempt all or part of the annuity income.

Also, since the bill provides for voluntary withholding of State taxes, not all annuitants will elect such deductions from their annuity checks.

I support enactment.

Mr. CORCORAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 6372.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE ACT OF 1980

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7666) to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7666

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the Federal Employees' Group Life Insurance Act of 1980.

REGULAR GROUP INSURANCE PAYMENT

SEC. 2. (a) Section 8701 of title 5, United States Code, is amended—

(1) in the section heading, by striking out "Definition" and inserting in lieu thereof "Definitions"; and

(2) by inserting at the end thereof the following new subsection:

"(c) For the purpose of this chapter; 'basic insurance amount' means, in the case of any employee under this chapter, an amount equal to the greater of—

"(1) the annual rate of basic pay payable to the employee, rounded to the next higher multiple of $1,000, plus $2,000, or

"(2) $10,000,

except that the amount of insurance may not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title, rounded to the next higher multiple of $1,000, plus $2,000. In the case of any former employee entitled to coverage under this chapter, the term means the basic insurance amount applicable for the employee at the time the insurance to which the employee is entitled as an employee under this chapter stops pursuant to section 8706(a) of this title.".

(b) Section 8704(a) of title 5 is amended to read as follows:

"(a) An employee eligible for insurance is entitled to be insured for an amount of group life insurance equal to—

"(1) the employee's basic insurance amount, multiplied by

"(2) the appropriate factor determined on the basis of the employee's age in accordance with the following schedule:

"If the age of the employee is:	The appropriate factor is:
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0.".

(c) Section 8704(b) of title 5 is amended—

(1) by inserting before "Subject to" the following new sentence: "An employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection.";

(2) in the table, by striking out "shown in the schedule in subsection (a) of this section" each place it appears and inserting in lieu thereof "of the employee's basic insurance amount"; and

(3) in the last sentence, by striking out "the amount shown in the schedule in subsection (a) of this section" and inserting in lieu thereof "an amount equal to the employee's basic insurance amount.".

(d) Section 8704(c) of title 5 is amended by striking out the last sentence and inserting in lieu thereof the following: "For the purpose of this chapter, 'annual pay' includes—

"(1) premium pay under section 5545(c)(1) of this title; and

"(2) with respect to a law enforcement officer as defined in section 8331(20) of this title, premium pay under section 5545(c)(2) of this title.".

(e) The item relating to section 8701 in the table of sections for chapter 87 of title 5 is amended by striking out "Definition" and inserting in lieu thereof "Definitions".

(f) Subsections (b) and (c) of this section shall take effect beginning with the first pay period beginning on or after October 1, 1981.

CONTINUATION OF REGULAR GROUP LIFE INSURANCE

SEC. 3. (a) Section 8706(b) of title 5, United States Code, is amended to read as follows:

"(b)(1) In the case of any employee who retires on an immediate annuity and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding the date of the employee's retirement, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office.

"(2) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding the date the employee becomes entitled to compensation, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismembership insurance, may be continued under conditions determined by the Office, during the period the employee is receiving compensation and is held by the Secretary of Labor or the Secretary's delegate to be unable to return to duty.

"(3) The amount of life insurance continued under paragraph (1) or (2) of this subsection shall be continued, with or without reduction, at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury, in accordance with the employee's written election at the time eligibility to continue insurance during retirement or receipt of compensation arises, as follows:

"(A) the employee may elect to have the deductions required by section 8707 of this title withheld from annuity or compensation, and the employee's life insurance shall be reduced each month by 2 percent of the face value until 25 percent of the amount of life insurance in force before the first reduction remains; or

"(B) in addition to any deductions which would be required if the insurance were continued as provided under subparagraph (A) of this paragraph, the employee may elect continuous withholdings from annuity or compensation in amounts determined by the Office, and the employee's life insurance coverage shall be either continued without reduction or reduced each month by no more than 1 percent of its face value until no less than 50 percent of the amount of insurance in force before the first reduction remains.

"(4) If an employee elects to continue insurance under subparagraph (B) of paragraph (3) of this subsection at the time eligibility to continue insurance during retirement or receipt of compensation for disease or injury arises, the individual may later cancel that election and life insurance coverage shall continue as if the individual had originally elected coverage under subparagraph (A) of paragraph (3) of this subsection.".

EMPLOYEE DEDUCTIONS; WITHHOLDING

SEC. 4. (a) Section 8707 of title 5, United States Code, is amended to read as follows:

"§ 8707. Employee deductions; withholding

"(a) During each period in which an employee is insured under a policy purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the employee's pay a share of the cost of the group life insurance and accidental death and dismemberment insurance.

"(b)(1) Whenever life insurance continues after an employee retires on an immediate annuity or while the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in section 8706(b) of this title, deductions for insurance shall be withheld from the employee's annuity or compensation, except that, in any case in which the insurance is continued as provided in section 8706(b)(3)(A) of this title, the deductions shall not be made for months after the calendar month in which the employee becomes 65 years of age.

"(2) Notwithstanding paragraph (1) of this subsection, insurance shall be so continued without cost (other than as provided under section 8706(b)(3)(B)) to each employee who so retires, or commences receiving compensation, on or before December 31, 1989.

"(c) The amount withheld from the pay, annuity, or compensaton of each employee subject to insurance deductions shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost as determined by the Office for each $1,000 of the employee's basic insurance amount.

"(d) If an agency fails to withhold the proper amount of life insurance deductions from an individual's salary, compensation, or retirement annuity, the collection of unpaid deductions may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of unpaid deductions, the agency shall submit an amount equal to the sum of the uncollected deductions and related agency contributions required under section 8708 of this title to the Office for deposit to the Employees' Life Insurance Fund.".

PREEMPTION

SEC. 5. (a) Section 8709 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

"(2) For the purpose of this section, 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.".

CONTINUATION OF REGULAR OPTIONAL INSURANCE

SEC. 6. (a) Section 8714a(c)(2)(C) of title 5, United States Code, is amended to read as follows:

"(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.".

(b) Section 8714a(d) of title 5 is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraph:

"(2) If an agency fails to withhold the proper cost of optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.".

ADDITIONAL OPTIONAL LIFE INSURANCE

SEC. 7. (a) Chapter 87 of title 5, United States Code, is further amended by inserting after section 8714a the following new section:

"§ 8714b. Additional optional life insurance

"(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of additional optional life insurance (without accidental death and dismemberment insurance). An employee may elect coverage under this section without regard to whether the employee has elected coverage under optional insurance available under section 8741a of this title.

"(b) The additional optional insurance provided under this section shall be made available to each eligible employee who has elected coverage under this section, under conditions the Office shall prescribe, in multiples, at the employee's election, of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee (rounded to the next higher multiple of $1,000) except that coverage may not exceed an amount equal to 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title (rounded to the next higher multiple of $1,000). An employee may reduce or stop coverage elected pursuant to this section at any time.

"(c)(1) The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title.

"(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, so much of the additional optional insurance as has been in force for not less than—

"(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

"(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

may be continued under conditions determined by the Office after retirement or while the employee is receiving compensation under subchapter I of chapter 81 of this title and is held by the Secretary of Labor (or the Secretary's delegate) to be unable to return to duty. The amount of insurance continued under this paragraph shall be reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age and is retired or is in receipt of compensation. The reduction shall continue for 50 months at which time the insurance stops.

"(d)(1) During each period in which the additional optional insurance is in force on an employee the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues additional optional insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost thereof shall be withheld from the former employee's annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the additional optional life insurance shall be without cost to the former employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

"(2) If an agency fails to withhold the proper cost of additional optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

"(e) The cost of the additional optional insurance shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

"(f) The amount of additional optional life insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.".

(b) The table of sections for chapter 87 of title 5, United States Code, is amended by inserting after the item relating to section 8714a the following new item:

"8714b. Additional optional life insurance.".

OPTIONAL LIFE INSURANCE ON FAMILY MEMBERS

SEC. 8. (a) Chapter 87 of title 5, United States Code, is further amended by inserting after section 8714(b) (as added by section 7 of this Act) the following new section:

"§ 8714c. Optional life insurance on family members

"(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of optional life insurance (without accidental death and dismemberment insurance) on the employee's family members.

"(b) The optional life insurance on family members provided under this section shall be made available to each eligible employee who elects coverage under this section, under conditions the Office shall prescribe, in the amount of $5,000 for a spouse and $2,500 for each child described in section 8701(d). The employee may stop coverage elected under this section at any time.

"(c)(1) Optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, 12 months after discontinuance of pay, or the employee's entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to individual policies under conditions approved by the Office.

"(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and who has had in force insurance under this section for no less than—

"(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

"(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

optional life insurance on family members may be continued under the same conditions as provided in section 8714b(c)(2) of this title.

"(d)(1) During each period in which the optional life insurance on family members is in force the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues optional life insurance on family members after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost shall be withheld from the annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the optional life insurance on family members shall be without cost to the employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

"(2) If an agency fails to withhold the proper cost of optional life insurance on family members from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

"(e) The cost of the optional life insurance on family members shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

"(f) The amount of optional life insurance which is in force under this section on a family member of an employee or former employee on the date of the death of the family member shall be paid, on the establishment of a valid claim by the employee, to such employee or, in the event of

the death of the employee before payment can be made, to the person or persons entitled to the group life insurance in force on the employee under section 8705 of this title.".

(b) Section 8701 of title 5 is further amended by inserting at the end thereof the following new subsection:

"(d)(1) For the purpose of this chapter, 'family member', when used with respect to any individual, means—

"(A) the spouse of the individual; and

"(B) an unmarried dependent child of the individual (other than a stillborn child), including an adopted child, stepchild (but only if the stepchild lived with the individual in a regular parent-child relationship), or recognized natural child—

"(i) who is less than 22 years of age, or

"(ii) who is 22 years of age or older and is incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

"(2) For the purpose of this subsection, 'dependent', in the case of any child, means that the individual involved was, at the time of the child's death, either living with or contributing to the support of the child, as determined in accordance with the regulations the Office shall prescribe.".

(c) The table of sections for chapter 87 of such title 5 is amended by inserting after the item relating to section 8714b (as added by section 7 of this Act) the following new item:

"8714c. Optional life insurance on family members.".

REPEAL OF SECTION 8713 OF TITLE 5

SEC. 9. (a) Section 8713 of title 5, United States Code, is repealed.

(b) The table of sections for chapter 87 of title 5 is amended by striking out the item relating to section 8713.

EFFECTIVE DATES

SEC. 10. (a) Unless otherwise specified, this Act shall take effect on the date of the enactment of this Act and shall have no effect in the case of an employee who died, was separated, or retired before the date of enactment.

(b) The amendment made by subsection (d) of section 2 of this Act shall apply with respect to premium pay payable under section 5545(c)(2) of title 5, United States Code, from and after the first day of the first pay period which begins on or after the date of the enactment of this Act.

(c) The amendments made by section 3 of this Act shall apply only in the case of an employee who retires or becomes entitled to receive compensation for work injury on or after the 180th day following the date of the enactment of this Act, or any earlier date that the Office of Personnel Management may prescribe which is at least 60 days after the date of enactment.

(d) The amendments made by sections 7 and 8 of this Act shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of the enactment of this Act, or on any earlier date that the Office may prescribe which is at least 60 days after the date of enactment, and shall have no effect in the case of an employee who died, was finally separated, or retired before the effective date.

AVAILABILITY OF CERTAIN FUNDS IN EMPLOYEES' LIFE INSURANCE FUND

SEC. 11. Amounts credited to the Employees' Life Insurance Fund under section 8714a(d) of title 5, United States Code, shall be available for expenses incurred by the Office of Personnel Management in implementing the amendments made by sections 7 and 8 of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. CORCORAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The gentleman from Michigan (Mr. FORD) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. CORCORAN) will be recognized for 20 minutes.

The Chair recognized the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to indicate, as I did before, that this is a bill coming from the subcommittee chaired by the gentlewoman from Maryland (Mrs. SPELLMAN), and I present the bill on her behalf.

Mr. Speaker, this legislation would improve the life insurance program offered to Federal employees under the provisions of the Federal Employees' Group Life Insurance Act of 1954. Under existing law, employees are covered under a group policy which offers insurance equal to the amount of their annual salary, plus $2,000. They are also eligible to purchase, at their own expense, without Government contribution, an additional policy of up to $10,000. When an employee retires, he may carry his insurance into retirement, but after reaching age 65 the amount of the insurance in force begins to decline at the rate of 2 percent of the face value of the policy until a minimum of 25 percent of the original face value remains.

When this life insurance program was enacted 25 years ago, it was a very progressive and farsighted fringe benefit program. But, over the years, it has not kept pace with life insurance generally available for employees in the private sector of the economy. Indeed, compared to major employers, it falls far short of being a comparable and adequate insurance program.

H.R. 7666, as amended, would make three major improvements in the program. First of all, it would increase the amount of basic insurance available from the amount of the employees annual salary, plus $2,000, to an amount equal to the annual salary, plus $2,000, multiplied by a factor of 2. This doubling of the existing coverage would apply to any employee less than 36 years of age. For the employees between the ages of 36 and 45, the multiplication factor declines according to age. For employees 45 years of age and older, the current amount remains in effect. The additional cost of this new insurance for the younger employee is paid for entirely by the Federal Government.

Second, a new optional life insurance policy is made available to all employees regardless of age under which an employee may purchase, at his own expense, without Government contribution, additional insurance in increments equal to his annual salary up to five times his annual salary. For instance, an employee who is a GS–7, step 4, earns $15,317 a year. Under the existing program, he is entitled to $18,000 basic insurance. That is, his annual salary rounded off to the next higher thousand dollars, plus $2,000. Under H.R. 7666, as amended, he would be entitled to basic insurance, plus an additional optional policy of $16,000, $32,000, $48,000, $64,000, or $80,000, according to which increment of additional optional insurance he wished to purchase. The employee would also be permitted to buy insurance for his spouse or children in amounts of $5,000 and $2,500, respectively.

The third change we proposed is in insurance protection for employees after retirement. Under existing law, the reduction takes effect immediately after the retired employees' 65th birthday and continues until the 25-percent remainder is reached 38 months later. Under H.R. 7666, the employee could continue to pay an amount determined by the Office of Personnel Management necessary to cover the cost of slowing down or entirely eliminating the reduction in coverage. The employee would have the option of paying the cost of changing the reduction to 1 percent a month instead of 2 percent; or he could elect to pay the cost of having no reduction at all.

This legislation has support on both sides of the aisle, and I am pleased to say that the administration has expressed its strong support for the enactment of this bill. Its cost, which would not become effective until the beginning of fiscal year 1982, would be $12 million in the first year, and decrease to $6 million by the fifth year.

I urge the House to suspend the rules and pass this important legislation.

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 7666. This measure was reported from our Committee on Post Office and Civil Service on a voice vote and it has the blessings of the administration.

Rather than reiterate the details of this bill, as has already been done by Mr. FORD, I will instead make some remarks about the general thrust of the bill.

Basically, this bill increases the amount of regular group life insurance to Federal employees under age 45. It allows Federal employees to buy increased amounts of group optional life insurance for themselves and their families. It also allows employees to elect to have additional amounts withheld from their annuities in order to have greater insurance coverage after retirement.

According to the Office of Personnel Management, the expense to the Government would be reasonable. While there would be additional outlays from the employee's life insurance fund until 1990, after this date the required additional contributions from employees would fully offset outlays in the early years.

Mr. Speaker, this proposal will vastly improve the Federal life insurance program by structuring it more along the lines of plans in the private sector.

I urge enactment.

☐ 1440

Mr. Speaker, at this time I would like to yield 1 minute to the gentleman from Illinois (Mr. DERWINSKI), the ranking

minority member of the Post Office and Civil Service Committee.

Mr. DERWINSKI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, H.R. 7666, as amended, provides needed improvements in the Federal employees life insurance program. In doing so, it avoids any cost in fiscal year 1981. While there are costs to the Government in the early years these costs will, in the long run, be offset by additional required contributions by Federal employees.

Specifically, this legislation changes the existing life insurance program in the following ways: First, it increases amounts of regular group life insurance for employees who are under 45 years of age. Second, it allows employees to elect to have additional amounts withheld from their annuities in order to have greater insurance coverage after retirement. Third, beginning with employees who retire after January 1, 1990, deductions will be made for continued group life insurance until age 65. Fourth, additional optional life insurance is available to Federal employees and their families.

Mr. Speaker, this is a reasonable proposal which has the solid support of the House Post Office and Civil Service panel.

I urge enactment.

Mr. CORCORAN. Mr. Speaker, I do not have any further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 7666, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous matter on the bill, H.R. 7666, just considered by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

IRC AMENDMENTS RE TAX COURT JUDGES

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7779) to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court, as amended.

The Clerk read as follows:

H.R. 7779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. 3 ADDITIONAL JUDGES FOR TAX COURT; REMOVAL OF AGE LIMITATION.

(a) INCREASE IN NUMBER OF JUDGES.—Subsection (a) of section 7443 of the Internal Revenue Code of 1954 (relating to the number of judges on the Tax Court) is amended by striking out "16" and inserting in lieu thereof "19".

(b) REMOVAL OF AGE LIMITATION.—Subsection (b) of section 7443 of such Code (relating to appointment to the Tax Court) is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on February 1, 1981.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Oregon (Mr. ULLMAN) will be recognized for 20 minutes, and the gentleman from Pennsylvania (Mr. SCHULZE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7779 responds to the vital need for the appointment of additional judges to the U.S. Tax Court by adding three judges to that court thus increasing the total number of Tax Court judges from 16 to 19. Appointments to these new seats could not be made before February 1, 1981.

In recent years, the workload of the Tax Court has increased significantly. Since 1974, the Tax Court has been authorized to issue declaratory judgments with respect to the status of certain organizations' employee retirement plans, municipal obligations, and the tax aspects of certain property transfers, and to decide certain disclosure actions brought against the Internal Revenue Service. The Crude Oil Windfall Profit Tax Act of 1980 extends the court's jurisdiction to windfall profit tax deficiencies. Because of these new responsibilities and the growth of complex tax litigation, particularly in the area of tax shelters, an increase in the court's membership to 19 is necessary to maintain timely resolution of taxpayer disputes. Despite these new responsibilities, the number of judges, has remained at 16 for over 50 years.

The bill also eliminates the present law ban on appointments of individuals age 65 or older as judges of the U.S. Tax Court. This ban conflicts with Federal policies against age discrimination and could deprive the Tax Court of experienced personnel.

The bill will have no effect on budget receipts and will increase outlays by only $185,000 in fiscal year 1981, $565,000 in fiscal year 1982, $665,000 in fiscal year 1983, $720,000 in fiscal year 1984, and $770,000 in fiscal year 1985.

Mr. Speaker, H.R. 7779 has bipartisan support in the Committee on Ways and Means. It is supported also by the tax section of the American Bar Association and, by the Department of the Treasury. I urge the passage of this most necessary bill.

Mr. SCHULZE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the suspension of the rules and immediate passage of H.R. 7779, a bill to add three judges to the U.S. Tax Court.

The Tax Court has functioned with 16 judges since 1925. The caseload of the court has grown significantly in recent years. Therefore, expanding the Tax Court to 19 judges will help it reduce the backlog of cases and adjudicate tax disputes without undue delay.

The increasing caseload on the Tax Court comes from several sources. First, since 1974 the Tax Court has had authority to issue declaratory judgments with respect to certain issues such as employee retirement plans and municipal obligations. Second, the crude oil windfall profit tax gives the Tax Court jurisdiction over this new excise tax. The windfall profit excise tax may generate some complicated litigation in the early years of its administration. Third, the IRS crackdown on abusive tax shelters is resulting in many persons challenging the IRS deficiency assessments in the Tax Court. Fourth, the public generally has become more prone to litigate tax disputes. While this may be a sign of a dynamic society, it does place a strain on the judicial branch to respond in a timely manner.

H.R. 7779 also eliminates the current prohibition on initially appointing an individual to the Tax Court after he has attained age 65. I believe this change will allow the Tax Court to attract highly qualified, mature persons for service on the bench.

Mr. Speaker, H.R. 7779 is a good bill. It will help the Tax Court discharge its responsibilities in a timely manner and will open Tax Court service to citizens of all ages.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. ULLMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill, H.R. 7779, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.".

A motion to reconsider was laid on the table.

REGULATORY FLEXIBILITY ACT

Mr. HARRIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 299) to amend title 5, United States Code, to improve Federal rulemaking creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The Clerk read the Senate bill as follows:

S. 299

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 "Regulatory Flexibility Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediately after chapter 5 the following new chapter:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"Sec. 601. Definitions.
"Sec. 602. Regulatory agenda.
"Sec. 603. Initial regulatory flexibility analysis.
"Sec. 604. Final regulatory flexibility analysis.
"Sec. 605. Avoidance of duplicative or unnecessary analyses.
"Sec. 606. Effect on other law.
"Sec. 607. Preparation of analyses.
"Sec. 608. Procedure for waiver or delay of completion.
"Sec. 609. Procedures for gathering comments.
"Sec. 610. Periodic review of rules.
"Sec. 611. Judicial review.
"Sec. 612. Reports and intervention rights.

"§ 601. Definitions

"For purposes of this chapter—

"(1) the term 'agency' means an agency as defined in section 551(1) of this title;

"(2) the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

"(3) the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(4) the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(5) the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

"(6) the term 'small entity' shall have the same meaning as the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4) and (5) of this section.

"§ 602. Regulatory agenda

"(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

"(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

"(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

"(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

"(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

"(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their repersentatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

"(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

"§ 603. Initial regulatory flexibility analysis

"(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

"(b) Each initial regulatory flexibility analysis required under this section shall contain—

"(1) a description of the reasons why action by the agency is being considered;

"(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

"(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

"(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

"(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

"(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

"(3) the use of performance rather than design standards; and

"(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

"§ 604. Final regulatory flexibility analysis

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and the objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes

and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

"(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

§ 605. Avoidance of duplicative or unnecessary analyses

"(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

"(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604, and 610 of this title.

"§ 606. Effect on other law

"The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

"§ 607. Preparation of analyses

"In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

"§ 608. Procedure for waiver or delay of completion

"(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

"(b) An agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be promulgated until a final regulatory flexibility analysis has been completed by the agency.

"§ 609. Procedures for gathering comments

"When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

"(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

"(3) the direct notification of interested small entities;

"(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

"§ 610. Periodic review of rules

"(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

"(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

"(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

"§ 611. Judicial review

"(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

"(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

"§ 612. Reports and intervention rights

"(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

"(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

"(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).".

EFFECTIVE DATE

SEC. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. HARRIS).

Mr. HARRIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us represents, I think, a great deal of work in both the other body and in this body with respect to trying to get regulation off the back of small business. The Small Business Committee, chaired by the distinguished Member from Iowa (Mr. SMITH), has had extensive hearings on this and has, in fact, reported out legislation.

The Judiciary Committee, and specifically the Administrative Law Subcommittee chaired by Mr. DANIELSON, of California, has also had extensive hearings and extensive markup with respect to a more comprehensive regulatory reform bill. What we have here is a bill that has been passed by the other body

and does a number of important things with respect to alleviating the burden on small business of our regulatory procedure. It requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have any substantive economic impact on a substantial number of small entities.

□ 1450

It requires an initial and final regulatory analysis of their rules to assess the impact on small entitles. The analysis may be done in conjunction with any other required analysis. The analysis need not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, and the analysis may be waived or delayed in the event of emergency but for not more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on a rule's effectiveness. Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities. There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance, and it is the Office of Advocacy of the Small Business Administration that will in fact conduct a review.

Mr. Speaker, I would like to yield to my colleague, the gentleman from Iowa (Mr. SMITH), who is the one Member who has done so much to bring this matter into focus and bring to the attention of this House the problems of small business and the need for this sort of regulatory reform.

Mr. SMITH of Iowa. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this bill which gives clear recognition to the different impact which Federal rules and regulations have on small business as compared to big business. This bill, S. 299, would require Federal agencies and departments to consider the impact of proposed rules and where appropriate to exempt or adopt different and less burdensome regulations for small businesses, small nonprofit businesses and small cities, towns, and other political subdivisions. An exemption or simplified regulation would be required where the purposes of the law could be obtained while doing so.

Similar legislation (H.R. 4660) was extensively considered by the House Small Business Committee. The Subcommittee on Special Small Business Problems held hearings in 1977 and 1978 and developed the approach in the bill. The Small Business Committee members unanimously support that bill and each of them are cosponsoring it. I want to note that the House bill (H.R. 4660) was unanimously favorably reported by the Small Business Committee last October and the bill was then referred to the Judiciary Committee which was discharged from further consideration on May 28 of this year. Meanwhile, the Senate substituted this approach for the provisions in a bill they had held hearings on and passed the bill.

Overregulation of small entities is one of the ways big business has gained advantages over small businesses. The cost per unit for a big business to comply may be small due to a large volume. Small businesses cannot cope with the maze of Federal regulations and they cannot afford the hiring of lawyers, accountants, engineers, and consultants which are employed by large companies. Nor can they afford their own time needed to comply with existing regulations and reporting requirements.

As a result of overregulation, productivity and innovation have been curtailed and inflation has increased and in some cases competition from smaller businesses eliminated. Our committee's files are replete with documentation of these burdensome requirements which range from one company with three small shops receiving Federal forms weighing 45 pounds to another company which paid a $500 fine rather than fill out a Federal form which was 63-feet long.

I also want to point out that some laws and agencies currently use flexible regulatory strategies such as the Internal Revenue Code's provisions permitting salaried persons earning less than $20,000 per year to file a short form income tax form while other taxpayers are required to file the long form.

I believe that the provisions of this bill now under consideration (S. 299) will substantially reduce the burden imposed by Federal regulation upon small business and yet at the same time allow Federal departments and agencies to carry out their duties and functions. Although the Senate-passed bill differs in some respects from the bill favorably reported by the House Small Business Committee, it is designed to accomplish the same purpose and I hope that all Members will strongly support it today so that it may be sent to the White House without further delay. For the benefit of my colleagues I am attaching a brief statement concerning the provisions of the bill now under consideration.

I also want to point out that the concept of two-tier regulation was one of the issues considered by the recent White House Conference on Small Business which included a recommendation for two-tier legislation as No. 15 on the list of priorities. The Small Business Administration counsel for advocacy would have the authority and responsibility to make sure that agencies do as expected under the law.

Finally, I want to commend all of the Members who worked so long and hard on this matter and particulary the chairman of our Special Small Business Problems Subcommittee, ANDY IRELAND, the subcommittee's ranking minority member, Mr. BROOMFIELD, and the ranking minority member on the committee, JOE MCDADE. I also want to commend Representative MARTY RUSSO who previously served on the Small Business Committee and chaired the Special Small Business Problems Subcommittee. It was his initial efforts and drafting which laid the groundwork for the bill we are considering today.

The material follows:

S. 299

(As passed Senate 8-6-80)

Sec. 2. Provides extensive statement of findings and purposes.

Sec. 3. Amends 5 U.S.C. to provide regulatory flexibility—

§ 601. Definitions—

(1) Agency means as defined in 5 U.S.C. (1),

(2) Rule means rule covered under 553(b) and includes those on grants but excludes rules of particular applicability relating to wages, prices, etc.,

(3) Small Business means as defined under § 3 of Small Business Act unless agency redefines,

(4) Small organizations means not for profit, independently owned and operated and not dominant in field of operation,

(5) Smal governmental jurisdiction means political subdivision of less than 50,000 population unless agency can justify additional definition, and

(6) Small entity means small business, small organization and small governmental jurisdiction.

§ 602. Regulatory agendas—

(a) In October and April each agency shall publish a regulatory flexibility agenda including

(1) Expected rules with significant economic impact on substantial number of small entities,

(2) Summary of nature of rules,

(3) Name and phone number of involved agency official—

(b) Copy of agenda sent to Chief Counsel for Advocacy,

(c) Agency shall provide notice by letter, publication etc, and

(d) Agency may promulgate regulation even if not on agenda.

§ 603. Initial regulatory flexibility analysis—

(a) If proposed rule must be published, an analysis must be done of impact on small entities; requires publication in Federal Register and transmittal to SBA's Chief Counsel for Advocacy, and

(d) Analysis must contain—

(1) Reason for rule,

(2) Objectives and purposes,

(3) Estimate of number of small entities to which rule will apply,

(4) Description of anticipated compliance requirements, and

(5) Crossreferences to other rules.

(c) Description of significant alternatives considered, including discussion of—

(1) Different compliance or reporting requirements,

(2) Clarification, consolidation or simplification of compliance and reporting requirements,

(3) Use of performance rather than design standards, and

(4) Exemption for smalls.

§ 604. Final regulatory flexibility analysis—

(a) Final rule shall be accompanied by final analysis; including—

(1) Succinct statement of need for rule and objectives,

(2) Summary of issues raised by comments, agency assessment of issues, changes made in response, and

(3) Alternatives and why rejected.

(b) Agency must make analysis available and give notice of availability in Federal Register.

§ 605. Avoidance of duplication or unnecessary analyses—

(a) Agency may do analyses as part of other proceedings,

(b) Regulatory flexibility analysis not required if head of agency certifies that rule

will not have significant economic impact on substantial number of small entities, and

(c) Related rules may be combined into one analysis.

§ 606. Effect on other laws—Regulatory flexibility analysis does not alter other laws.

§ 607. Preparation of analyses—Agency may use either a quantifiable or numerical description of effects of proposed rule or alternatives or a more general description if quantification is not practicable or reliable.

§ 608. Waiver or delay—

(a) Agency head may waive or delay initial analysis upon written finding that final rule is emergency one making compliance impracticable, and

(b) Agency head may not waive final analysis but may delay it for up to 180 days after final rule published if emergency rule making; if not done, the rule lapses.

§ 609. Comment gathering procedures—When rule is promulgated having significant economic impact on substantial number of small entities, agency head shall assure that small entities have been given opportunity to participate through techniques such as—

(1) Notification that rule may have significant economic effect on a substantial number of small entities,

(2) Publication of notice of rule making in publications likely to be obtained by small entities,

(3) Direct notification of small entities,

(4) Holding open conferences or public hearings, and

(5) Agency rules designed to reduce cost of participation by small entities.

§ 610. Periodic review of rules—

(a) Within 180 days of law, agency shall publish in Federal Register a plan for periodic review of rules with a significant economic impact upon substantial number of small entities. Purpose is to change as needed to minimize significant economic impact upon substantial number of small entities. All rules reviewed within 10 years and new ones within 10 years, except agency may delay review for up to 5 years one year at a time,

(b) In conducting review, agency shall consider—

(1) Continued need for rule,

(2) Complaints or comments,

(3) Complexity,

(4) Relationship with other Federal or state regulations, and

(5) Changes which have occurred.

(c) Agency annually publishes agenda of rules to be reviewed in next year.

§ 612 Judicial review—

(a) Agency decisions regarding regulatory flexibility implementation are not subject to judicial review except as below in (b),

(b) Regulatory flexibility analysis and compliance or non-compliance by agency are not subject to judicial review but the analysis shall be apart of record of agency action if rule is subject to judicial review, and

(c) Nothing herein bars judicial review of any other impact statement or analysis otherwise permitted by law.

§ 611. Reports and intervention rights—

(a) SBA's Chief Counsel for Advocacy shall monitor agency compliance and report to President and Congress annually;

(b) Chief Counsel for Advocacy may appear amicus curiae in any action to review a rule to present his views on effect of rule on small entities, and

(c) U.S. court shall grant application of Chief Counsel for Advocacy to appear for purpose of (b).

§ 4. Effective date—Act effective 1-1-81 except that provisions for initial regulatory flexibility analysis and final regulatory flexibility analysis apply only to proposed rules issued 1-1-81 or after.

Mr. HARRIS. Mr. Speaker, I would like to yield at this point to the chairman of the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, the gentleman from California (Mr. DANIELSON), who has worked on regulatory reform so assiduously over the past several months.

Does the chairman of that subcommittee wish me to yield to him at this point?

Mr. DANIELSON. Mr. Speaker, as long as the gentleman from Virginia (Mr. HARRIS) is here and is managing the bill on behalf of the Committee on the Judiciary, which has jurisdiction over this subcommittee, and with no other committee having that jurisdiction, I will allow him, with my thanks, to continue in the management of the bill, but I would like to have an opportunity to comment later. I trust the gentleman will give due recognition to members of the Committee on the Judiciary who are here and who would like to be heard.

Mr. HARRIS. Mr. Speaker, I would like to yield to our fine colleague from the Committee on the Judiciary, the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, the legislation before us today, the Regulatory Flexibility Act, may be one of the best means we have to acknowledge that our diversity, which is our strength, is based as much on size as on anything else.

This bill addresses the very real differences between big business and small business—large urban areas and small towns—major national organizations and small local nonprofit groups.

It says, basically, that the Federal Government should, where feasible and consistent with the intent of the law, develop regulations only after thoroughly assessing their impact on small entities—business, organizations and governmental jurisdictions.

The measure before us is a result of several years of effort, numerous hearings in the House and Senate, and compromises between the House, Senate and the administraiton. More than half the House has cosponsored either H.R. 4660 or my own bill, H.R. 1971.

The Senate has twice unanimously passed a version of this legislation—comparable to my own bill, H.R. 1971 of the 96th Congress—first on the last day of the 95th Congress, and most recently on August 6 of this year.

Senator CULVER deserves particular praise for his efforts on behalf of this legislation. He, along with Senator NELSON, developed the concept back in 1977, and they have built a body of testimony substantiating the need for such legislation. Both Senator CULVER and Congressman IRELAND have assembled for the RECORD lengthy statements describing the legislative history of regulatory flexibility proposals and the intent of S. 299. Senator CULVER's statement appears in the RECORD of August 6, 1980 at pages 21452-21461. Mr. IRELAND's is appearing in today's RECORD. These statements ably describe the understandings reached among the principal authors and sponsors of regulatory flexibility legislation on the Judiciary and Small Business Committees, allowing S. 299 to come before us today.

The President has issued a statement in support of the bill and embodied it in a directive to agency heads last November. We propose to embody it in law to assure congressional oversight of agency compliance with regulatory flex-

The bill requires that agencies consider the needs and interests of small ibility provisions.

entities in carrying out their mandates. In no other respect does it alter current procedures. In no respect does it alter substantive law.

The bill's treatment of judicial review is intended to strike a balance between two necessary goals.

First, to insure that the internal procedures of the agencies are not unnecessarily delayed by interlocutory and intermediate court review of the regulatory flexibility analysis; and

Second, the desire to insure that agencies take seriously their obligation under the law by providing for review of regulatory flexibility analyses as part of the entire record.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield at that point?

Mr. HARRIS. Mr. Speaker, I might note that I have the time here, and I am going to continue to yield to the gentleman from Wisconsin (Mr. KASTENMEIER). I have the time.

Mr. KASTENMEIER. Mr. Speaker, may I conclude my remarks? The gentleman from Virginia (Mr. HARRIS) has the time, and perhaps he will yield to the gentleman from Georgia (Mr. LEVITAS) at the appropriate time.

Mr. LEVITAS. Mr. Speaker, if the gentleman from Virginia will yield, I have a question I would like to ask the distinguished member of the Committee on the Judiciary about that very point that he was just addressing. If he could explain it for the RECORD, it would be quite helpful.

Mr. HARRIS. Mr. Speaker, I do have a number of requests for time, but I do yield for the purpose of a question by the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I would simply like to inquire, what does this bill do by way of providing a judicial review to see that the procedures that have been written into this are in fact followed and can be reviewed by a court to see if they have been followed?

Mr. KASTENMEIER. Mr. Speaker, my understanding is, as the gentleman from Georgia (Mr. LEVITAS) knows because he has been following the bill, too, that this strikes a balance between having an appeal and not having appeals made on the record of the regulatory analysis as such, but when challenges to the rules themselves are made, that is, as a part of the complete record, the process of regulatory analysis may also then be reviewed, but only reviewed in that context judicially.

Mr. Speaker, if I may conclude my remarks, in other words, as I was saying, the courts may examine the regulatory flexibility analysis in determining the reasonableness of the final rule. The bill in no other way, changes or alters the right of judicial review under the Administrative Procedure Act.

Through this bill we can remove some

of the burdensome requirements placed on small business and small governments. We can begin to free vitally needed capital and human resources from wasteful activities and direct these energies to more productive and efficient purposes. This can be an important component of our economic recovery program and one that all Members of this body should support.

Mr. HARRIS. Mr. Speaker, may I inquire of the Chair as to how much time I have remaining?

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) has 10 minutes remaining.

The Chair recognizes the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, public discussion of overregulation and the need for regulatory reform all too often conjures up the oversimplified image of a confrontation between big government and big business. But, as we all know, it is small business that carries the heaviest burden with respect to governmental regulation. Other small entities such as hospitals, small colleges, and local governments are also hampered by the same situation. Unlike large corporations or unions, these organizations do not have the time, the personnel, nor the resources to adequately monitor and comply with the morass of regulation that confronts us all daily.

For this reason, I support the regulatory flexibility concept that is symbolized in S. 299.

I would like to point out by way of clarification how we happen to be where we are today. The Committee on Small Business of the House reported out some months ago H.R. 4660, the Small Business Regulatory Flexibility bill, which was sequentially referred to the Committee on the Judiciary. The concept was embodied into the regulatory reform bill that the Committee on the Judiciary has been working with.

However, the administration has sought to delay the progress of the regulatory reform bill in the full Judiciary Committee for reasons that have to do with its current contents. Thus the concept has not reached us or has not reached the House floor previously in what would be an orderly fashion. Incidentally, H.R. 4660 amended the Small Business Act, and that properly came out of the Committee on Small Business.

□ 1500

This bill that comes to us from the other body, however, adds a chapter VI to the Administrative Procedures Act and thus, of course, appropriately is within the jurisdiction of the Judiciary Committee; but Small Business and the Judiciary Committee are certainly no strangers, and the interest is shared, of course, with the Small Business Committee in seeing a more appropriate type of approach to regulatory flexibility for small business.

The regulatory flexibility approach recognizes that it is often counterproductive and unfair to apply identical regulations to entities regardless of their size. The regulatory flexibility approach is based upon the understanding that generalized rules often do not advance the regulatory objective that is involved.

However, I would be less than candid if I did not express concern over our present involvement in a piece-meal approach to regulatory reform. This is only a part of the picture that we are dealing with today. As important as regulatory flexibility for small organizations is, it does not address the full range of problems brought on by overregulation. We on the Judiciary Committee have been working on comprehensive regulatory reform since last November. Tomorrow the full Judiciary Committee was scheduled to resume its consideration of the Regulatory Reform Act of 1980, H.R. 3263. This has been stalled for some time, since about last May, because of the direct intervention of the Carter administration whose regulatory reform program has been marked by confusion and hypocrisy. It remains my hope that we will be able to bring this broader, more comprehensive bill to the House floor before adjournment.

The concept of small business and small organization regulatory flexibility is an important element in H.R. 3263 that is before the Judiciary Committee. But this measure also would require that agencies consider the economic impact of regulation, as well as regulatory and geographic differences, in promulgating new rules. H.R. 3263 also contains provisions aimed at speeding up seemingly interminable administrative proceedings, along with encouraging expanded public and business input into the regulatory process.

In fact, it is particularly worth noting that the language of H.R. 3263 is even stronger than the bill before us today with respect to small business and small organization regulatory flexibility. The bill we consider today requires that regulatory agencies undertake a detailed analysis, so as to give special consideration to the impact of a proposed rule on small entities. However, there is no language specifically requiring that the agency act on the conclusions of their analysis. It is conceivable that we could study these problems and then choose to do nothing about them. In contrast, under H.R. 3263, an agency is empowered to exempt a small business or small organization from the scope of a regulation, or to set lower compliance standards, where such a distinction is lawful, desirable and feasible.

I urge that S. 299 be supported today, realizing it is only part of a larger picture.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Speaker, I rise in strong support of this legislation.

Mr. Speaker, I strongly support S. 299, the Regulatory Flexibility Act, and urge its passage by the full House.

As a small businessman myself, I am painfully aware of the need for a policy of 2-tier regulation as a means of helping small businesses. S. 299 addresses the fact that small businesses cannot and should not be expected to comply with all of the regulations developed for application to big businesses.

In addition, small governmental jurisdictions with populations of less than 50,000 are also granted relief by this bill. It incorporates a number of methods of making regulations more flexible, including, for example, the establishment of differing compliance and reporting requirements that take into account the amount of resources available to small businesses and mandate agency consideration of regulatory effects on small cities and towns, as well as on small enterprises and on individuals.

The present regulatory environment has a devasting effect on the competitive viability of the small business sector. Regulations when applied uniformly to big businesses and small businesses clearly provide huge advantages to the largest enterprises. Big business has the lawyers, accountants, engineers, consultants, and economic resources to comply with governmental regulations. On the other hand, the small businessperson often must spend critical time and resources sorting through a confusing morass of complex Federal regulatory requirements, which is a drag on national productivity.

As the chairman of the House Small Business Subcommittee on Antitrust, I have been a witness to the need for this legislation. I have heard not only from my constituents in northwest Iowa, but from small business people from all over the United States.

Last year, the Antitrust Subcommittee undertook an investigation into petroleum retail marketing practices. We found that several years of Federal attempts to regulate that industry have harmed the competitiveness of participating small businesses, contributing to tens of thousands of independent service station operators going out of business. Ironically, this effect was not the intent of the Federal regulations. Small businesses, whom the Government sought to protect, were smothered by a system imposed upon them that gave them no opportunity to respond to changing marketplace demands. Large oil companies, whom the Government attempted to control through regulation, easily found ways to manipulate and profit from Federal regulations, further entrenching their dominant industry position at the expense of the small business operator.

Today the gasoline retail market is structurally unsound, due to the uneven way Federal regulations have affected competition. As a result, the House Small Business Committee favorably reported the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722; a bill also identified by the Speaker's Task Force on Small Business as being one of this Congress most vital small business bills.

Regulations reward staid, inefficient business practices that often are found in large bureaucratic enterprises. Frequently, they are drafted to force these enterprises to respond to the interests of our national goals. But when applied uniformly to small business they stifle

innovation, creativity and efficiency—the hallmark of the entrepreneur.

Of course, judicial review is necessary to assure that agencies comply with this act. The question of judicial review has been addressed very sensibly in this legislation, which provides that the courts should not be bogged down with lawsuits before the agencies have even finished their rulemaking. However, section 611(b) states that regulatory flexibility analyses can be examined by the courts when the validity of final rules is being determined. So judicial review in this act fits in well with the practice of judicial review under the law we are amending today and, I might add, with most of the other pending regulatory reform bills. I think this is a good, balanced approach to judicial review which will achieve the benefits the bill seeks without causing any unnecessary litigation.

Mr. Speaker, I have been supporting action on this problem ever since I came to Congress 6 years ago. A Federal policy of regulatory flexibility is long overdue. The delegates to the White House Conference on Small Business, representing the views of small business people from all across the United States, overwhelmingly endorsed the concept of reg-flex. Your task force on small business chose this legislation as a small business priority for this session of Congress. Two hundred and forty-six Members of Congress, including every member of the House Small Business Committee, are cosponsors of H.R. 4660, the original House version of S. 299. This legislation deserves the support of the entire House.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I support the concept of S. 299, but I think it is important for the Members of this body to know that this legislation does not really, in the long run, solve the problem.

This legislation does rightfully address some of the problems faced by small businessmen. The small businessman must be given special consideration, as offered by this bill, for regulations which are applied generally, can be most oppressive to small businesses. But I do not want the American public, or the small businessman, to be taken in and made to believe that this legislation alone will accomplish meaningful regulatory reform.

As the gentleman from Ohio pointed out, all of the language in this legislation could be totally ignored by any agency. There is no effective enforcement mechanism. This legislation can be disregarded by the same bureaucrats who are trampling over the small businessman right now.

If the administration thinks it can get away with calling this bill alone regulatory reform, without action on the comprehensive regulatory reform bill, then they are going to have people across the country remind them of the hypocrisy of their actions, both on the Republican side and on the Democratic side, between now and November. Without more comprehensive regulatory reform, this bill alone will be comparable to attacking a dragon with a wet spaghetti noodle.

We need real regulatory reform that has teeth in it. This is a good move in the right direction, but it in and of itself will not accomplish the goals of effective regulatory reform. We need results, not cosmetics.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. ALBOSTA).

Mr. ALBOSTA. Mr. Speaker, I rise in support of the bill.

S. 299, the Regulatory Flexibility Act, is needed to reduce the unfair regulatory burden currently placed on our Nation's small businesses. This bill is part of a comprehensive regulatory reform package that includes vital elements, such as the one-House veto, court reimbursements to small businesses for actions against Government agencies, paperwork reduction, and revisions in the selection and evaluation of administrative law judges.

The package of regulatory reform is a must for the 96th Congress, if we are serious about reducing the burden of Government on the private sector. With productivity at record lows, we must streamline the requirements placed on business by the Government. I am hopeful that the appropriate committees will continue in their efforts to move this legislation to the floor of the House.

S. 299 is one of the major parts of the regulatory reform package, requiring regulatory agencies to analyze the likely impact of their rules on small businesses and other concerns. The bill requires each agency to publish semiannual lists of rules it anticipates promulgating which are likely to have a serious economic impact on small businesses or other small concerns. Small businesses are encouraged to participate in the rulemaking procedures. The bill also requires agencies to review all new and existing rules within 10 years.

I am pleased to see that the subcommittee, under the able leadership of the gentleman from Florida, included a section in this bill to apply the "two-tiered" approach to regulations affecting most nonprofit organizations which "are not dominant in their field" and local governmental subdivisions under 50,000 in population.

I urge my colleagues to support the passage of S. 299 so this process of regulatory reform and paperwork reduction can begin.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I rise in support of S. 299, which embodies the concept of regulatory flexibility. This means that agencies must analyze alternatives to proposed regulations that would minimize any adverse burden on small business. Among the alternatives would be the granting of outright exemptions or issuing regulations with different and less burdensome standards of compliance for small business. This concept has undergone several legislative changes in the last few months. And I am glad to say that these changes have improved the proposal significantly.

Earlier this year, a variation of this concept was presented in the form of an amendment to the Regulation Reform Act which the Judiciary Committee was considering in May. That amendment required an agency to issue regulations which exempt or lessen the burden on small businesses when the agency's analysis indicates it would be feasible to do so. I believe strongly that every effort must be made to free small businesses from unnecessarily burdensome regulations. At the same time it is important that this goal not be attained in ways that would result in significant weakening of other important public interests to which regulations may be directed.

For example, we must be careful not to make it easy for big businesses to spin off their dirty operations into small businesses that are not subject to a strict regulation. This occurred when the kepone scandal broke, involving the Allied Chemical plant in Hopewell, Va. Allied Chemical simply spun off the plant to a small business. Certainly we do not intend to say that being a small business, is in itself, sufficient grounds for exempting it from public health and safety laws.

Another factor relates to productivity. In some cases, an exemption could create an incentive for a small business to stay small. Certainly we do not want to create any disincentives to economic growth.

Another important consideration is whether a particular exemption would impair the ability of the Government to protect the public health and safety. For example, amendments have been offered from time to time to exempt from occupational safety and health laws any business employing less than 25 people. It is important to make sure that OSHA does not impose unnecessary burdens on small businesses. On the other hand, people who work for a business that employs less than 25 people surely are entitled to have their health and safety protected.

Because it seemed to me that agencies ought to consider such factors, I offered an amendment to the regulatory flexibility amendment during the Judiciary Committee markup in May. The amendment read:

> In determining whether it is feasible and desirable, and in the public interest, to exempt or set differing and less burdensome standards for small businesses and small organization, the agency shall consider whether such exemption or standard would
>
> (A) provide opportunities for businesses and organizations that are not small businesses and small organizations to avoid compliance with such rule;
>
> (B) create incentives for small businesses and small organizations against increasing their productivity, hiring additional employees, merging with other businesses or organizations, or otherwise increasing their size; or
>
> (C) impair the ability of the agency to protect the public health, safety or the environment or otherwise achieve statutory requirements.

While there was important committee support expressed for my amendment, it

was the consensus of the committee that such language would be best handled in the report, rather than in the bill itself.

Representative ROBERT KASTENMEIER, one of the regulatory flexibility amendment's coauthors, stated that he supported report language to this effect. The regulatory flexibility amendment's other coauthor, Representative CALDWELL BUTLER, expressed appreciation to me for bringing this matter to the attention of the committee and stated that he would work with the subcommittee chairman in an effort to accommodate my recommendations into the legislative history.

Representative ROMANO MAZZOLI, who was managing the bill in the absence of Representative GEORGE DANIELSON, the chairman of the Subcommittee on Administrative Law and Government Relations, offered his services in drafting report language similar to the language in my amendment.

The reason I raise these points now is that the Judiciary Committee has not yet completed marking up the Regulation Reform Act and, therefore, no report has been written. In supporting the Senate bill we are now considering I want to make sure that the record reflects that my support, and I believe that of many other Members, is given with the understanding that such considerations are implicit in this legislation.

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in strong support of S. 299. At the same time, I wish to remind the Members of this body that the American people have been asking for true regulatory reform for many years. We are told that overregulation costs the American people over $100 billion a year. This bill is directed to only a small segment of the total amount of industry that is affected and the total number of people in this country who are affected by this overregulation.

This bill is a good first step, but I would hope that we would not take it as a substitute for H.R. 3263 which the Judiciary Committee and this Congress has been laboring over for many, many months.

The American people deserve to have true regulatory reform that deals with all of American industry and American problems of overregulation. This bill that we are considering today requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have significant economic impact on a substantial number of small entities, such as small businesses, organizations and governmental jurisdiction. It requires an initial and final regulatory analysis of all rules to assess their impact on small entities.

☐ 1510

The analysis may be done in conjunction with any other required analysis.

The analysis may not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The analysis may be waived but delayed in the event of an emergency, but not for more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on rules affecting them.

Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities.

There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance.

You can see from the things that this bill covers that there are many, many areas that are left totally uncovered. We do nothing in this legislation about a one- or two-House veto giving the Congress the right to decide themselves whether regulations are in order that have been passed by a regulatory agency. At the present time we have nonelected people that are determining the fate of thousands and thousands of American businesses and jobs of millions of American people without any real opportunity for the elected Members of Congress to react in such a way that they could overturn the regulations that are adopted, even though they are not in conformity with legislation that has previously been adopted by the Congress, or even if they are nonessential and go far beyond the problems that they seek to cure.

I think it is important in regulatory reform that the regulations at least are cost effective. This bill does not provide for that. It is a good first step, but please, let us not have the Congress fall for the kind of control that the present administration is presently imposing upon the Congress to prevent true regulatory reform.

Let us do something about this problem that we have promised the American people that we would do something about. Let us do it this year. Let us not let this bill take the place of a strong, true regulatory reform bill.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. MCDADE).

Mr. MCDADE. Mr. Speaker, I want to thank my friend, the gentleman from Ohio, for yielding to me.

Mr. Speaker, today the House will have the opportunity to approve legislation of tremendous significance to our Nation's small business men and women. The Small Business Committee has worked on this bill for almost 3 years, and I am pleased to say that I have cosponsored a similar measure and worked for its passage. Because the bill was stalled during the consideration of another bill in the Judiciary Committee, the Senate version has been used as a vehicle for this body to act upon this urgent request of the small business community.

S. 299 provides the impetus to Federal agencies to undertake innovative, flexible approaches when adopting and applying Federal regulations which otherwise may adversely affect smaller enterprises. Small organizations and small Government units are also covered by the bill's provisions.

The legislation under consideration revises administrative procedures to require Federal departments and regulatory agencies to perform an analysis of the economic and paperwork impact of a proposed rule on individuals, small businesses, organizations, and local governments. A number of alternatives designed to insure that rules promulgated are tailored to fit the size and scale of the entities to be regulated consistent with the applicable statute, are spelled out in the bill.

These include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation of compliance, and reporting requirements; and

Use of performance rather than design standards.

Regulatory flexibility legislation represents 3 years of hearings and related work by the Small Business and Judiciary Committees, with input by small business owners and their national associations, labor representatives, public interest groups, economists, fellow Members, and administration officials.

The need for flexible standards has generally been acknowledged and endorsed by these various interests. Prompt passage of this proposal is imperative, especially as we proceed through a period of escalated inflation, high unemployment, and business decline. By directing Federal agencies to consider the economic and redtape impact of their proposed regulations, we can expect less burdensome requirements for small entities. In this way, a measure of the resources necessary to get us back on the road to economic recovery can be directed to more efficient and productive purposes.

Mr. Speaker, no doubt each of us has heard from individuals operating small firms within our districts. The comments are always the same. Small business owners regularly report that they are unfairly burdened by complicated, costly regulations uniformly applicable to both large and small operations; by insensitive Federal regulators; and by detailed, time-consuming paperwork requirements. Such regulations strain the limited resources of small business owners who find that their limited capital must be spent on compliance and their precious time consumed by redtape demands. It is simply unfair to expect small outfits to be subject to the same rules as their counterparts, when less burdensome methods could be adopted and still serve the mandate of the applicable statute.

The measure under consideration today revises Federal administrative procedures so that whenever a Federal department or regulatory agency under-

takes a rulemaking, it must perform an analysis of the economic impact, including the cost of compliance, of a proposed rule on individuals and small businesses, organizations and governmental units. The purpose behind this requirement is to assure that Government agencies adopt reasonable alternatives, consistent with the underlying substantive statute which would be less burdensome for smaller concerns. The proposal spells out a number of solutions agencies are to seriously consider to insure that rules promulgated are tailored to fit the size and scale of the parties to be regulated. The alternatives recommended to minimize the impact of a proposed rule on individuals and small entities include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation and simplification of compliance and reporting requirements; and

Use of performance rather than design standards.

Let me point out that Federal agencies are not limited to consideration of these alternatives only. Other reasonable means of assuring regulatory flexibility may be discussed. But, these alternatives are included in the legislation so that agencies will be on notice of their authority and, in fact, of their duty to take flexible steps in their regulation of small entities, if this would be consistent with the applicable statute. The alternatives the agency reviewed and deemed feasible, along with the reasons why any were rejected, must accompany issuance of the final rule.

When undertaking a regulatory flexibility analysis, Federal agencies are also required to evaluate the impact of recordkeeping and reporting requirements imposed by a proposed rule, including an estimate of the time necessary to complete such paperwork. Additionally, S. 299 directs the agencies to actively seek the participation of small businesses, organizations and governmental units in the consideration and formulation of proposed regulations. To insure adequate advance notice, each agency will have to publish semiannually an agenda of rules and regulations expected to be issued or reviewed during the coming year. Finally, at least once every 10 years, agencies must assess regulations currently on the books, with a view toward modification of those which unduly impact on small entities.

I must emphasize that this legislation is not designed to confer special favors or advantages on certain individuals or groups within our society. Nor is it intended to strip away the advances we have made in laws promoting the public's health, safety, and well-being, including statutes calling for clean air and water, a safe workplace, and manufacture of safe goods, to name just a few. Small business owners who testified before the Small Business Committee have not called for a wholesale abrogation of these laws. Rather, they have sought recognition that the regulations implementing these laws accommodate the size and capabilities of affected parties. I feel that S. 299 ably accomplishes these goals.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I yield to the gentleman from Michigan.

Mr. BROOMFIELD. Mr. Speaker, I rise in support of this bill.

Mr. Speaker, I would like to see congressional action to improve Federal agency rulemaking for all segments of our economy, and I certainly support S. 299 which is a positive beginning toward reducing the regulatory burden imposed upon small business by the Federal Government.

Small business plays a vital role in our Nation's economy. As a group, small businesses exemplify the traits which made America great. Today, however, this important sector of our economy is being crushed by the weight of Federal regulations and the resulting paperwork. One of the most frequent complaints I hear from the small business people of my district concerns the burden of Federal regulations, and I believe this is true of most of us in the Congress. The small business community's message to us regarding the Federal regulations and paperwork burden has been loud and clear: Reduce it. And that is the aim of this bill: To reduce the impact of Federal regulations on small businesses.

The bill does not call for a special commission to make a study of the problem and issue a report to Congress. Nor does it call for a new agency to deal with the continuing growth of regulations. This bill checks the growth at its source.

This legislation will make some overdue changes in the way the Federal agencies develop and issue regulations. It requires the agencies to weigh carefully the effects of their rules on small businesses and not issue those regulations whose benefits do not justify their costs to small business.

It is not the intent of the legislation to undermine the important progress our country has made during the past two decades in providing safer food, drugs, places of work, and cleaner air and water. We must protect the health and welfare of people as well as small business. Many regulations are essential and were developed in response to rising expectations and demands of the public that the Federal Government "do something about that."

This bill does not seek the elimination of Federal regulations, but a control of the bureaucrats. It deals with those Federal regulations that severely impact small business, and are not necessary, equitable, or very poorly serve the public interest. The legislation meets the justified concerns of small businesses without sacrificing progress toward meeting the goals established by legislative mandate and public need.

This bill gives the Members of the House a chance to really do something about a major problem facing small business. It is not a final answer, but it is a first step toward keeping the regulatory agencies from being a nightmare for small businesses. I urge my colleagues to support it.

Mr. Speaker, I wonder if the gentleman from Pennsylvania would join me in a little colloquy on the intent of this bill.

Mr. McDADE. I would be delighted to.

Mr. BROOMFIELD. Mr. Speaker, I am concerned about the difference between this bill and H.R. 4660 which I cosponsored, was approved unanimously by my subcommittee and was passed out of the Small Business Committee. Particularly, I am worried about whether the agencies are actually required to analyze their regulations for impact on small businesses, or may merely slide over potentially devasting provisions with only a cursory glance.

Mr. McDADE. My friend, the gentleman from Michigan, as usual, has raised a tremendously important question, one that we looked at in the subcommittee with diligence. May I say that it is the intent of our committee, and we are the people who wrote and reported the companion bill, and I believe I can speak for the members of the committee, I know I certainly speak for my friend, the gentleman from Massachusetts, who has had 3 years of his life invested in this bill, that agencies and departments have a positive duty under this legislation to determine the impact on small businesses of each and every new regulation and a specific, and I repeat, specific statement of businesses to which the new rule will apply and the proposed alternatives to reduce that impact. Furthermore, the agency has a positive duty to consider alternatives that would lessen the impact upon small business.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield further?

Mr. McDADE. I would be delighted to yield to my friend.

Mr. BROOMFIELD. But what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy, or incomplete?

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired.

Mr. KINDNESS. Mr. Speaker, I yield 2 additional minutes to the gentleman from Pennsylvania.

Mr. BROOMFIELD. Mr. Speaker, repeating the question, but what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy or incomplete? What if the agency ignores significant information provided by an affected individual; or, more importantly, what happens if the agency ignores its own findings or makes a conclusion that is not in keeping with its own facts?

Mr. McDADE. Mr. Speaker, again I want to commend my friend. The question, I think, is terribly important as we establish the legislative history of this piece of legislation.

Let me say unequivocally as a member of the committee that wrote this bill, that in that instance, upon review of the final regulation, it is the intent of our committee that the court should strike down the regulation.

Now, I must make it clear that there are no intermediate court reviews. The

only review will be for final regulations; but when the court does review it, and I know I speak for my friend, the gentleman from Iowa, the distinguished chairman of the subcommittee on this, when the court finally does review it, then we intend that this regulation shall be invalidated.

Mr. BROOMFIELD. Mr. Speaker, I thank the gentleman.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I am delighted to yield to my friend, the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, I just want to point out that it is difficult to make sure in legislation that every agency will do what it is expected to do; but to try to guarantee that, this bill provides, and our bill provided, although I think our bill was a little stronger, that the Chief Counsel for Advocacy has both the authority and the responsibility to carry through within the administration to make sure agencies do what they are expected to do under this legislation. The Chief Counsel for Advocacy does have a measure of independence within the administration and we will be sure he gets the personnel to do that.

Mr. McDADE. I thank my chairman. I could not agree with him more. It is our intent that our bill, and I agree with the chairman, it was stronger than the one we are considering today, but the intent of all of us in passing this legislation is to do exactly what the gentleman says and to make the agencies respond.

I thank my friend, the gentleman from Iowa, for his contribution.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I stand in support of this critical legislation. With the passage of this measure before us today, the House takes a major step forward on behalf of the overregulated small businessman and woman in this recession-ridden country.

For years now the small business community has been disproportionately burdened by the same reporting requirements as the corporate giants in the United States, those multinational, multibillion dollar entities which comprise the Dow-Jones industrial stock average. This is true even though the problems which gave rise to the Government action may not have been caused by the smaller entities.

It is obvious to all in this Chamber that unnecessary regulations create many barriers in many industries and discourage potential businessmen and women from introducing beneficial products and processes into the mainstream. How far do you think Wilbur and Orville would have gone if faced with similar regulations?

Mr. Speaker, as a member of the Small Business Committee since 1965, I have actively supported and cosponsored legislation designed to achieve the stated goals of this legislation. It is critical for the future posture of our industrial, high-technology Nation that it provide the innovative and productive sector of our society, small business men and women, the opportunity to direct most of its energies on production and not paperwork.

Failure to pass this long-awaited measure translates into continued diminution of this country's image as a world leader in innovation and technology. The long-term effect will be that the Japan's and Germany's in the world marketplace will continue to surge ahead in their relative productivity figures.

Therefore, it is imperative that Federal agencies endeavor to fit regulatory and information requirements to the scale of the businesses. If we can accomplish the objectives of this legislation, small businesses throughout the United States will save the millions of nonproductive man hours and billions of dollars required each year to comply with these unnecessary regulations.

I urge passage of this important matter.

□ 1520

In closing, Mr. Speaker, I want to congratulate the subcommittee, the gentleman from Iowa (Mr. SMITH) and the gentleman from Florida (Mr. IRELAND), who is chairman of the subcommittee. I also want to thank the gentleman from Pennsylvania (JOE MCDADE) and all of the others on the Small Business Committee, who have worked so hard and diligently for the past 3 years on this piece of legislation which I, too, have cosponsored.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. NOWAK).

Mr. NOWAK. Mr. Speaker, today we will consider landmark legislation on behalf of small business. For the first time, Government regulations must be designed to "fit the scale of those being regulated." Regulatory flexibility is not a new concept. Both Houses of the Congress have considered similar measures over the last few years.

Recently, I voted, along with 29 of my other colleagues on the Small Business Committee, to report a similar bill, H.R. 4660. And every Member knows the issue: They have been directly involved with constituent cases, and have seen how excessive Government regulations hamper smaller firms.

S. 299, the Regulatory Flexibility Act, is the first step toward the establishment of a broad, tiered Government policy, one which recognizes the special needs and limits of smaller firms. Ultimately, this policy will restore our free enterprise system.

It will insure that the small business community will continue to create the jobs, competition, and innovation our economy so desperately needs in the 1980's.

S. 299 provides a framework which will yield regulatory flexibility. Federal agencies are required to periodically publish a regulatory flexibility agenda. And they must prepare a regulatory flexibility analysis which will explain how their rules can be tiered to accommodate smaller firms. Lastly, they must review existing regulations and change them if they adversely affect small business.

Tiered regulations are not a drastic departure from past regulatory practice. A good example of a two-tiered reporting requirement is the personal income tax form. Salaried persons earning less than $20,000 a year are permitted to file a short form, 1040A, while others fill out the more detailed long form.

The Securities and Exchange Commission has embarked on an ambitious program of tiering. The Department of Energy tiers, the Environmental Protection Agency tiers, the Occupational Safety and Health Administration tiers. The problem is that, in some cases, past efforts to promote flexible regulations within the agencies have been undertaken without adequate economic analysis. The results are sporadic and sometimes inconsistent.

What this bill would do is impose an orderly, Government-wide, process on a rather ad hoc process. Some may ask, if we impose too many restrictions on the agencies' informal rulemaking, are we opening the door to the possibility that agencies will get around the restrictions by increasing enforcement efforts in an attempt to establish legal precedents? Agencies, of course, can, and should pursue violators of the law. However, when enforcement becomes petty or ill conceived, Congress has shown little reluctance to step in and chastise agencies through the oversight and budget review process.

Small business' demands are not outrageous. They only want straightforward, equitable laws. They are willing to pull their own weight, to hire employees, sell their products, to pay taxes, and contribute to our economy. Today, unfortunately, what they have is a jungle of conflicting regulation, and a Tax Code skewed in favor of the wealthy and the large corporations.

Tiered laws and regulations will move us a step closer to our goal. S. 299 is an important and vital first step which should be overwhelmingly supported by this House.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. SKELTON).

Mr. SKELTON. Mr. Speaker, I rise in support of S. 299, the Regulatory Flexibility Act.

The House version, H.R. 4660, the Smaller Enterprise Regulatory Improvement Act was unanimously reported by the Small Business Committee on October 17, 1979, and had 245 cosponsors.

S. 299 was unanimously passed by the Senate August 6, 1980.

This legislation would require Federal agencies to assess the small business impact of their regulations and tailor them to fit the size of the entity being regulated.

Legislation of this nature was one of the major goals of the White House Conference of Small Business.

Our Nation's small businesses file more than 305 million Federal forms every year, totaling over 850 million pages and containing over 7.3 billion questions. The cost of this paperwork is about $12.7 billion, a cost that is eventually passed along to the consumer.

I commend the gentleman from Florida (Mr. IRELAND) for his work and lead-

ership on this measure. I support it and urge its passage.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. HEFTEL).

● Mr. HEFTEL. Mr. Speaker, I rise in support of S. 299 as a token recommendation of the necessity for better protecting small business from the consequences of rulemaking by Federal agencies. It is mandatory that these agencies analyze before the fact proposed rulemaking in terms of the consequences for small business. It is unfortunate that the bill is not stronger and I would hope that this body would consider carefully the necessity for strengthening it in the future if such a need becomes apparent.●

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. IRELAND).

Mr. IRELAND. Mr. Speaker, today marks the next to last step of a very long journey—that of the odyssey of the concept of regulatory flexibility for small business. I need not take up the House's time explaining how the mounting tide of Federal regulation and paperwork has swept away small business after small business. We have all heard the horror stories. The Small Business Committee has worked on this issue for years.

The result of several years of effort in our committee was H.R. 4660. This bill gained 246 cosponsors. Over 60 more Members asked to cosponsor after the report on the bill had been filed. The main concepts of the bill were later incorporated into major House regulatory reform legislation. Apparently, that legislation may not proceed further this Congress. In any event, small business cannot wait any longer.

Today we have before us Senate bill S. 299. This bill, which passed the Senate unanimously, is essentially the same as H.R. 4660. In fact, in all candor, S. 299 improves upon several sections of H.R. 4660. In a discussion of issues which I will insert in the RECORD today, our understanding of S. 299, which we are taking up today in lieu of H.R. 4660, is carefully described. I would like to thank Congressman BUTLER for providing his well prepared statement to the House for its consideration before the vote on this act.

What will this bill do for small business? First, Federal agencies will be required to publish in the Federal Register every 6 months a regulatory flexibility agenda. This agenda will also be sent to the Chief Counsel for Advocacy at the Small Business Administration and agencies will also endeavor to notify small businesses of the agenda through other channels. The agenda will contain a summary of any rules to be proposed which will have a significant economic impact on small business as well as the name and telephone number of a knowledgeable agency official among other things.

Second, whenever an agency has to publish notice of general rulemaking they are to prepare and make available for comment an initial regulatory flexibility analysis. They then must prepare a final regulatory flexibility analysis after having reviewed all comments. In this analysis, they must explain how their rules can be "tiered" or their burdens on small business otherwise lessened.

Third, agencies must review all regulations currently on the books and determine the continued need for any rules which have a substantial impact on small business. They have 10 years in which to complete this task and may use 1-year extensions, not to exceed 5 years, to complete the task.

Finally, the Chief Counsel for Advocacy of the Small Business Administration will monitor agency compliance with this law and will report at least annually to the Congress on said subject.

The Members of the House should know that regulatory flexibility was one of the major priority recommendations to come out of the White House Conference on Small Business. Last November, the President issued an executive memorandum that directed Federal agencies to consider flexibility in future rulemakings.

Mr. Speaker, the United States is presently in the midst of a rapid and pervasive expansion of Government influence over business. To assure a future for private, competitive enterprise, Federal policy needs to give careful attention to ways of dealing with the increasing intrusion of Government into the mechanics of the marketplace.

The design of the regulatory process goes right to the heart of the relationship between the Government and the people. It is the most tangible contact many people have with their Government. Every aspect of our lives is affected in some way by Government regulation: The air we breathe, the food we eat, our daily transactions in the marketplace, our safety as we drive our cars or work at our jobs. Government intervention in the economy is today much more the rule than the exception.

Although Federal regulation has helped our society achieve many desirable goals, evidence is growing that too many regulations are poorly designed to begin with, or have outlived their usefulness. Such unnecessary regulations have imposed tremendous burdens on the public.

The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: First, the disproportionate impact of Government regulation on small business reduces the competitive capacity of small business, thereby placing Government in the strange position of encouraging economic concentration, and, second, consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

The time to act is now. The vehicle is S. 299.

I would like to take this opportunity to commend President Jimmy Carter for the leadership and concern he has shown in this area of regulatory relief for small business. While the congressional wheels were turning, the President put regulatory flexibility into an executive memorandum and in effect got the ball rolling early. His staff has been very helpful in the latter stages of this process and their expertise and assistance was much appreciated.

The Nation's small businesses owe a special debt of gratitude to the former chairman of the Subcommittee on Special Small Business Problems, Representative MARTY RUSSO. MARTY worked long and hard on this legislation and due to his appointment to the Ways and Means Committee was unable to continue as chairman. We all know that MARTY RUSSO has been a leader in the fight against needless regulation not only on this bill but also by his work on independent bakers' labeling problems.

Needless to say this bill has wide support. Chairman NEAL SMITH and ranking minority member, JOSEPH MCDADE, of our committee have been towers of strength for years in the battle against overregulation of small business. Also, SBA Administrator A. Vernon Weaver, Chief Counsel for Advocacy Milton D. Stewart and, Jere W. Glover, Director SBA Office of Interagency Office Affairs, have been instrumental in this process. The National Federation of Independent Business and the National Small Business Association have played a major supportive role during considerations on this bill.

I would like to thank the subcommittee staff which has worked for several years on this issue—Stephen P. Lynch and Patricia E. Reese of the majority staff; Marvin W. Topping of the minority staff; and James W. Morrison, former consultant to the subcommittee.

Mr. Speaker, at this point I would like to insert in the RECORD a legislative history of H.R. 4660, a reply to Mr. SEIBERLING on the question of abuse of the size standards, a discussion of the issues involved in S. 299, and a letter from Senator CULVER.

I also would ask permission to revise and extend my remarks.

WON'T TIERED REGULATIONS ENCOURAGE LARGE BUSINESSES TO SET UP "DUMMY" SMALL BUSINESSES TO TAKE ADVANTAGE OF LESSER REQUIREMENTS ON SMALL BUSINESS?

The bill provides that the definition of a small business shall be that employed by SBA or a definition of the agency's choosing. The SBA definition, at 15 USC 632 provides, among other things, that a small business concern "shall be deemed to be one which is independently owned and operated . . ." This tough, explicit definition provided by Congress has been strengthened by SBA criteria which further refine the concept of a small and independent business. SBA has more expertise on this matter than any other agency in Washington. Its Size Standards Division has carefully researched the question of business size for many years. An important body of case law has developed around these SBA definitions.

For instance, the courts have held that the SBA definitions have the force of law. (See for example: *Otis Steel Products Corp. vs. U.S.*, 1963, 316 F. 2d, 937,161 Ct. Cl. 694.) The courts have also backed up SBA's refusal to consider an affiliate of a big business as a small business. (See, for example, *American Electric Co., vs. U.S.*, D.C. Hawaii 1967, 270 F. Supp. 689 and *Springfield White Castle Co. vs. Foley*, D.C. Mo. 1964, 230 F. Supp. 77.)

Thus, these highly-developed, legally binding SBA criteria should be adequate in nearly every situation. However, should a rare case arise in which an agency feels it needs even more stringent criteria to define a small business, the bill would allow the agency to de-

velop its own definition. Given these stringent safeguards against abuse, and given the bill's stipulation that critical matters of public health, safety, and welfare are never to be compromised, the issue of potential misuse of the tiers would seem to be fully addressed within the legislation.

SEPTEMBER 8, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: This is in response to your inquiry with regard to the judicial review provisions of S. 299 recently approved by the Senate. I understand that your concerns relate to part of the explanation on page 21457 in the Congressional Record of August 6, 1980.

I believe your concern can be resolved by the addition of the words "and consciously" between "completely" and "ignores" in lines ten and eleven of the second column, and by striking the word "therefore" in the eighteenth line of that column.

Sincerely,

JOHN C. CULVER.

LEGISLATIVE HISTORY OF H.R. 4660 OF THE HOUSE SMALL BUSINESS COMMITTEE

H.R. 4660 was the result of 3 years of hearings and related work by the Committee. During the Ninety-Fifth Congress two relevant bills were referred to the Committee, H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. Caldwell Butler of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative Andy Ireland of Florida. The purpose of his bill was to give Federal agencies flexibility in the issuance of Federal regulations.

Hearings were held on these bills on February 1, March 8, March 9, and March 16, 1978.

During this Congress, several similar bills were introduced and forwarded to the Committee. They were:

H.R. 1306, introduced by Representative Richard Schulze of Pennsylvania. The purpose of his bill was to require the preparation of small business impact statements in connection with Federal agency rules.

H.R. 1745, introduced by Representative Andy Ireland of Florida. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 2837, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of her bill was to require the preparation of small business impact statements in connection with Federal agency rules, and for other purposes.

H.R. 2908, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 3011, introduced by Representative Robert Lagomarsino of California. The purpose of his bill was to amend the Small Business Act to require Federal agencies to reimburse small business for certain paperwork costs.

Hearings on these and the concepts considered last Congress were held on April 5, April 24, May 17, and May 22, 1979.

In these eight hearings the Committee heard from almost 40 witnesses from the public and private sectors. The result of all of this was a Committee bill combining the original Butler and Ireland concepts with refinements—H.R. 4660. This bill was considered and ordered favorably reported by the Full Committee 30–0, on July 17, 1979, as amended. At present 246, including all 39 members of the Small Business Committee, are co-sponsoring this legislation.

THE NEED FOR THE LEGISLATION

The Committee has for the last several years received evidence and heard testimony from countless small businesses complaining about Federal overregulation. These individuals have not opposed all regulation, but have drawn attention to instances of too much regulation and of ill-conceived regulation which has had an extraordinary economic impact.

Most of the witnesses who addressed themselves to this legislation sought means for balancing the goals of Federal regulation with those of a market economy. One such witness, Dr. Murray L. Weidenbaum, the Director of the Center for the Study of American Business at Washington University in St. Louis, has devoted considerable effort to studying the various impacts Federal regulation has upon business. In testimony before the Committee, he eloquently outlined some problems of regulatory impact. Turning to the Occupational Safety and Health Administration (OSHA), for example, he noted that the agency "provided a complex pamphlet containing 24 pages of fine print just listing the applicable standards for 'general industry'." And the explanation of those standards? For this the reader was referred to 29 CFR 1910. How is the average businessman supposed to know that CFR is the Code of Federal Regulations, that 29 is the volume 29 dealing with labor, and 1910 is section 1910, devoted to OSHA?

"(Assuming such a business person eventually located) * * * a copy of 29 CFR 1910, he is in for some surprises. The document contains 455 pages of fine print, including algebraic equations and trigonometric functions, but no index. Let us assume, generously, that our small business executive skips over the obviously technical parts and turns to what seems to be a simple section—the definition of an exit. By way of reference, the dictionary tells us that exit is 'a passage or way out.' For OSHA, however, defining exit is a challenge to its bureaucratic prerogatives, and it is not found wanting.

"To OSHA, an exit is 'that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment * * *' to provide a protected way of travel to the exit discharge." Obviously, our business executive now needs to find out what is "a means of egress" as well as an "exit discharge."

"Exit discharge is the easier term. It is defined merely as 'that portion of a means of egress between the termination of an exit and a public way.' Next comes OSHA's definition of a means of egress: 'a continuous and unobstructed way to exit travel from anv point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel (?) and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, exits, escalators, horizontal exits, courts, and yards.' "

Anyone who followed all this would ultimately discover that OSHA is saying that an exit is an exit is an exit. In the case of "ladder" there are three renditions of the same tedious set of definitions plus one trigonometric function.

OSHA is certainly not the only offender when it comes to abstruse regulations. One could note the proposed regulations on job testing written by the Equal Employment Opportunity Coordinating Council. The guidelines were drafted with the best of intentions—to assure that tests do not discriminate on the basis of race, color, religion, sex or national origin. The objective surely is worthy. Yet the guidelines have been challenged by such professional organizations as the American Society for Personnel Administration and the American Psychological Association.

Reading the proposed regulations reveals the basis for the objections. Here is a typical section, one of which in fact attempts to ease the burden on employers:

"A selection procedure has criterion-related validity, for the purpose of these guidelines, when the relationship between performance on the procedure and performance on at least one relevant criterion measure is statistically significant at the .05 level of significance * * * If the relationship between a selection procedure and a criterion measure is significant but non-linear, the score distribution should be studied to determine if there are sections of the regression curve with zero or near zero slope where scores do not reliably predict different levels of job performance."

Should such guidelines be enforced, the result would surely not be fairer testing but a shift from what would be very costly and cumbersome procedures back to the simpler but far more bias-prone oral interview.

A CASE STUDY OF REGULATORY EFFECT ON SMALL BUSINESS LABELING RULES AND INDEPENDENT BAKERS

The Subcommittee on Special Small Business Problems conducted all the hearings leading up to H.R. 4660. In addition they have held many other hearings concerning regulatory impact on small business. One of the most telling examples of what is happening came in their hearings on small bakers and a Food and Drug Administration labeling regulation.

In the 1930's there were more than 10,000 idependent bakers in America. Between 1939 and 1964, while the volume of bread production increased fivefold, the number of bakery plants declined to less than 5,000. Today the number of independent bakers is less than 1,000. Several large metropolitan areas have only one independent to serve them.

Independent bakers have made significant contributions to their industry as well as to the economy. For example, all of the following bakery innovations are attributed to independent bakers:

1. Wrapped bread.
2. Marketing of sliced bread.
3. Baking of a continuous-mix bread.
4. Bag bread.
5. End labels.
6. Bread in cellophane.
7. Bake-and-serve items.

Under sections 401 and 403 of the Federal Food, Drug, and Cosmetic Act, Congress directed the Food and Drug Administration to require careful and detailed labeling of food products. In particular, the act requires that all foods composed of two or more ingredients be labeled with the common or usual names of those ingredients. The FDA, in interpreting the law has for the most part required that ingredients be listed in the order of predominance.

In 1978 the FDA was prepared to put a new labeling regulation into effect. The rule had no flexibility and called for all products to be listed in strict order of predominance on the label. Since small bakeries tend to have more variable sources of supply the requirement would have necessitated the printing of an almost infinite number of labels by such small operations. Small bakers complained to the Subcommittee that this one new rule would add vast new costs and would drive a number of them out of business

Subcommittee members had several meetings with the bakers, FDA officials, and consumer advocates. Once various consumer representatives who had urged the FDA to adopt the regulation saw what the results

would be, they were ready to modify the rule. The FDA was very cooperative. A new rule was issued, taking into account the needs of smaller bakeries.

Based on this and other similar experiences, the FDA has now set up four information desks throughout the nation for small business. The agency also now seeks out small buinesses for all their views, not just on labeling.

The lesson of this experience is important. An accelerated decline in independent bakeries would have led to a concentrated group of dominant companies and might well have created a baking monopoly or oligopoly. Characteristics of monopolies and/or ologopolies are all to well known—controlled output, high prices, and excess profits. Such a situation would confront the consumer with a market functioning according to the whims of a few. An objective of Federal regulation is to stop such concentration, not to create it. But a Congressional Subcommittee cannot realistically be expected to intervene in every such situation.

OTHER EXAMPLES

The Committee's files are replete with documentation of burdensome regulations adversely affecting small business. Productivity and innovation have ben curtailed. Inflation has been increased. Instances like the following are unfortunately all too commonplace:

A gas station owner spent 600 hours last year filling out just his Federal reporting forms.

An Idaho businessman paid a $500 fine rather than fill out a Federal form which was 63 feet long.

A New Hampshire radio station paid $26.23 in postage to mail its license renewal back to Washington.

A dairy plant licensed by 250 local governments, 3 states, and 20 agencies had 47 inspections in 1 month.

A butcher had one Federal agency tell him to put a grated floor in his shop one month and then the next month was told by another Federal agency he could not have a grated floor.

A company was forced out of the toy business because one of its main products was inadvertently placed on a Federal ban list.

An Oregon company with three small shops received Federal forms weighing 45 pounds.

THE OVERALL REGULATORY CLIMATE FOR SMALL BUSINESSES AND SMALL ORGANIZATIONS

A regulatory environment which necessitates the hiring of lawyers, accountants, engineers and consultants for businesses of any size to survive will clearly provide competitive advantages of the largest, most automated businesses and increase the size of firms which can enter the marketplace or remain there.

Professor Milton Kafoglis, formerly Senior Economist of the Council on Wage and Price Stability, set forth the problem in testimony on this legislation:

"* * * the regulatory agencies usually assume—contrary to fact—that costs imposed by regulation can be passed through to consumers with equal ease by all firms. This assumption tends to blunt the concern of regulatory agencies about disproportionate impacts on various sizes and classes of business.

"Though 'uniform' regulatory treatment of all businesses seems to be a reasonable criterion, it must be remembered that there are real differences and that uniformity of regulation could represent an economically inefficient solution * * *

"Uniform application of regulatory requirements seems to increase the size of firm that can effectively compete. In technical jargon, the unit-cost curve of the firm is shifted upward and to the right with its minimum point occurring at a larger output. That is, the imposition of regulations will, in most cases, artificially increase the size of the firm that can survive. If one employs the economists' theoretical 'dominant firm' model and introduces such upward shifts in cost curves (the small firm's cost curve shifting more than that of the dominant firm's), the market share of the dominant firm will increase while that of the small firms will decrease. As a result, industrial concentration will have increased. Thus, the 'small business' problem goes beyond mere sympathy for the small businessman, but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly.

"The usual paperwork and reporting burden whose total costs are invariant to output is the most obvious example of economies of scale imposed by regulation. Whereas large firms typically have a managerial structure and/or legal section that can absorb these costs with either no increase in staff or with an incremental increase, small firms must either add increments which are large relative to the size of the firm or seek consulting services which are expensive and not very highly specialized in the firms' particular needs. All such expenses are invariant to output, and their cost per unit of output declines as output increases. Such costs raise the cost curves of all firms but place the small firm at a relative disadvantage on a unit-cost basis.

"More importantly, the technology imposed by most regulations is itself subject to scale economies * * *

"Standards which impose technologies involving large fixed costs also raise barriers to entry, imposing capital burdens that small or medium-size firms cannot handle, and solidifying the market positions of existing firms. Indeed, large firms are likely to support such regulations since they are capable of insulating the industry from new competition * * *

"* * * there is not to my knowledge a government regulation which (if uniformly applied to all firms) would generate diseconomies of scale and increase the number of firms in an industry, thus encouraging deconcentration and increased competition."

Our Committee found ample evidence, on the other hand, that flexible regulatory strategies are not only workable in theory but have in fact been used on a sporadic and ad hoc basis throughout the agencies. An example of a two-tiered reporting requirement with which most Americans are familiar is the income tax form. Salaried persons, earning less than $20,000 are permitted to file their tax returns on Form 1040A (the "short form"), while other taxpayers are required to fill out Form 1040 (the "long form"). In this instance the Internal Revenue Service has made a determination that less information is necessary from low- and middle-income taxpayers with a single major source of income than is necessary from other taxpayers. Other agencies on occasion use multi-tiered techniques and they should continue to do so.

The Committee discovered numerous examples of such flexibility (both legislatively and administratively mandated) throughout the Code of Federal Regulations. The National Federation of Independent Business (NFIB) presented schematic charts of some of the varieties of existing "tiered" Federal regulation in a dozen different regulatory areas. Other witnesses compiled lists of flexible regulations in specific industries.

Unfortunately, however, efforts to promote regulatory flexibility have until now been sporadic, lacking in overall Congressional guidance, and at times ill considered. For example, the General Accounting Office's (GAO) testimony drew attention to the Department of Energy's crude oil entitlements program, which has enabled smaller refineries to purchase crude oil at subsidized prices. An unintended consequence of this program was that 37 of the 38 refineries built in the United States between January 1974 and September 1977 were designed to process less than 40,000 barrels per day, the threshold of the entitlements program, whereas the minimum technologically efficient refinery size is 175,000 barrels per day.

Our Committee is persuaded that the most direct and practical solution to counterproductive flexible regulations, is to stimulate a much greater degree of participation in rulemaking by affected parties. Offering agencies the means for tailoring regulations to the resources of affected parties must be accompanied by a strong mandate to involve those parties in the deliberations.

Thus, although administrative and legal precedents support the general approach of the bill, they do not obviate the need for the legislation.

In fact, much of the thrust of the legislation could be met by the agencies by adapting their application of Executive Order 12044 to the demonstrated problems of small businesses and small organizations.

The Executive order requires that regulations should be as simple and clear as possible and should achieve legislatively mandated goals effectively and efficiently. It states that:

"They shall not impose unnecessary burdens on the economy, on individuals, on public and private organizations, or on state and local governments."

While this policy is completely consistent with the purposes of H.R. 4660, such as reducing unnecessary requirements and simplifying and clarifying necessary ones, there are numerous provisions of H.R. 4660 which are not addressed in the Executive order.

The order does not address the issue of the different impact of uniformly applied regulations on individual segments of the population, nor does it urge agencies to issue rules which apply differently to such segments of the population. Although the order does improve the opportunities for public comment on substantive rules, its provisions are narrower than those of H.R. 4660, and it does not open reporting requirements for public comment.

Finally, the Small Business Committee noted that enforcement of the Executive order is restricted. Since the question of agencies' compliance with the order is not subject to judicial review, realization of the benefits the order seeks to provide will largely depend upon the personal sensitivity and good faith of the rulemakers. Adherence to the order by the independent regulatory agencies, which are not part of the executive branch, is completely voluntary. Moreover, the Office of Management and Budget has limited structural mechanisms for enforcing the order, even within the executive agencies.

H.R. 4660 does not conflict with the Executive order and does not represent a duplication of objectives. H.R. 4660 would supplement and strengthen the order in several ways, notably by adding two new regulatory objectives: improving public participation and an assessment of alternative regulatory strategies in light of their impact on small concerns. Thus, the Committee believes this legislation is not only necessary, but timely.

Indeed, the Committee agrees with the testimony offered by the General Accounting Office (GAO) that:

"In the absence of Congressional action establishing comprehensive guidelines to improve agency rulemaking, we would support legislation designed specifically to ease the regulatory burden on small business."

H.R. 4660 has been carefully designed to permit such broad scale reform in the future, and nothing in the legislation would stand

in the way of comprehensive rulemaking reform. Each major aspect of the bill accords with generally accepted principles under Executive Order 12044 or existing administrative law.

THE CONCEPT OF FEDERAL REGULATION OF THE MARKETPLACE

Federal regulations have the effect of law when finalized. Though thousands of new regulations are created every year, very few are ever taken off the books. Estimates of the cost to the economy of all these regulations ascend to $100 billion. In such a situation, it is important to keep track of the main lines of reasoning in support of Federal intervention in the marketplace.

There are two main arguments. Market failure, a term which economists use to designate a flaw in the marketplace which produces undesirable consequences, can create several problems. Regulations can remedy many of these problems. Among them are:

Natural monopoly, resulting in high prices, reduced output, and excess profits;

Interdependencies in natural resource extraction, resulting in the inefficient use of natural resources;

Destructive competition, resulting in chronically sick firms unable to satisfy consumer demand;

Externalities, which impose costs in society but not on the person who causes them; and inadequate information in the marketplace, resulting in poor decisions and wasted resources.

A regulation in any of these areas is meant to improve the market system and aid competition.

The second line of reasoning concerns social or political problems which demand regulation. Among these are regulations which are intended to:

Alter income distribution;

Strengthen national security;

Improve the environment;

Protect public health and safety;

Promote new industries;

Give special protection to groups like small business or family farms;

Provide special assistance to smaller communities and/or rural areas.

In each of these cases, regulation serves to meet an important social need. Difficulties arise when bureaucracies which are not responsible to the electorate exceed their statutory authority or fail to consider rulemaking alternatives which would have a less burdensome impact on the regulated public. It is this imbalance between goals and unnecessary burdens which this legislation is designed to address. The Committee did not intend to sanction any diminution of the legislatively mandated goals of Federal regulation.

AGENCY ENFORCEMENT

During the hearings an issue arose concerning an option which agencies may use rather than regulation. One of the witnesses before the Subcommittee, Mr. Calvin Collier, a former Deputy Director of OMB and former Chairman of the Federal Trade Commission, raised the possibility that agencies confronting new rulemaking procedures might evade them by resorting to the creation of legal precedents through enforcement actions against "worse case" offenders, and subsequent enforcement of such precedents upon the regulated public as though the precedents were actual rules.

While our Committee believed such agency action is much more likely under the more sweeping regulatory reform measures now pending before Congress, and that the Smaller Enterprise Regulatory Improvement Act would impose little additional burden on any agency, the Committee would note that agency enforcement budgets will be subject to rigorous oversight if evidence suggests that enforcement actions are being used as a surreptitious form of "rulemaking."

A PUBLIC PROBLEM

Overregulation is not just a small business probem. It is a problem with significant public consequences. One witness summed it up this way:

"The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: (1) the disproportionate impact of government regulation on small business reduces the competitive capacity of small business, thereby placing government in the strange position of encouraging economic concentration, and (2) consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

"The disproportionate impact of regulation on small business stems from economies of scale inherent in the regulatory process. This fact is neither unexpected nor stunning once attention is drawn to it. But as often is the case of the obvious, we tend to dismiss it in our preoccupation with the more specific."

On October 17, 1979, H.R. 4660 was referred to the House Judiciary Committee. On May 28, 1979, the Judiciary Committee was discharged from further consideration of H.R. 4660.

DISCUSSION OF ISSUES

When the Senate passed S. 299 on August 6, a "Description of Major Issues and a Section-by-Section Analysis" was provided to explain certain substitute language adopted for that bill. (See 126 Congressional Record 21452-21461.) Members of the House of Representatives took an active role in helping the various parties in interest achieve the understandings which were necessary to bring the measure before the Senate, just as members of the Senate have provided much help in bringing the measure before the House of Representatives today. Thus the Senate document entered into the Record on August 6 already reflects many of the concerns of House members who have been involved in the development of regulatory flexibility legislation. Indeed, much of S. 299 as passed is derived from provisions of H.R. 4660. Rather than commenting again on each of the various sections of S. 299, as passed by the Senate, this Discussion of Issues will supplement the Senate document by noting some general themes and objectives of the legislation, occasionally amplifying some of the points made during Senate consideration, and drawing upon, where appropriate, House Report 96-519 on H.R. 4660 (which should be incorporated by reference into the legislative history of the pending bill.) That House report more fully conveys the views on regulatory flexibility legislation of the principal authors and sponsors in the House of Representatives. Agreement on the matters discussed in this Discussion of Issues has helped provide the broad political consensus necessary to bring S. 299 before the House of Representatives in lieu of H.R. 4660. House members who have worked on this legislation are deeply grateful for the active and creative participation of Senators Culver, Nelson, Laxalt, Thurmond, and others in developing S. 299. Senator Culver has shown particular strength and perseverance in the long effort to enact regulatory flexibility legislation.

In general, regulatory flexibility legislation is designed to eliminate the unnecessary regulatory burdens which attend uniform or rigid regulatory strategies, particularly with respect to those on whom such unnecessary burdens weigh the most heavily—small businesses, small organizations, and small jurisdictions of government. The legislation directs agencies promulgating federal rules, reporting, and recordkeeping requirements to carefully examine them with the purpose of seeking less burdensome "flexible" alternatives.

The agencies are directed to assess such options as "tiering" (that is setting differing and less burdensome requirements on smaller entities), exemptions from all or parts of rules, the structuring of differing timetables for compliance, the use of performance standards rather than design standards, and so on. It is important to note that agencies are not restricted to use of the options specifically enumerated in S. 299. When S. 299 refers (in Section 603(c)) to "any significant alternatives to the proposed rule" and then enumerates alternatives "such as" those mentioned above, it means just that—that those alternatives are examples or possibilities, but that any other appropriate flexible regulatory strategy which is suggested must be given serious consideration. The Act does not specifically mention the adoption of less frequent reporting requirements for smaller entities, for example, although this form of flexible regulation is already used by many agencies, and is indeed completely consonant with S. 299. Equally appropriate in the future, although again not explicity noted in the Act, would be such current agency practices as adopting multi-tier regulations, and using criteria which have the effect of tiering by size but which do not directly measure business size (as for example, the EPA regulations affecting leather tanneries which are tiered according to volumes of effluent discharge.) The Act does not specifically cite the entitlements programs now in use by some agencies, although entitlements programs are a form of flexible regulation. Nor does it take note of imaginative new approaches like the Environmental Protection Agency's "bubble" concept, which takes into account that agency's mandate to clean up the air while lessening unnecessary burdens through a flexible application of a statute.

Neither S. 299 nor any other single piece of legislation could ever begin to specify the appropriate solution to address every situation regulators will encounter, now and in the future, and it would be unwise to attempt to do so. Reguatory flexibility should be viewed by the agencies as Congressional encouragement to reward agency personnel for seeking out and applying creative solutions to the genuine problems our smaller entities face in complying with broad, general statutes. Statutory mandates must never be compromised—that is why section 606 explicitly states that the Act does not alter any other statutory standard—but agencies are required by the Act to solicit and consider flexible approaches in the application of their statutes, where legally permissible.

Agencies may undertake initiatives which would directly benefit such small entities. Thus, the term "significant economic impact" is neutral with respect to whether such impact is beneficial or adverse. The statute is designed not only to avoid harm to small entities but also to promote the growth and well-being of such entities.

Acertaining the impact on small entities is the heart of the regulatory flexibility analysis. It is a finding of significant economic impact on a substantial number of small entities which triggers the consideration of flexible regulatory strategies. Evidence of such impact upon any one of the three types of entities—the small businesses, the small organizations or the small jurisdictions of government—requires agency compliance with applicable provisions of this legislation. Normally, rules will not affect two or three types of small entities simultaneously, but when this does occur, agencies should take steps to involve each type of entity in their

rulemaking, and account for each in their regulatory flexibility analyses. Agencies should promulgate final rules whose flexible provisions are based on the rule's potential impact on each of the different types of affected small entities.

Thus the possibility that a rule may cause a substantial impact on a significant number of small entities is central to an agency's determinations under this legislation. Exactly what a "significant economic impact on a substantial number of small entities" is will vary from case to case. For example, if there were 500 small organizations of a certain description, and 200 of them would face major new reporting requirements if a certain rule were implemented, then the rule should be expected to have a significant economic impact on a substantial number of small entities (in this case small organizations). If there were only 25 small businesses in an industry dominated by 12 large businesses, then a rulemaking initiative which would threaten the economic viability of 15 of those small businesses, and thus adversely affect competition and industrial concentration, would have a "significant economic impact on a substantial number of small entities" within the meaning of the legislation, even though the absolute number of small businesses involved would be minuscule. As this example makes clear, economic impacts include effects on competition and economic concentration. The phrase "significant economic impact on a substantial number of small entities" is ambiguous in order to cover critical situations such as these examples without imposing exact numerical thresholds on the agencies overall. But clearly, any anticipated rulemaking which common sense would suggest could have a direct, noticeable economic impact on several thousand or more small entities (of any type) should be considered as included within the concept of having a "significant economic impact on a substantial number of small entities." Obviously, agencies are not expected to estimate the unforeseeable or to avoid ever making any mistakes in their estimates. Rather, the agencies should make good faith efforts to arrive at reasonable estimates and should scrupulously follow the procedures outlined in the legislation.

Those procedures can be delineated in a step-by-step manner. The initial decision the agency makes is a determination that the provisions of this Act are applicable to the agency and to the actions that it takes. This is clearly an important decision, which the agency should consider very seriously. The legislation is intended to be as inclusive as possible, and doubts about its applicability should be resolved in favor of complying with the provisions of the Act. Any significant comments from the public or especially the Office of Advocacy that a rulemaking should be accompanied by a regulatory flexibility analysis should be given the utmost serious consideration by an agency.

Although these more inclusive interpretations may result in additional effort for the agencies in the short run, such inconvenience should be viewed in light of the final rule's long-term advantages: more just application of the laws and more equitable distribution of economic costs, which will ultimately serve both the society's and the government's best interests.

It is difficult to ascertain how many regulatory flexibility analyses agencies will be required to prepare or publish under this Act, One estimate is that there will be about 500 per year. There may be more or fewer. The number will surely vary according to the subject areas the agencies choose to consider in any given year.

Having made the determination described above, the agency must then perform the regulatory flexibility analysis. The first step in this analysis is a careful estimation or projection of whether a rule, not yet proposed, may if implemented have a significant economic effect on a substantial number of small entities. This estimation will become a part of the agency's permanent rulemaking record. Under normal circumstances, a positive finding regarding impact should be followed by notification on the agendas required by section 602 that the rule, if implemented, could have such an effect on small entities. Sometimes, very early in rulemaking, agencies may only know in general terms that an area of rulemaking activity could have such an effect. This, too, should be noted on the agendas. In other words, an agency does not need to have a specific rule already developed to provide the public with agenda notification; agency activity in an area which is likely to result in a proposed rule having such an effect should also be noted. For purposes of agenda publication, agencies should interpret potential impact liberally. It would be preferable to have the agendas err on the side of anticipating more impact than subsequent rulemaking records indicate is likely to occur than to have such impact overlooked on agendas. For in cases where such potential impact proves to be unsupported by subsequent evidence, agencies are completely free to suspend any further regulatory flexibity analysis (provided appropriate certification is published pursuant to section 605(b) of this Act), but the rulemaking record will have been enhanced by public comment on the agenda items. (Such public comment on agendas should be gathered in accordance with Section 609 of this Act, to the extent feasible.) A different type of situation occurs when an agency obtains evidence later in its rulemaking that suggests that an estimation of "significant economic impact on a susbtantial number of small entities" would be appropriate. In such a situation, the agency should proceed directly to the publication of an initial regulatory flexibility analysis. In other words, when, an agency must consider or act upon an item which did not appear in an agenda, it may do so. And an agency will not be required to consider or act upon any matter solely because it appeared in an agenda. In preparing agendas, as with other responsibilities under this Act, agencies may reduce their paperwork and avoid duplicative analyses by considering a group of closely related rules as one rule for purposes of simplifying analyses. But agencies may not avoid the requirements of this Act by dividing a larger rule into smaller rules with less impact.

Following the receipt and consideration of comments on the agency's impact assessment, as published in its agenda, the next step in the regulatory flexibility analysis is either the agency head's certification, under section 605(b), that a rule will not, if promulgated, have a significant economic impact or a substantial number of small entities, on the publication of an initial regulatory flexibility analysis under section 603. A certification under 605(b) must be made by the agency head personnaly, must be based upon sufficient evidence with in the rulemaking record, and must not ignore or fail to account for any significant evidence to the contrary. Certifications under section 605(b) should not be abused or taken lightly; they represent an important step in the evolution of an agency's regulatory flexibility analysis and overall rulemaking. Such certifications will also become a part of an agency's rulemaking record. For the administrative convenience of the agencies, the Act allows, certifications under section 605(b) to be published either concurrently with proposed rule publication, or after publication of an initial regulatory flexibility analysis (under section 603) concurrently with final rule publication. This timing of publication is flexible so that section 605(b) certifications can serve as the final evaluation in the regulatory flexibility analysis: the point at which the evidence makes clear that a flexible rule is not warranted by a rule's potential impact.

Agencies are required to notify the Chief Counsel for Advocacy of the Small Business Adminitration whether they publish an initial regulatory flexibility analysis under section 603 or whether they publish a certification under 605(b). The Chief Counsel's office was set up by Congress (under P.L. 94-305, 90 Stat. 669) to be an advocate for small business within the Federal Government. In that role, the Chief Counsel's office has been empowered to take part in a variety of inter-governmental activities, including participation in agency rulemaking proceedings. Comments by the Chief Counsel's office on agency certifications under section 605(b) should be viewed by the agencies as being just as significant as comments by the Chief Counsel's office on other parts of the regulatory flexibility analysis, such as comments upon the publication of the initial regulatory flexibility analysis under section 603. Because of the broad role Congress is assigning the Chief Counsel in the Administrative Procedure Act in monitoring agency compliance with this legislation, any comments submitted by the Chief Counsel in connection with an agency rulemaking should be given the utmost serious consideration by the agency. Agencies will benefit from the considerable experience of the Chief Counsel in developing flexible alternatives under this new area of law.

The reports on agency compliance which the Chief Counsel is required to submit to the President and to Congress under section 612(a) of this Act should include a listing of the Chief Counsel's comment submissions regarding the applicability to agency actions of provisions of the Act, including especially sections 602(b), 603(a), 605(b), and 610, as well as candid evaluations of all instances of disagreement between the Chief Counsel and the agencies involved. The reports will measure the progress of regulatory reform by compiling the number of regulatory flexibility analyses completed, rules under review, rules reviewed and flexible alternatives adopted. Inasmuch as the Chief Counsel is required to report "at least" annually, he may report more frequently, and may from time to time issue special reports on matters of particular significance with respect to regulatory flexibility implemention. Reports by the Chief Counsel's office, and other responsibilities of the Chief Counsel under this Act, should be implemented in accordance with existing procedures under that office's authorizing statute, P.L. 94-305. Section 612 of the Regulatory Flexibility Act provides that the Chief Counsel for Advocacy be permitted to appear as amicus curiae in any action in any views and the views of small entities with respect to the effect of a rule upon entities covered under the Act. This judicial role complements his already-established function of monitoring federal rulemaking affecting small business and participating in such rulemaking where appropriate.

After publishing an initial regulatory flexibility analysis, an agency should take the steps stipulated in section 609 for gathering comments, and should do so with special vigor if such steps have not already been taken following agenda publication under section 602.

Section 609 is quite explicit about the direct involvement of affected smaller entities in rulemaking. The participation of affected smaller entities in an agency's deliberations regarding flexible alternatives is an absolutely essential responsibility of an agency under this legislation. Such public participation will doubtlessly produce a number of significant contributions to an agency's search for the least burdensome

regulatory strategy consistent with its mandate.

Analysis of comments gathered using these procedures, as well as comments, if any, from the Chief Counsel's office should form the foundation for the agency conclusions as expressed in the publication of the final regulatory flexibility analysis. An agency's final regulatory flexibility analysis of a rule should be directly linked to the final rule. It would not be reasonable for an agency to publish a finding that a rule is unnecessarily burdensome and that it could and should be made flexible, and for the agency then to fail to promulgate such a flexible rule.

Agencies may conduct emergency rulemaking in exceptional situations. The initial steps of a regulatory flexibility analysis need not be performed if a rule is being promulgated in response to an emergency, although the agency head must personally so certify, as in the case of certifications under section 605(b). However, as noted in section 608 (b), all rules, even emergency rules, must have a final regulatory flexibility analysis published for them (unless, of course, the agency publishes a certification under section 605(b) of this Act), but such publication may occur up to 180 days after the rule is promulgated. Failure to publish a final regulatory flexibility analysis within 180 days shall cause a rule to lapse.

To help agencies cope with unusual circumstances, particularly when unforeseen difficulties arise in the future, an agency head is permitted to extend the time limit for the review beyond ten years, for a year at a time, up to fifteen years. This authority should be used very sparingly, on a case-by-case basis for each rule involved. This provision of section 610(a) is most emphatically not intended to extend the review period beyond ten years on a wholesale basis for any agency. The agency plan for review of its rules, which must be published within 180 days of the enactment of this legislation, should be based on a ten-year cycle of review. In reviewing existing rules, agencies should follow the procedures described in sections 602–609 to the extent appropriate. Of course, such reviews should be consistent with the objectives stated within the underlying statutes of the agencies, as should all agency actions under this Act.

Ultimately, the Regulatory Flexibility Act is directed to agencies which in the past may not have known whether they were permitted by Congressional mandate to promulgate rules which were flexible enough to take into account special problems faced by small entities. The Act is designed to eliminate such uncertainty as well as to encourage agencies already promulgating flexible rules to continue doing so.

The sponsors of this Act hope that those agencies, and the agencies already working to implement flexible rules, will take their new responsibilities under this Act seriously and will make steadfast good faith efforts to comply. There are sanctions available for agencies which do not comply with this legislation, of course, in Congress and in the courts. This Act represents more than three years of careful work by both Houses of Congress to provide responsible legislative assistance to groups of Americans who feel sorely and justifiably afflicted by the way their government has treated them. Congress' concern about this problem is vividly expressed in the legislative history of regulatory flexibility proposals, a history which has included numerous unanimous votes in subcommittees, in full Committees, and on the Floor. In fact, there has never been a single negative vote cast against any regulatory flexibility bill since the introduction of the first such bill in the 95th Congress. Today's vote on the Floor of the House of Representatives finalizes a now general consensus that proper implementation of this legislation will result in much needed relief and significant benefits to our Nation's small entities.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from California, chairman of the Subcommittee on Administrative Law and Governmental Relations (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I should like to point out a few things in connection with this bill which we are today considering, S. 299.

First of all, this bill has never been considered by any committee or by any subcommittee of the House of Representatives. It stands here naked, by itself, the product of the other body, which was passed by the other body, but has never been referred to a committee of the House of Representatives.

Comment has been made, as to the subject matter of judicial review, to the effect that judicial review is provided for in this bill. I should like to point out that section 611 on page 15 of the bill provides as follows:

> Except as otherwise provided in subsection(b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

Insofar as thare may be Members who feel that judicial review is encompassed within this bill, I trust that the foregoing reference to the language of the bill itself will set that point straight.

I am willing to state as I stand here that this bill has some merit, and I emphasize the word "some." But I submit that it has very little.

The problems of regulatory reform are not fully addressed by this bill. If one were to use a form of common analogy, one could say that this is but a band aid on an economic cancer. The public and the business community have for years been clamoring for some relief from the overregulation from which we all suffer.

My subcommittee and I have worked long and hard to provide that relief. But apparently what we are confronted with now, under suspension of the rules, with no opportunity to amend, is a very small and inadequate substitute.

This bill, S. 299, falls far short of realizing the promise of regulatory reform as heralded so long ago by Executive Order No. 12044 which was issued on March 23, 1978, and which is now scheduled to expire on April 30, 1981.

In response to the public clamor, from all walks of life, for some meaningful reform of the regulatory process which would lift some of the burden of overregulation from the backs of our business and governmental community, the President issued Executive Order No. 12044 setting forth a realistic, meaningful, and hopeful proposal to make some real and substantial changes in the process under which Government regulations are issued to govern the business and community relationships of all our people.

In response to Executive Order No. 12044 I, together with Chairman PETER RODINO of the Judiciary Committee, and others, introduced the bill H.R. 3263 on March 27, 1979. That bill sought to bring about many improvements in the regulatory process and, at the same time, to extend its coverage to govern the regulatory procedures of the so-called independent agencies as well as those agencies which are a part of the Executive Office.

The Judiciary Committee's Subcommittee on Administrative Law, of which I am the chairman, conducted hearings for many months in order to obtain the information which would be necessary to mark up an effective bill which would carry out the purposes of Executive Order No. 12044. We had 10 days of testimony during which we heard more than 100 witnesses from every walk of life, from every section of the business community including small businesses and big businesses alike, from legal scholars, from the officials of many executive department agencies and from independent agencies, from legal scholars and practicing lawyers, from professors and administrative law judges, from organized labor, from public interest groups, Members of Congress, numerous Government officials and others. We benefited greatly from the opinions and experiences of this wide variety of witnesses. There followed 13 days of subcommittee markup before we concluded our amendments to the bill, H.R. 3263, and reported the same to the full Judiciary Committee.

Later the Judiciary Committee held 5 days of markup making sundry amendments to different parts of the bill but largely sustaining the work of the subcommittee.

In fact on May 14, 1979, when we concluded the fifth day of markup by the full committee, we were within about 2 hours of completing our work. Since then we have held the bill, H.R. 3263, in abeyance at the request of those who wish to work out some kind of compromise or agreement on two of the more controversial provisions of the bill; namely, those relating to the so-called legislative veto and those relating to the so-called Bumpers amendment.

Nevertheless, the bill, H.R. 3263, is completed in substantial respect and is an excellent bill which, with or without legislative veto and with or without the Bumpers amendment, could bring about the salutory and meaningful regulatory reform that the executive department, the legislature, the business community, labor, and the public so urgently need.

H.R. 3263 covers the entire spectrum of regulatory reform and would require many innovative techniques to be used by regulatory agencies in the preparation and promulgation of the rules and regulations to which it is directed. The bill would require advance notice to all concerned through a mandated regulatory agenda published twice a year identifying prospectively all major and significant rules that an agency might consider.

It requires regulatory analysis prior to rulemaking for all major and significant rules. As marked up by the Judici-

ary Committee that bill provides the maximum of regulatory flexibility which would take into account the specific needs of smaller businesses, smaller organizations and smaller units of government.

It would also require flexibility as to geographical sectors since it is obvious, for example, that a rule regulating water must be treated differently in a water rich area such as the Northeastern United States than in an arid area such as the Southwestern part of the United States. H.R. 3263 would require that regulations be drafted in plain English that can be understood by all, that there be an opportunity for public participation in the hearings on ruemaking procedure; and that there be review provisions for those regulations already in effect so that regulations which are no longer necessary could be eliminated and those which no longer meet the problems for which they are intended could be amended and modified. The bill, H.R. 3263, takes into consideration many other factors most of which are not even considered in the present bill S. 299.

One of the inadequacies of the present bill, S. 299, is shown by the following:

The question of whether Treasury regulations issued under the Internal Revenue Code are covered by S. 299 is not resolved by this bill. S. 299 was never considered in the Judiciary Committee nor in any subcommittee thereof. The bill by its terms applies only to the rules and regulations governed by section 553(b) of the Administrative Procedures Act, and that section excepts—excludes—interpretative rules.

Therefore, to the extent that Treasury Department regulations are in fact and in law interpretative rules they would be excluded. Otherwise, they would not be excluded. There are many other "open questions" in the bill which would be avoided by the passage of H.R. 3263.

Mr. Speaker, I respectively submit that the bill, S. 299, is not necessarily a bad bill. Truly, it amounts to nothing. It does not respond at all to, and does not meet, the need for regulatory reform which all of us have heard and considered during the past several years. It certainly does not meet the promise of regulatory reform that the public has come to expect as a result of the clamor of the last few years. After all the clamor and discussion concerning regulatory reform in the past 2 years the public has a right to expect a monumental work which will truly bring about meaningful and useful regulatory reform; instead of that what we are producing here today is a very small molehill.

Mr. Speaker, I hope that no one uses this bill as an excuse for, and that this bill will not lessen the demand for, regulatory reform. And I hope that this poor bill will not be used by the administration, by the Congress, or by anyone else as an excuse for not proceeding further with the bill, H.R. 3263, which is capable of providing the public with meaningful regulatory reform and which could be completed in the remaining days of this 96th Congress.

Mr. KINDNESS. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. ROTH).

Mr. ROTH. Mr. Speaker, I rise in support of the bill, S. 299, the Small Business Regulatory Flexibility Act. S. 299 amends the Administrative Procedure Act to provide for increased flexibility in the application of the Federal rulemaking process to small businesses, small governmental jurisdictions, and small organizations.

This measure further provides that agencies must include economic and red-tape impact analysis for small businesses, small governmental jurisdictions and small organizations whenever it publishes notice of a proposed rulemaking and must give public opportunity to comment on the initial analysis.

Moreover, this measure provides that agencies must publish a final regulatory flexibility analysis when it issues a final rule, explaining how rules can be "tiered" and offer reasons why less burdensome alternatives were rejected. If the Agency fails to do the required analysis or fails to take its own study into account when the final rule is published, the regulation is subject to being struck down by the courts. I want to point out that this act does not deny the statutory responsibility of the agencies. On the contrary, the act makes it perfectly clear to the agencies that they have a congressional mandate to adopt flexible alternatives.

By embracing S. 299, the House can take a quantum leap forward in the reduction of regulatory burdens which small businesses must shoulder. It must be recognized that Federal regulatory policies work a hardship on the small firm that the large is able to escape. Large firms have at their command a myriad of resources—lawyers, accountants, and greater organization that enable them to absorb and sometimes deflect the impact of Federal regulations. We must remember that in order for an economic system to remain competitive, it needs a strong and healthy small business section and I believe S. 299 is a step in the right direction toward insuring this goal.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Speaker, I want to say to my colleagues that as a member of the Administrative Law and Governmental Relations Subcommittee of the Committee on the Judiciary, I am extremely disappointed at how the administration has tried to slip this particular bill through as some means of regulatory reform. Our subcommittee has worked for the better part of 10 months in trying to craft a bill that would actually achieve the reform that is needed in the regulatory process.

H.R. 3263 is a much, much superior bill. The bill that was reported out by the Small Business Committee, and the Small Business Committee worked long and hard on, is a much preferable bill. This is not even half a loaf. It does not go anywhere near where we have to go in reforming the regulatory process.

Those that suggest they are cosponsors of this legislation are totally in error. There are no cosponsors to this legislation. This bill is S. 299—a Senate bill. There have been no hearings to look at any aspect of this particular bill, and no Members of Congress in this body have had an opportunity to cosponsor or work their will on this legislation. In fact, I am greatly concerned at this point that the administration will believe that this legislation is an adequate substitute for the bill we should be passing, H.R. 3263.

● Mr. LUKEN. Mr. Speaker, I have always been a strong supporter of regulatory flexibility, because I believe burdensome and unnecessary regulations are a threat to the survival of the small businesses of this Nation.

We are currently facing declining productivity and innovation in the United States. Small business can reverse this trend if it is allowed to do so and is not regulated to death. Time and time again, small business has proven itself to be the innovator in our country.

For example, during the period of 1953–73, firms with less than 1,000 employees accounted for almost one-half of major U.S. innovations.

Furthermore, the small business community has proven to be the backbone of our economic system. Recent reports indicate that 43 percent of the GNP is generated by small business and 57 percent of all employees in the United States are employed by small businesses.

In recent years, the regulatory burden for small business has continued to increase to levels that are suffocating their entrepreneurial qualities. This paperwork burden has spread to all types of interaction that small businesses have with the Federal Government. The Small Business Energy Subcommittee, which I chair, has heard testimony from numerous witnesses on the number of forms they must complete to apply for Federal funding and Government procurement. One solar small businessman stated that he has a 4-pound application file, containing 52 different forms, exhibits, and financal statements, requiring no fewer than 1,127 segments of data. Added to this were approximately 5.000 words of narrative descriptions and thousands of calculations and hundreds of hours of preparation time.

Small businesses must be relieved of this unnecessary and costly drain on their time and financial resources. Small business men and women cannot afford to spend the majority of their time completing forms, nor should they have to. If this trend is not reversed, many small businesses will have to close their doors, because they cannot overcome the demands imposed by the Federal Government. We must not let this occur, but we must do everything possible to stand behind the small businesses which are so valuable to our Nation's well-being.

S. 299, the Regulatory Flexibility Act of 1980, is an important step in reducing this disproportionate burden small business faces. This legislation tailors regulations to the size and capabilities of those being regulated. Small business will no

longer have to bear the brunt of uniform rules and regulations created by Federal agencies. I urge you to join me in supporting this much-needed and valuable legislation. Thank you.●

● Mr. BUTLER. Mr. Speaker, I rise in support of the Regulatory Flexibility Act now pending before us. As the author of the first small business impact bill, H.R. 7739, in the 95th Congress, I am extremely gratified to find that my regulatory approach has now received such widespread support shown in the unanimous enactment of S. 299 by the Senate. I thank my Senate colleagues for their cooperation with me and the other principal House sponsors in the process of revising S. 299. The act we are voting on today is consonant with the objectives of my original bill and H.R. 4660 which I coauthored and creates a viable consensus on those important issues covered by the legislation. I have considered the Discussion of Issues which my colleague and coauthor on H.R. 4660, Mr. IRELAND, is placing in the RECORD today. Mr. IRELAND's Discussion of Issues explains very thoughtfully the understandings reached among the principal authors of regulatory flexibility legislation on the Judiciary Committee and its sponsors in the House. These understandings have cleared the way for House consideration of S. 299. I am particularly pleased to be able to make this statement today regarding S. 299 so that the House may consider my comments in voting on this legislation.

When I served on the Small Business Committee, I was horrified at some of the testimony presented before the committee by small businessmen regarding some Government regulations, and the seeming lack of concern by Federal agencies for the plight of the small businessman in complying with these regulations. Examples are numerous. Horror stories over OSHA regulations are legion, making OSHA a four-letter word among businessmen.

The number and functions of Government regulatory agencies have expanded at an alarming rate in the 1960's and 1970's, and it is obvious that almost every facet of business activity is subject to one or more governmental agencies who have the power to inspect, review, modify or reject the work of private industry; we are talking about regulation which affects nearly every aspect of industry, commerce, agriculture, trade, banking, and even private life.

And this regulation comes to us with an incredible price tag for which the consumer picks up the tab.

The cost of Government regulation in 1979 is estimated to run over $100 billion. Of that amount, $4.8 billion will go to operating costs of the agencies themselves but the cost of compliance with regulation will be over 20 times that. This compliance cost is especially alarming, considering it has doubled since 1974, and is five times its cost in 1970. Regulatory agency staffs now number 80,000, or nearly triple their size in 1970.

The successful small business in this country is the personification of the individual spirit that has characterized the achievements and accomplishments of this Nation. We must do what we can to halt the decline of small business if we are to preserve our free enterprise system. The purpose of well-conceived, meaningful regulations can still be accomplished and small businesses can still be protected if Government agencies will only take small business into consideration when they draft regulations. This act, in my opinion, would help make Government agencies cognizant of small business, would help the agencies implement their statutory goals, and would help preserve small business in our economy.

This legislation directs Federal agencies to consider less burdensome alternatives to regulations with significant economic impact on a substantial number of small entities. The specific requirement to analyze small business needs and regulatory goals will vastly improve the quality of rulemaking and will benefit both society and the affected entities.

Agencies will be required to prepare and publish an initial regulatory flexibility analysis for every proposed rule meeting the impact criterion. This preliminary analysis should generally explain the proposal's goals, the expected impact on small entities and the need for the proposed rule. Such an analysis will also include a preliminary discussion of significant less burdensome atlernatives.

Agencies are invited to go beyond the alternatives presently in use (such as multitiered regulations, reduced paperwork and additional time for compliance and adopt innovative approaches for regulatory flexibility, for example, the EPA "bubble" approach. Additional innovative approaches are especially desirable for the fulfillment of statutory goals with the minimum cost to the affected entities and the public that would inevitably bear a portion of the additional costs.

Let me emphasize that this act does not, in any way, compromise the statutory mission of the agencies. The act simply clarifies the authority of the agencies to adopt flexible alternatives. Where the underlying statute does not specifically preclude the consideration of flexible alternatives, Congress confirms the authority of every agency to incorporate flexible alternatives in its promulgation of rules.

I would like to add that this act also provides an excellent vehicle for agencies to fulfill their obligation under the Small Business Act, other applicable Federal laws and applicable executive orders and memoranda that direct Federal agencies to promote and protect the interests of small business. There have been numerous instances of the use of regulatory flexibility approaches to strengthen small business' ability to compete in the marketplace. The term "significant economic impact" was deliberately used to convey the intent of Congress that agencies would continue their practice of utilizing the regulatory flexibility analysis framework to develop rules that will benefit small businesses directly, as well as reducing the burdens on small businesses.

In other words, because the agencies are required to identify all proposed rules wth "significant economic impact," both adverse and positive, they will consequently be considering alternatives which also promote the health and well-being of small businesses. This benefit from this legislation is particularly welcome news at a time when vigorous small business activity would go far toward reducing inflation and unemployment and promoting the Nation's economic health.

After the receipt of comments from the affected small entities, from the Chief Counsel for Advocacy, if any, and from other interested parties, the agency shall prepare and then publish a final regulatory flexibility analysis. Such analysis shall explain the basis for the adoption of the final rule, and shall include discussion of the significant flexible alternatives.

The act does not require that an agency adopt a rule establishing differing compliance standards, exemptions or any other alternative to the proposed rule. It simply provides that the agency must explain its rejection of any reasonable alternative rule which would have been significantly less burdensome or significantly more beneficial to small entities. The act also insures that agencies which determine that the inclusion of small entities poses a significant burden to the small entities and is also of minimal value to the realization of the statutory goals will be certain to exempt those small entities from the scope of the final rule.

This legislation also recognizes that unforeseen events will occasionally preclude timely compliance with the initial and final regulatory flexibility analysis requirements (sections 603 and 604). Under certain conditions, an agency is permitted to waive or delay the preparation and publication of the initial regulatory flexibility analysis.

However, section 608(b) clearly provides that a final regulatory flexibility analysis must be completed for every final rule.

Thus, even rules issued in final (pursuant to section 553(b)(3)(B) of title 5, the "good cause" exception) without a proposed rule published for comment will be subject to a final regulatory flexibility analysis.

Although the provision for judicial review in S. 299 is less encompassing than the review applicable in H.R. 4660, this provision nevertheless insures that Government agencies will take seriously their obligation to comply with this new mandate. Current implementation of the concept of regulatory flexibility varies greatly among the agencies. The judicial review provision is designed to eliminate undesirable interlocutory or purely procedural challenges to rulemaking proceedings, but leave unimpaired the present right under the Administrative Procedure Act of review of the final rule. Judicial review of the lack of or adequacy of the regulatory flexibility analysis is permitted to the extent it is relevant to a review of the validity of the final rule. While the compliance of an agency with respect to particular provisions of this legislation is not subject to independent judicial review, such matters may be relevant to a determination of the reasonableness of the final rule.

Thus, unlike the situation regarding environmental impact statements, the failure to perform a regulatory flexibility analysis would not be grounds for injunctive relief in advance of the issuance of the final rule. However, the failure to perform an analysis of a reasonable alternative consistent with the desired regulatory goal may be adequate grounds for a determination that the final rule is unreasonable. Similarly, an agency's unreasonable determination not to perform a regulatory flexibility analysis may provide a basis for invalidation of the final rule, but would not be grounds for interlocutory relief.

The requirement of agenda publication, section 602, and the public notification requirements of section 609 will go far toward assuring adequate small business participation in the formulation of proposed rules with significant small business impact. For example, such a provision could have prevented the recent failure of the Department of Energy (DOE) to consider certain flexible alternatives in its recent proposal of appliance energy efficiency standards. Because the advance notification requirements were not in place, DOE overlooked informing the affected small business trade associations that the Department was proposing to include a testing requirement beyond that required by the Federal Trade Commission that had been developed months earlier. By DOE's own estimate, the new requirement would force some 65 percent of the small appliance manufacturers out of business.

Specifically with regard to small manufacturers of refrigerators, freezers, ranges/ovens, water heaters and room air conditioners, the Department indicated that these manufacturers had a 0.0 percent chance of successfully financing compliance with the new requirement. In its Economic Analysis, DOE simply stated that this was "an acceptable impact."

Furthermore, compliance with the provisions of section 603 requiring an initial regulatory flexibility analysis would have prevented DOE from failing to consider flexible alternatives at the time of the proposal. The Department did not consider the desirability of the alternative of not imposing the additional burdensome testing requirements, nor did it evaluate the impact of the proposal on competition in the industry.

When this act becomes effective, perhaps the Department of Energy will, at last, pay more attention to its statutory mandate and Executive directives to promote and protect small businesses. If the Department still entertains any doubts regarding its authority to promulgate flexible alternatives under its existing laws to aid small businesses and to alleviate small business burdens, this legislation resolves all such doubts and directs DOE to consider and promulgate such alternatives where appropriate.

Let me add a few words about the role of the Chief Counsel for Advocacy of the U.S. Small Business Administration. Under Public Law 94–305, the Chief Counsel for Advocacy is already required to file reports with the President and the Congress. This new law simply specifies the content of one of those reports. The Chief Counsel is already empowered under Public Law 94–305 to compel agency disclosure of the pertinent information required to perform these duties. It is expected that the Chief Counsel for Advocacy's monitoring efforts will insure compliance with the new law and aid Federal agencies in developing effective regulatory alternatives. The Office of Advocacy should act as a catalyst for innovative experimentation with regulatory alternatives by the agencies.

The legislation also provides that the Chief Counsel for Advocacy be permitted to appear as an amicus curiae in any action in any U.S. court to review a rule. He will present the views of the small business community with respect to the effect of a rule on small businesses. This judicial role complements his current role as the primary Federal regulatory watchdog for small business at the agency rulemaking stage. Courts should profitably draw from the considerable experience and expertise of the Chief Counsel in considering the unchartered waters of this regulatory reform. This provision provides an additional incentive for agencies to comply with the new legislation.

As the author of the first small business impact bill, H.R. 7739, I am extremely pleased to have played a part in helping this regulatory flexibility legislation be enacted into law. I am convinced that this act will mark the most significant legislative achievement for small business since the passage of the Small Business Investment Act 22 years ago.●

● Mr. RUSSO. Mr. Speaker, it is with extreme pleasure that I rise today to urge the House to act favorably upon legislation which embodies the concept of regulatory flexibility for small business. Through the majority of work done on H.R. 4660, I was the chairman of the House Subcommittee on Special Small Business Problems. Since that was the case, I believe it only appropriate that for the record I state the history of this concept.

James W. Morrison, who at the time was on Senator GAYLORD NELSON's staff, developed the concept of regulatory flexibility in August 1977. Senator NELSON, along with Senator JOHN CULVER, introduced the concept as a bill, S. 1974. It passed the Senate unanimously last Congress.

Last Congress several regulatory bills were introduced and referred to my subcommittee. The two primary bills were H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. CALDWELL BUTLER of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative ANDY IRELAND of Florida. The purpose of this bill was to give Federal agencies flexibility in the issuance of Federal regulations.

The concepts in these two bills were merged and formed the basis for H.R. 4660. The interest and hard work of the members of the subcommittee were instrumental in the forging of our final product. The subcommittee also was fortunate to have had Mr. Morrison on board as a consultant during our hearing process for a period of 6 months.

Representative ANDY IRELAND, a member of the subcommittee, became chairman upon my departure and has done a most commendable job of promoting regulatory flexibility. He has perservered and after endless meetings with various parties, he has brought us today to the brink of a new era in the relationship between the Federal Government and the small business community. The Senate on August 6 passed S. 299, thanks to the diligent efforts of many people. Senators JOHN CULVER, GAYLORD NELSON, and PAUL LAXALT deserve special praise.

S. 299 embodies the concept of our own H.R. 4660, and in fact, improves the bill in several areas. Congressman IRELAND, who introduced H.R. 4660 with me, has prepared a legislative history of H.R. 4660, and a Discussion of Issues of S. 299, for insertion in the RECORD today. The Discussion of Issue in particular very clearly states what we expect from this bill, and how we expect the agencies to implement it. We need this legislation.

In poll after poll, growing Federal regulation and its accompanying paperwork demands rank near the top and often are the No. 1 complaint of the Nation's small businessmen and women. Our Nation has a mixed economy. Public and private sectors necessarily interact. The Federal Government, through some regulation, attempts to bolster competition among businesses by laws designed to eliminate restraint of trade. Conversely, certain business activities are directly regulated by the Government. In effect, this substitutes Government decisionmaking for the normal workings of the marketplace. All types of Federal regulation have grown so much in recent years, that virtually every industry and household is now affected in often highly visible ways.

The time to act is at hand. We have the vehicle before us. Let us pass S. 299 and send the bill to the President.●

● Mr. BALDUS. Mr. Speaker, today is a special day for the small business men and women in this country. At last, we, in Congress, are heeding the pleas that they have long made to us to reduce the crush of Federal regulation that they must face on a daily basis.

This bill, S. 299, not only admits that such a problem exists, it addresses that problem as well. If we pass this bill today, in the future, Federal bureaucrats will have to understand, as well as be more sensitive to, the impact of the regulation they generate, and, we will all be better off because of it.

In the last Congress, as a Small Business Subcommittee chairman, I strongly and vigorously supported regulatory flexibility in several different legislative pro-

posals. In this 96th Congress, S. 299 is the culmination of a long search for substantive regulatory flexibility for the small business community. I am especially pleased that this bill also recognizes that small organizations and small governmental jurisdictions are also in need of the same relief.

The primary sponsors of H.R. 4660—Representatives ANDY IRELAND, MARTY RUSSO, and M. CALDWELL BUTLER, should be highly commended for their perseverance in this field. President Carter, who earlier issued an Executive order calling for regulatory flexibility, should also be thanked for his assistance, and it is my hope that he will sign this bill as soon as possible.

Small business makes a tremendous contribution to our Nation's economy. Small business, as defined by the Small Business Administration, constitutes over 13 million businesses, comprises about 97 percent of all U.S. businesses, and accounts for more than one-half of all private employment in this country. Small business also accounts for 43 percent of business output, and one-third of the gross national product. Small businesses account for nearly all of the major innovations and inventions that move our technology ahead, as they have since World War II, and small business increases employment by about 4 percent per year as compared to the Fortune 500 companies which increase it only about 0.07 percent per year. In terms of economic growth, the record of small business is about twice that of the Fortune 500 companies, again, by percent.

For all of these vital contributions small business makes to our economy and the American way of life itself, small business asks very little from us in return. The small business community is one of entrepreneurs that have made it on their own, and believe that they can continue to make it on their own, maintaining their exceptional record of achievement, if they are not unduly interfered with by Government. The Federal help that these 13 million small businesses do receive each year is in the form of 270,000 loans from the Small Business Administration, but the recipients of these loans promise to return the money to the Government, with interest, and on time.

The clearest and most fervent request of these independent, small businessmen and women to the Federal Government is one which distinguishes them from the other special interest groups the Federal Government deals with. In exchange for their substantial contributions to our Nation's economy, they ask not for a handout, but only that the Government stop unreasonably regulating the environment in which they must function.

While the Government will always require a certain amount of information from business and while some regulation of industry may be inevitable, it should and can be accomplished in a reasonable and an equitable manner. It is clear that as it now stands, the amount of Government regulation has grown to self-defeating proportions which is deleterious to small business' very existence.

Mr. Speaker, S. 299 is a major first step in completing the task of reducing the regulation which stifles small businesses in a time when we need small businesses more than ever.

I urge the House to pass this bill.●

● Mr. RATCHFORD. Mr. Speaker, I welcome the opportunity to take a moment today to voice my support for S. 299, the Regulatory Flexibility Act.

My colleagues in the House have all become more conscious of the burdens which Federal regulations place on business and industry, and of the heavy responsibility which rests with the Congress to insure that regulations are neither excessive nor unnecessary. The regulatory process poses particularly large burdens for small businesses, which have neither the capacity nor the resources to challenge or to comply with Federal rules and regulations. It is this concern for the plight of the small businessman to which S. 299 is addressed.

Every week, when I return to Connecticut's 5th District, I hear the frustration of small businessmen who are being increasingly overwhelmed by the burdens of Federal regulation. The White House Conference on Small Business which was convened this January reaffirmed this message, and among the conference recommendations given the highest priority were calls for the establishment of greater regulatory flexibility with regard to small business. The White House Conference on Small Business reminded us all that we cannot treat large corporations and small firms as though they were identical, and the legislation before us today reflects the extent to which Congress has heard and responded to that important message.

The Regulatory Flexibility Act will take some crucial first steps in recognizing the special needs of small business. The legislation requires Federal agencies to analyze the likely impact of their regulations on small, privately owned businesses and other concerns. The bill also requires each agency to publish semiannual lists of rules it anticipates issuing which are likely to have a serious economic impact on small businesses and other concerns. Finally, provisions of S. 299 are designed to encourage small businesses to participate more fully in the Federal regulatory process.

The above provisions are significant, in that they represent the beginning of a growing awareness that regulations must be sensitive to the situation of small businessmen while protecting the public interest. In addition to these advances in the development of new Federal regulation, S. 299 also addresses problems in existing Federal regulations by requiring agencies to review all new and existing rules within 10 years. I have long supported the concept of "sunset" legislation which would mandate a periodic review of Federal programs to assess their effectiveness, and I strongly applaud the use of this type of mechanism in the Regulatory Flexibility Act to protect small business from excess in existing regulations.

Mr. Speaker, I have little doubt that this landmark legislation for regulatory flexibility with regard to small businesses will receive overwhelming approval by my colleagues in the House. The need for greater sensitivity in applying regulations to small businesses is all too apparent, and the merits of this legislation are equally clear. I simply wish to register my strong support for the Regulatory Flexibility Act, and to express my deep hope that this legislation represents the beginning of an honest effort in Congress to shape a regulatory process which serves the public interest while remaining manageable for the small businessmen who have contributed so much to our Nation's strength and prosperity.●

● Mr. RODINO. Mr. Speaker, the Congress, working with the administration, has been moving toward an extraordinary record in regulatory reform. In the last 3 years, we have passed major deregulation bills covering the airline, trucking, and banking industries and we are working on railroads, communications, and a comprehensive overhaul of the regulatory process.

The Regulatory Flexibility Act, which the House is considering today, is a vital part of that program. It will help the small businesses of our country and thereby strengthen competition.

Too many Federal regulations and paperwork requirements are written with big companies in mind, without considering the effect on small business. These rules can have a disproportionate and unfair impact on small businesses, reducing their ability to compete.

The Regulatory Flexibility Act requires all regulators to assess the impact of a proposed rule or report on small organizations. When the impact is significant, the agency must consider alternative approaches, such as requirements tailored to the size of the organizations affected and performance standards that give more leeway on how to comply. The creative approaches to regulation in this act will ease the burden on small business without sacrificing our commitment to protect the public's health and safety.

This act is drafted to help small businesses deal with the regulatory process. Many valid regulations are tied up in years of litigation, and small businesses often cannot afford the legal costs to participate. The judicial review standard in this bill is carefully designed to avoid needless litigation.

I want to commend the chairman of our Subcommittee on Administrative Law and Governmental Relations, Mr. DANIELSON; Mr. HARRIS, the manager of this bill, S. 299; and all of my colleagues who have supported the major deregulation bills that we have passed in the 96th Congress. S. 299 is a very significant part of the overall regulatory reform effort, and I urge my colleagues to vote for its passage.

□ 1530

Mr. HARRIS. Mr. Speaker, I want to recognize all those who worked so hard

on this bill. The fact of the matter is that this is a good bill. I think it is time that we remove the tremendous burden of unnecessary regulation upon the small business community. I think they deserve it; I think they need it; I think our economy will benefit from it.

Mr. Speaker, I urge the passage of this bill and yield back the remainder of my time.

Mr. REGULA. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. LENT).

● Mr. LENT. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act.

As a cosponsor of similar legislation, the Smaller Enterprise Regulatory Improvement Act (H.R. 4660), I am gratified that legislation requiring Federal agencies to assess the small business impact of their regulation is on the agenda for final congressional action. This legislation was unanimously passed by the Senate last month. Prompt and positive action today can insure that this legislation is enacted without further delay.

Though I have long sought comprehensive improvements to administrative rulemaking to alleviate unnecessary and costly Federal regulation, I believe expeditious action on behalf of small business, small organizations, and small governmental jurisdictions—"small entities"—is absolutely necessary.

Small organizations face special burdens resulting from Federal regulation; uniformly applied Federal regulations often have a disproportionately greater economic impact on small entities unable to benefit from large-firm economies of scale. Overly burdensome Federal regulations have adversely affected competition and created barriers to innovation and creativity in many industries. Paperwork such as reporting and record-keeping requirements pose special hardships on firms not having in-house accounting and legal departments; too often, compliance with such Federal regulatory requirements necessitates that costly outside assistance be retained.

This legislation is designed to alleviate this counterproductive situation by providing a measure of flexibility in the application of the Federal rulemaking process to small entities. Where necessary, agencies are directed to institute procedures including two-tiered rulemaking and exemptions from all or part of some rules to help reduce the disparate economic impact of rules and regulations on small entities. By assuring that the Small Business Administration is informed of proposed agency rules likely to have a significant economic impact on a substantial number of small entities, this legislation can increase small business participation in the Federal rulemaking process—a process which for too long has remained isolated from the organizations it most affects.

Along with calling for periodic review of new and existing rules affecting small entities, the bill also contains a provision waiving the requirement that a regulatory flexibility analysis be prepared in those cases where a proposed regulation has no significant economic effect on a substantial number of small businesses.

On balance, this legislation makes sense and I urge my colleagues to support passage of S. 299 so this legislation can be enacted into law without further delay.●

● Mr. BEREUTER. Mr. Speaker, I wholeheartedly urge my colleagues to vote today for passage of S. 299, the Regulatory Flexibility Act. America's productive small businesses, now hampered by a multitude of rules and regulations, must be given relief. Approval of S. 299 would provide some measure of assistance to this beleaguered segment of the economy, and would help our country return to the path of economic growth and prosperity.

ORIGINS OF THE REGULATORY PROBLEMS

During the decade of the 1970's, Congress rushed to pass legislation which would insure clean air, clean water, a safe workplace, and a multitude of other desirable environmental and social goals. This legislation granted many existing and newly created agencies sweeping powers to bring about those desirable objectives. As a result of this excessive delegation of authority, the Federal Government has become engaged too often in an inappropriate effort to restructure business operations and the activities of individuals.

This unprecedented regulatory effort went forward without due consideration for the cost efficiency of any individual regulation or for the cost efficiency of the regulatory effort as a whole. Furthermore, far too few efforts have been made to determine if the ends indeed justify the means used and the costs imposed by these regulations. In addition, the regulators have explored few alternatives to direct regulation; rather, detailed requirements applied across the board and strict enforcement have been the norm.

As a result, commercial and industrial enterprises within this country now bear a heavy paperwork burden and must expend far too much money in order to comply with these rules. Scarce financial resources, necessary to finance plant expansion, equipment acquisition, technological innovation, and job creation, thus have been siphoned off into less productive activities. In some cases, the costs imposed by such rules threaten the financial viability of individual businesses and entire industries.

The small business sector of our economy, in particular, bears a weighty burden in its attempts to comply with these rules. This segment of the economy typically must spend 7 to 10 times the amount spent by larger businesses in meeting the requirements of a given rule or regulation.

Obviously, the hard-working businessmen and businesswomen of America need relief.

S. 299 OFFERS RELIEF

At long last, Congress appears ready to recognize this problem and to provide that necessary relief by adopting S. 299. This bill would require each agency:

First, to publish a semiannual agenda of forthcoming regulations which are expected to have a significant impact on a substantial number of small businesses, organizations, and governmental units.

Second, to precede the promulgation of a rule with an analysis of its potenial impact on small businesses, organizations, and governmental units.

Third, to publish this analysis at the time the final rule is adopted. In this analysis, the agency must state the need for the regulation, and its objectives. In addition, public comments on the proposed regulation must be summarized and printed. An identification of the changes made in response to these public comments must be included in the analysis as well. An explanation of the alternatives to the regulation would form another part of the analysis. Finally, justification for the rejection of alternatives must be given as well.

Fourth, to insure that small businesses, organizations and governmental units receive an opportunity to comment upon any proposed regulation which may possess a significant impact upon them. New methods of notification must be pursued in order to allow more businesses to learn of pending regulations which may affect them.

Fifth, to design rules in order to reduce the cost of participation in rulemaking proceedings.

Sixth, to review—on a 10-year cycle—existing rules which impose a significant economic impact upon small businesses, organizations, and governmental units in order to eliminate or to modify the rules as necessary.

Despite my support for this long-overdue bill, I am disappointed that more comprehensive legislation remains stalled in committee. Enactment of S. 299 represents only one small, minor step on the road to regulatory reform. Much more needs to be done in order to reduce duplicative, unduly complicated, contradictory, and ineffective regulations in American society. The current regulatory system, clogged by delays and hampered by uncertainty, must be replaced by a cost efficient, effective, and streamlined system—one that is based on commonsense and reasonable discretion in the application of regulations.

I urge my colleagues, therefore, to give their support to S. 299 today and to follow through with even stronger support for passage, yet this session, of the more comprehensive legislation necessary to bring about true regulatory reform.●

● Mr. UDALL. Mr. Speaker, I rise in support of the Regulatory Flexibility Act, S. 299. I want to commend my good friend, the chairman of the Small Business Committee, for his hard work and strong leadership in bringing this bill to the floor. I know that he has put in many long hours in working on this legislation and on other bills that will benefit small business.

Back in 1978, I began extensive discussions with small businessmen and women in southern Arizona about their problems with the Federal Government. I continued those talks into 1979, when I co-

sponsored a small business conference with Walt Pearson, who is the publisher of a noted Arizona business magazine. The one overwhelming complaint that came up was that small businesses are swamped with paperwork. And it really does not make much sense to force some small firm—a corner drugstore, a little plumbing outfit, a small clothes store—to comply with the same regulations that we ask General Motors and Exxon and A.T. & T. to follow.

After consulting with business people in Tucson, and the rest of southern Arizona, I introduced a bill, H.R. 4729, the Small Business Promotion Act, that deals with several problems connected with small firms. One of those was Federal paperwork and Federal regulations. Title II of that bill would have required that all Federal agencies and departments examine their past regulations to see if somehow they could be less burdensome on small business, and it required that all future regulations be examined to either exempt or set separate standards for small businesses, whenever that is possible.

So I am glad that S. 299, which is very similar to this proposal, has made it this far and will, I hope, soon be enacted into law. I know that there are some departments and agencies of the Government that do not like this idea. But it is time that Government become more responsive to the needs of small business, and more realistic about the demands placed on these small firms. S. 299 will take us a long way toward these goals.

I strongly support passage of this bill, and I urge my colleagues to vote for it.●

● Mr. McKAY. Mr. Speaker, in recent years the Federal Government has intruded increasingly into the private sector in an effort to provide benefits for the American public. This has resulted in safer places to work, a cleaner environment, and many other benefits.

This process, however, has also resulted in thousands of rules and regulations being issued, all governing the lives and activities of Americans and American businesses. Thousands of reports and answers to thousands of questions from Federal agencies are required by this regulation.

The paperwork alone has become burdensome, particularly for small business. As a member of the Small Business Task Force, I have heard time and again examples of how Government regulations adversely affect small businessmen, particularly because of the discrepancy between the size of the enterprise and the scale of Federal requirements.

This overregulation is more than just a small business problem. The greater impact Federal regulation has on a small business reduces its ability to compete in the marketplace. The advantage goes to the largest, those most able to afford the hiring of the lawyers, accountants, and consultants needed to complete the work. Small businesses often lack the manpower and skills needed to comply efficiently. The public must pay the consequences of the resulting economic concentration.

Small businesses should not be exempted from important and beneficial regulation simply because they are small. But the requirements should and must be tailored to their ability to comply. We must stop restricting innovation and productivity. We must also stop fueling inflation.

This bill, S. 299, the Smaller Enterprise Regulatory Improvement Act, by requiring that Federal agencies take the circumstances of small business into account, will put us on the path toward equitable treatment for all, and will speed economic recovery in the Nation. It is with pleasure, therefore, that I have watched the progress of S. 299. As a cosponsor, I commend its passage to my fellow Congressmen.●

● Mr. GILMAN. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act of 1980.

As a cosponsor of a similar House bill, H.R. 4660, I am gratified for having this opportunity to vote on this Senate measure.

Mr. Speaker, it is crucial to our small businesses that a way be found to relieve them of burdensome, unnecessary, and unreasonable regulations.

I am pleased that this bill also includes in its purview small government jurisdictions—with less than 50,000 populations—as well as small businesses.

What S. 299 will do is direct Federal agencies to institute, where necessary, procedures—including two-tiered rulemaking, and exemptions from all or part of some rules—to help reduce the disparate economic impact of rules and regulations on small entities.

By reducing the special burden of regulations on small businesses, the bill will help those small businesses remain competitive with larger organizations which have the resources necessary to comply with complex Government regulations.

Small business provides the bulk of the new jobs created every year in the American economy. Unless we look after small business at every stage of the regulatory and legislative process, we will be in danger of "killing the goose that laid the golden egg" of our American economy. The way to recovery from our present economic difficulties will surely involve a greater role for the small businessman, and I very much hope that the way toward their assuming that greater role will be enhanced by the passage of this important legislation.

Mr. Speaker, I urge the adoption of this measure and that a summary of the provisions of S. 299 be printed at this point in the RECORD:

PROVISION OF S. 299

REGULATORY AGENDAS

S. 299 requires agencies to publish twice yearly a regulatory agenda which summarizes proposed agency rules likely to have a significant economic impact on a substantial number of small entities. The agency must transmit the agenda to the Small Business Administration (SBA), and endeavor to notify small entities of the agenda.

INITIAL REGULATORY FLEXIBILITY ANALYSIS (IRFA)

Whenever required by law, to publish notice of a proposed rule, an agency must prepare for public comment an IRFA describing the impact of the rule on small entities, including the projected time and degree of skill required to comply with the recordkeeping and reporting requirements of the rule. Each analysis also shall discuss significant alternatives to the rule, such as:

Differing reporting requirements depending on the size and resources of the entity;

Simplification of reporting requirements for smaller entities;

Use of performance rather than design standards; and

Exemptions from coverage of the rule.

FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

When an agency promulgates a final rule, the agency shall prepare an FRFA outlining the need for the rule and its objectives. Public comments received shall be summarized, including any decisions or actions taken as a result of those comments. If alternatives were rejected the agency must state why.

CERTIFICATION AND WAIVER

Allows the agency to certify that a proposed rule will not have a significant economic effect on a substantial number of small entities, thereby obviating the need for any flexibility analyses. The agency also may waive or delay an IRFA where necessary to propose an "emergency" rule. It may not waive an FRFA for such a rule, though the agency may delay publishing the FRFA while the emergency rule takes effect. The emergency rule will lapse, however, if an FRFA is not published within 180 days from the day the rule was published.

PERIODIC REVIEW

The bill requires an agency to review its rules which significantly affect a large number of small entities. For existing rules, this review must take place within 10 years of the date of the Act; for future rules, within 10 years of their promulgation. The agency must publish a plan for such review within 180 days of the effective date of the Act.

This review should assess the continued need for the rule, evaluating length of time since the rule has been evaluated and considering: changes in economic or technological conditions; any complaints received on the rule; and the complexity of the rule. The agency shall publish yearly a list of the rules to be evaluated during the succeeding 12 months, inviting public comment.

OTHER PROVISIONS

S. 299 provides no interlocutory right of review of agency action, and does not alter any existing standards of review.

Each agency shall insure public participation in its rulemaking process.

All IRFA's, FRFA's and certifications of no significant impact must be published in the Federal Register.

The SBA shall monitor agency compliance with this Act, reporting annually to the President and Congress.●

● Mr. BIAGGI. Mr. Speaker, as a cosponsor of similar House legislation, I rise as an avid supporter of S. 299, the Regulatory Flexibility Act. Once again, Congress, in a close partnership with

President Carter, has emerged with substantive legislation in the all-important area of regulatory reform—a vital element in a stable economic future for our Nation.

S. 299 is directed at one of this Nation's most important economic segments—the small business community. The rapid proliferation of Government regulations has had an especially adverse impact on small businesses. The cost of Government regulation in 1979 was estimated to be in the vicinity of $100 billion. Regulatory staffs alone have tripled in size, now totaling 80,000. Excessive and occasionally unnecessary Government regulation has stifled small business growth and development. As a consequence, productivity has dropped significantly.

This legislation seeks to put forth some important reforms aimed at relaxing the regulatory stranglehold on small businesses. S. 299 requires Federal rulemaking agencies to analyze the likely impact of their rules on small, privately owned businesses and other concerns. The bill further requires each Federal agency to publish semiannual lists of rules it anticipates promulgating, which are likely to have a serious economic impact on small businesses or other small concerns. Small businesses are encouraged to participate in the rulemaking process.

President Carter, to his credit, has made regulatory reform one of the main elements of his domestic economic policy. His support and advocacy of this legislation has been invaluable. We should consider this to be good short- and long-term legislation. It will reduce a major problem of today which, in turn, will bolster our Nation in the future.

The small businessmen and women of this Nation typify what is supported to be the best of our free enterprise system. Yet, the free enterprise system is under severe stress because of the burdens of regulations and paperwork mandated by the Government. S. 299 is an excellent blueprint for a new policy seeking much needed and unrestricted growth in small business development. It deserves our passage today.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken.

Mr. HUGHES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum will be considered withdrawn.

GENERAL LEAVE

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 299.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

NATIONAL AQUACULTURE ACT

Mr. BREAUX. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 20) to provide for the development of aquaculture in the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 20

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 "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquaculture production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology—

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propaganda and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "'coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers of employees of the Federal Government), while away from their homes or regular places of business in the

performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential;

(3) address, taking into account the status of aquaculture regarding the aquatic species concerned—

(A) aquaculture facility design and operation,

(B) water quality management,

(C) use of waste products (including thermal effluents),

(D) nutrition and the development of economical feeds, including natural food sources,

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans),

(F) processing and market development,

(G) production management and quality control, and

(H) the development of adequate supplies of seed stock;

(4) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(5) include, where appropriate, programs to analyze, and formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture; and

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person, and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquacultural assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the coordinating group, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system and, if necessary to demonstrate its feasibility, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economic information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and

(ii) recommended measures to ameliorate any such effect; and

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, through the coordinating group, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, an explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretary deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 6. (a) ESTABLISHMENT.—There is established within the Office of Science and Technology Policy an interagency aquaculture coordinating group that shall, subject to subsection (f), operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978. The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture.

(2) The Secretary of Commerce.

(3) The Secretary of the Interior.

(4) The Secretary of Energy.

(5) The Secretary of Health and Human Resources.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Administrator of the Small Business Administration.

(9) The Administrator of the Agency for International Development.

(10) The Chairman of the Tennessee Valley Authority.

(11) The Director of the National Science Foundation.

(12) The Governor of the Farm Credit Administration.

(13) The heads of such other Federal agencies as are deemed appropriate by the Director of the Office of Science and Technology Policy (hereinafter in this section referred to as the "Director"), after consultation with the coordinating group.

(b) PURPOSE AND FUNCTIONS.—The purpose of the coordinating group is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the coordinating group shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) CHAIRMAN.—Each of the Secretaries or their designees, on such rotating basis as shall be determined by the Director, shall serve as the chairman of the coordinating group. The term of office of the chairman is two years.

(d) REPORTS.—The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) FEDERAL CONSISTENCY.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

(f) FUNCTIONS IF FEDERAL COUNCIL TERMINATED.—If at any time after the date of the enactment of this Act, the functions of the Federal Council are by executive action terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) and the reports required under subsection (d) shall be made to the Director.

CONTRACTS AND GRANTS

SEC. 7. (a) IN GENERAL.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) LIMITATION.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

SEC. 8. (a) CAPITAL REQUIREMENTS STUDY.—The Secretaries, through the coordinating group, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) CAPITAL REQUIREMENTS PLAN.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

SEC. 9. (a) REGULATORY CONSTRAINTS STUDY.—The Secretaries, through the coordinating group, shall conduct, within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983;
(2) to the Department of Commerce—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983; and
(3) to the Department of the Interior—
(A) $3,000,000 for fiscal year 1981,
(B) $4,000,000 for fiscal year 1982, and
(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or activity authorized under any other provision of law.

The SPEAKER pro tempore. Is a second demanded?

Mr. FORSYTHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. BREAUX) will be recognized for 20 minutes, and the gentleman from New Jersey (Mr. FORSYTHE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a little like the last bill that we just had passed, there was a better bill which we wished everyone could have agreed on with regard to aquaculture. However, the bill which we bring to the House floor today is, I think, one that all Members could be comfortable with supporting.

Mr. Speaker, Americans have not ranked among the major fish-eating peoples of the world. We consume on an average only a bit more than 13 pounds per capita a year while the average Japanese citizen eats some 70 pounds of seafood annually. In addition, this Nation is blessed with one-fifth of the world's fishery resources within 200 miles of our shores. Given these statistics, you may wonder why we should bother to encourage the development of aquaculture in this country which is what the bill before us is designed to do. But these statistics are somewhat misleading.

First, despite a relatively low appetite for fish and a wealth of fishery resources, we still import well over 60 percent of the fish we consume. Second, Americans are learning not only to appreciate the good taste of seafood but also its healthful qualities—high in protein and low in cholesterol. Consequently, they are eating it more with current estimates that

levels of consumption will rise 80 percent by the year 2000. At the same time, on the basis of information garnered since the passage of the Fishery Conservation and Management Act of 1976, we now know that many of our traditional stocks of marine resources are declining from overfishing, pollution, and many other pressures. The regional fishery management councils have drawn up plans to manage these stocks and they will, wherever possible, be returned to a maximum yield level but this will take time.

In the meantime, where will we get the fish to meet our growing appetite? Initially, we can increase the share of the resources off our shores taken by Americans rather than foreign fishermen. My committee will be bringing legislation for this purpose before this body in the near future. Then, of course, we could always import more fish—or could we?

Aside from the detriment to our balance of payments, that is not a likely possibility in the years ahead. The world situation is far graver than ours: While estimates vary on the maximum global harvest from traditional marine stocks, they all agree that maximum will be reached no later than the year 2000. At the same time, the world's population is growing by leaps and bounds and is expected to reach 6 billion by the end of this century. In short, more people are going to be vying for a share of a limited supply of seafood. No, increased imports are not the answer even if we wanted to take that route.

This leads us to an as yet largely untapped nutritional resource—this country's vast potential for the development of aquaculture. But the emphasis here is strongly on potential. Contrary to what most of the small percentage of Americans who are aware of aquaculture think, it will be no simple matter to cultivate fish and shellfish on a national scale. America may be the breadbasket of the world but we have a long way to go before we can farm fish as effectively as we produce loaves.

The National Oceanic and Atmospheric Administration (NOAA) has categorized our current aquaculture expertise as being "roughly analogous to the state of agriculture before the land grant system and the Department of Agriculture launched intensive research programs to develop agricultural technology." And that took place over 100 years ago.

But the situation is not as hopeless as it sounds. However embryonic our aquaculture efforts may be, there are pockets of success throughout the country which show that it can be done even in the existing climate of discouragement.

Salmon produced in publicly supported hatcheries on the Columbia River represent more than one-half of the salmon caught in that large river system. The eggs are hatched and the fish are fed until they grow to a suitable size to be released to the wild. The released salmon feed off natural resources until maturity when they return to spawn and are caught by commercial fishermen or for sport.

Another successful example is that of trout farming. All of the trout purchased in our local markets are products of aquaculture.

Catfish is another species that is raised by large-scale production and is commercially successful. There are approximately 3,000 catfish farmers located in 42 States. The larger, more productive farms are located in the warmer climates of the Southern States and account for 80 percent of the catfish cultured.

The type of aquaculture with which I am most familiar and I might add for which I am most grateful, is that of culturing crawfish. In my home State of Louisiana, crawfish farming is an integral part of our local economy. Local landowners produce 99 percent of the crawfish in the United States, 85 percent of which is consumed within the State. In South Louisiana there are some 40 processing plants providing jobs for hundreds of people.

Aquaculture supplies only 3 percent of the fish we consume but where would we be without it? Would we be importing a larger quantity of our salmon and all of our trout, catfish, and crawfish? It is apparent that aquaculture can be a viable industry. It can and does contribute to our food supply. It can and does create new job opportunities. Other species can be cultured on the same basis with additional research and technical expertise. America's aquaculture potential can be realized if we will provide a climate of encouragement in which these pockets of success can multiply.

Mr. Speaker, the legislation before us today is a product of long and intensive study of aquaculture and its needs by the Committee on Merchant Marine and Fisheries which has held hearings on the subject in the 94th, 95th and current Congresses and has instigated a number of related studies. I am happy to say that these efforts have brought about a greater awareness of and interest in aquaculture in the executive branch. But these efforts have only enhanced the need for coordinating legislation.

Recognizing this fact, other members of the Committee on Merchant Marine and Fisheries and I introduced H.R. 20 on January 15, 1979. After a brief hearing, the committee unanimously ordered the bill reported to the House on May 3, 1979. That bill as reported authorized the Secretary of Commerce in consultation with the Secretaries of Agriculture and Interior, to develop a national aquaculture plan within 18 months. That plan would identify those aquatic species with a high potential for culturing on a commercial basis. For each identified species, the plan would set forth a research and development program.

The bill authorized the Secretary of Commerce to appoint an advisory committee to assist in initial development of the plan and to set up an interagency coordinating committee comprised of the heads of eight Federal agencies and chaired by the Secretary of Commerce, who was charged with preparation of a biennial report on the status of aquaculture. This bill also authorized scale tests and, if necessary, construction, operation, and maintenance of developmental aquaculture facilities—including production scale facilities—to assess the biological and economic feasibility of any aquaculture system.

It established an Aquaculture Information Center and provided for the sharing of such information with foreign countries.

It authorized matching grants on a 50–50 basis and loan guarantees up to a maximum of $150 million and provided a risk insurance program with a maximum face value of $125 million.

In addition to these assistance programs, the bill authorized to be appropriated to the Departments of Commerce, Interior, and Agriculture $65 million over a 3-year period.

Mr. Speaker, H.R. 20 was sequentially referred to the House Agriculture Committee. That committee ordered a substantially amended version of the bill reported to the House on July 11, 1979.

The Agriculture Committee bill contained many of the provisions of the original bill, but it authorized the Secretaries of Agriculture, Interior, and Commerce to draw up a national plan and establish a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET) under the Office of Science and Technology Policy (OSTP) to be composed of 13 agency heads. The Chairmen of two FCCSET sponsoring Committees would select the Chairman of the Joint Subcommittee for a 2-year term.

In this bill, the biennial report on the status of aquaculture would be prepared by the three Secretaries through the Joint Subcommittee on Aquaculture and the Joint Subcommittee would be required to complete, within 18 months, studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture.

The construction of production scale facilities was specifically excluded and provisions for matching fund grants, loan guarantees and insurance were eliminated from this bill which authorized to be appropriated only such sums as may be necessary to carry out the programs authorized.

In the ensuing months the two committees have negotiated their differences and this has culminated in the joint committee amendment in the nature of a substitute, to H.R. 20 which we are bringing before the House for its approval today.

The compromise bill closely parallels the bill reported by the Agriculture Committee but includes some changes considered important by the Merchant Marine and Fisheries Committee. It would require the Secretaries of the Interior, Commerce, and Agriculture to develop within 18 months the national aquaculture plan previously described.

The three Secretaries would be authorized to appoint an advisory committee to assist in initial development of the

plan. An interagency aquaculture coordinating group would be established under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering, and Technology, and would consist of the heads of 13 agencies with acquaculture responsibilities. Its chairman would be selected by the Director of OSTP from among the three Secretaries or their designees for a 2-year term. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis. The bill also authorizes demonstration projects to test the feasibility of aquaculture systems. There are authorized to be appropriated to each of the departments of Commerce and Agriculture $7 million for fiscal year 1981, $10 million for fiscal year 1982, and $12 million for fiscal year 1983; and to the Department of the Interior $3 million for fiscal year 1981, $4 million for 1982 and $5 million for 1983. This is a total of $70 million over the 3-year life of the program.

It is the understanding of the members of the Merchant Marine and Fisheries Committee that the language of this bill with respect to demonstration projects would include production scale facilities where necessary to assess the biological, technical and economic feasibility of aquacultural systems.

Mr. Speaker, the members of both committees have worked hard to reach this compromise language. We believe it is the bare minimum necessary to get a national aquaculture development program underway.

Many of the Members of this body will recall that a more expansive aquaculture bill was passed overwhelmingly 2 years ago by both Houses only to be vetoed by President Carter. The compromise language which we are presenting for your approval today was negotiated in coordination with representatives of both the Senate and the administration and we have every reason to expect it will be enacted into law.

Administration witnesses, including representatives from the Office of Science and Technology Policy, and the Departments of Agriculture, Commerce, and the Interior all testified in support of a virtually identical bill at Senate hearings late last year. In addition, the Secretary of Agriculture wrote the Senate Agriculture Committee strongly recommending enactment of that bill.

Mr. Speaker, this bill has the overwhelming support of the Committee on Merchant Marine and Fisheries and of the Committee on Agriculture. Legislation for this purpose is strongly backed by the shellfish industry, the catfish industry, the freshwater trout industry, and all other fishermen in general, except the Pacific salmon fishermen, who were fearful that large private salmon producers would adversely affect their industry.

Mr. Speaker, the end of this century is only a short 20 years away. If we are ever going to coordinate the aquaculture programs of the Federal Government into an effective effort to encourage the development and growth of a thriving U.S. aquaculture industry, we must begin now. I can think of no more important legislative proposal than one which is aimed at assuring adequate supplies of protein-rich food resources for Americans in the 21st century and I urge the Members of the House to join me in this effort by adopting H.R. 20.

Mr. FORSYTHE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the National Aquaculture Act offers an exciting opportunity for this Nation to seize the initiative in the development of a new seafood production industry. Although worldwide output from aquaculture has approximately doubled in the last 5 years, and now amounts to some 6 million metric tons, U.S. aquaculture has remained relatively static.

One of the reasons why worldwide aquaculture production has increased is that several nations have recognized the potential for aquaculture development and have embarked on extensive aquaculture programs. Japan, for example, has established a 7-year coastal fisheries development program and has allocated $333 million to develop aquaculture. Canada has committed $300 million to an ambitious aquaculture program for restoring British Columbia salmon stocks. Mexico has recently launched a $1 billion fisheries program, of which more than $200 million will be allocated to aquaculture.

In contrast to the aquaculture efforts of these nations, aquaculture in the United States has been small and insignificant for many years. While international aquaculture accounts for approximately 10 percent of the world's fisheries production, U.S. aquaculture accounts for only 3 percent of all fish and shellfish consumed within the United States.

On an annual basis, the U.S. aquaculture industry is producing 48 million pounds of catfish, 2.6 million pounds of clam meats, 10 million pounds of crawfish, 17,000 pounds of freshwater prawns, 20 million pounds of oyster meats, 1 million pounds of pen cultured salmon, 60 million pounds of hatchery released salmon, 800,000 pounds of shrimp, and 30 million pounds of trout. Although these figures may seem significant, it is important to recognize that other nations such as Japan are producing 11½ times as much seafood by aquaculture as the United States. It is also significant to note that the United States is importing approximately $800 million of seafood products each year which could be produced domestically by the aquaculture industry.

Despite the relatively limited production of aquaculture in the United States, the future seafood market in this country provides an excellent opportunity for the expansion of the U.S. aquaculture industry. Within the United States, most traditional fisheries resources are already being harvested at or near their optimum sustainable levels. It is expected, however, that the demand for seafood products in the United States will increase 80 percent by the year 2000.

Even allowing for the introduction of nontraditional species into domestic markets, the amount of seafood which will be available to meet domestic demands will probably be severely limited. The implications of a limited domestic supply are increased prices to the consumer, an inadequate supply of seafood products, and an increase in the U.S. seafood balance-of-payments deficit.

Mr. Speaker, in my view, aquaculture offers the potential for overcoming many of these problems. Proven techniques for the production of trout, salmon, oysters, and other species are well known, and a review of the production records for these species provides a basis for estimating the potential for expanded production. The aquaculture production of rainbow trout, for example, has increased from just over 1 million pounds in 1954 to over 30 million pounds in 1972. With adequate markets and acceptable feed prices, it is estimated that production could be doubled in the next decade.

Private oyster farmers currently produce 20 million pounds of meat annually. Production through aquaculture could increase by a factor of 10 in many places by suspending oysters above the bottom, a method currently used in Japan and experimentally tested in the United States. With adequate markets and satisfactory prices, private oyster production through aquaculture could be quadrupled during the next decade.

For nearly 100 years, the salmon fishery has been enhanced by public aquaculture (hatcheries) and more than one-quarter of our salmon, 60 million pounds, now originates in these hatcheries. Federal and State salmon culture experts estimate that landings attributable to public hatcheries could be increased by 50 percent during the next decade if funds were available for expanding hatchery production. Private salmon aquaculture also has a great potential for expansion. The production from this source, which was less than 1 million pounds in 1974, could exceed 80 million pounds by 1985 if certain production problems could be solved and if markets remain attractive.

If these breakthroughs can be achieved, the benefits to the United States will be extraordinary. As I noted earlier, the United States is currently importing over $800 million of seafood products which could be provided by U.S. aquaculture. In addition to meeting our own growing demand for seafood, and significantly reducing our seafood balance-of-payments deficit, the United States could become a net exporter of marine protein to meet the food needs of other nations.

If the future is so bright, the question is why do we need to enact a National

Aquaculture Act? Although the answer is not simple, it can be summarized by saying that there are significant obstacles to the development of the aquaculture industry which can be overcome by this legislation.

The development of aquaculture for any species is a two-stage process. First, it is essential that an understanding of the basic biology of the species be developed. This entails a knowledge of what makes the species reproduce, what is the optimal growing temperature, what is the best food mixture at various stages of development, and so forth.

Once this information is available, it is possible to move into the second stage of development—an engineering, biological, and economic stage. There is a major difference between growing 100 fish in a laboratory tank and 100,000 fish in an aquaculture facility. The problems of disease, waste disposal, water quality within the system, nutrient mixes, and other factors become magnified. The problems are no longer biological.

For many species, the basic biology is known. What is needed is second-stage development and here is where the problem lies. Because of the present high-risk nature of the fledgling U.S. aquaculture industry, investors are generally reluctant to invest their funds in aquaculture when higher and safer returns are available elsewhere. We are thus confronted with the proverbial chicken and egg situation. Investment money is available to develop the aquaculture industry, but only after second-stage development is completed. Yet, without this investment capital, second-stage development may never be achieved.

To overcome these problems, the National Aquaculture Act directs the Secretaries of Commerce, Agriculture, and the Interior to develop an aquaculture development plan and to implement that plan through contracts and grants. The purpose of these contracts and grants is to test and demonstrate the feasibility of aquaculture including, where appropriate, the construction and operation of demonstration production facilities.

Mr. Speaker, in view of the extremely high potential the U.S. aquaculture industry offers for meeting the United States and world demand for seafood potential, and in view of the hesitation by private investors to provide capital for the development of the U.S. aquaculture industry, I urge that my colleagues join me in supporting this legislation.

Mr. Speaker, I would now yield such time as he may consume to the gentleman from Virginia (Mr. WAMPLER), the ranking member of the Committee on Agriculture.

□ 1540

Mr. WAMPLER. Mr. Speaker, I thank the distinguished gentleman from New Jersey for yielding.

Mr. Speaker, I rise in support of this legislation, the National Aquaculture Act of 1980, which provides a framework for the development of aquaculture in the United States. For many months, a number of members on the House Committee on Agriculture and the House Committee on Merchant Marine and Fisheries have been working to reach agreement on legislation that would serve the needs of our aquaculture industry. This bill is the result of those efforts.

We on the Agriculture Committee were particularly interested in assuring that the Secretary of Agriculture had coequal status with the Secretaries of Commerce and the Interior in the development and carrying out of the national aquaculture development plan, and this is provided in the bill. Although a number of Federal agencies—including the Farmers Home Administration and the Farm Credit Administration—have been providing assistance to the aquaculture industry, most people would agree that more needs to be done. One of the major problems, however, is the lack of sufficient information about the acquaculture industry as a whole upon which to base further Federal support.

With the new impetus of the interagency aquaculture coordinating group in the development of a national aquaculture plan and in carrying out this legislation, I feel that we will be able to gather the needed information and make progress toward assisting the aquaculture industry of this Nation in research and development, technical assistance, demonstration, and extension education and training activities.

An important provision of this legislation is a requirement that a study be conducted to determine capital requirements for the further development of the industry. It was this aspect of the prior legislation passed by the 95th Congress which prompted the President to veto that bill. The President cited the lack of a clear demonstration of need for a loan guarantee program and an insurance program.

This study should allay the President's concern and enable him to sign this legislation into law. The results of the study should clearly demonstrate where additional Federal support needs to be targeted. I feel no one can disagree that we will need in the future to increase our supplies of aquatic foods in order to meet our ever increasing needs for food both nationally and worldwide.

We must be prepared to meet these demands by whatever means are available. The development of the aquaculture industry is most promising in this regard, and in my opinion, the bill we are considering is an important step to expediting this development.

I urge my colleagues to support this legislation.

Mr. BREAUX. Mr. Speaker, I yield 2 minutes to a member of the subcommittee who has worked very hard with the subcommittee on this legislation, the gentleman from Hawaii (Mr. AKAKA.)

Mr. AKAKA. Mr. Speaker, I rise in strong support of H.R. 20, the National Aquaculture Act. As the Members are aware, this bill is the result of much work between the Merchant Marine and Fisheries Committee and the Agriculture Committee and represents a sensible approach to Federal support of this growing industry.

The aquaculture industry stands on the threshold of great advances, and an indication of Federal support will give it the needed impetus. This is a reasoned and balanced approach to Federal support for aquaculture, providing an interagency national aquaculture development plan which will encourage aquaculture activities in both the public and private sectors.

Technical assistance will be provided to those individuals interested in aquaculture, and efforts will be made to eliminate needless regulation involved in starting aquaculture ventures. To accomplish the purposes of the legislation, a modest sum of money is authorized, certainly consistent with the present policy of fiscal restraint.

Mr. Speaker, in my State of Hawaii, we have long turned to the sea for many of our needs. Passage of this bill will lend support to those efforts throughout the Nation, and greatly assist this developing industry.

I urge my colleagues to support this bill and ask unanimous consent to revise and extend by remarks.

Mr. BREAUX. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. HEFTEL).

Mr. HEFTEL. Mr. Speaker, I want to congratulate the gentleman from Texas (Mr. DE LA GARZA) and the gentleman from Louisiana (Mr. BREAUX) for their leadership and perseverance, with the Members on the other side of the aisle, in finally bringing this bill back to the floor, not in its original form unfortunately, but nonetheless this is a step in the right direction.

Mr. Speaker, I rise in strong support of H.R. 20, the National Aquaculture Act. This legislation will create a long-overdue national policy on aquaculture development, requiring the planning and coordination of the Federal activities relating to aquaculture. Equally important, it will mandate studies of the financial and regulatory constraints which have inhibited the development of aquaculture in the United States.

In my home State of Hawaii, where we are blessed with climatic conditions conducive to aquaculture, we lead the country in its development. However, in the United States as a whole, acquaculture accounts for only 3 percent of all fish and shellfish consumed domestically. In 1979, the United States produced about 90,000 metric tons of fish through aquaculture. China, in the meantime, has produced 1.2 million metric tons annually of farmed fish, Japan 480 000 metric tons, and the Soviet Union 190.000 metric tons. Since the United States imports over 60 percent of the fish that Americans consume, the economic and trade benefits of a national aquaculture plan are readily evident.

There are many individual aquaculture efforts taking place in our country today, including overlapping Federal, State, and private activities. By taking

action now to coordinate these efforts and encourage aquaculture production through careful planning, research, and development, I am convinced that we will be able to better meet the increasing challenge of feeding the world's people.

I urge my colleagues to join with me in supporting this bill and look forward to the President's early signature on this legislation.

Mr. FORSYTHE. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I rise as a cosponsor of H.R. 20, to commend both the subcommittee chairman and the ranking member for this legislation. Representing, as I do, the Chesapeake Bay of Maryland, I am acutely aware of the deficiencies in the development of aquaculture in the United States. This was forcefully brought home to me only a few months ago when I met with officials of a Japanese corporation that is now establishing a commercial eel farm in St. Mary's County, Md., where they will use American fish products grown in Maryland and harvested there. They will be cooked, frozen and shipped back to Japan for consumption, all at a price that is cheaper than production in Japan. Yet we in the United States are unable to produce and harvest fish stocks and species that are perfectly acceptable to our own American people for consumption and yet we have to import great amounts of fish at great cost. Perhaps this legislation will lead the way to encouragement toward ending that situation and enhancing American fish production.

Mr. Speaker, again I commend the committee for its action.

Mr. BREAUX. Mr. Speaker, I would just conclude with the statement that while we are today considering a bill under the simple process of suspension of the rules, it really belabors the fact that we have worked many, many months and, many years and, in fact, through several Congresses on getting to the point where we are today. I would like to acknowledge the tremendous amount of staff work that has gone on, I know in the staff of the Committee on Merchant Marine and Fisheries and I am certain also in the staff of the Committee on Agriculture to bring us to the point where we can stand today and bring up a bill with relatively no opposition at all. It was not like that in the 94th Congress, it was not like that in the 95th Congress when the President saw fit to veto this bill and yet today we are able to stand before the House and recommend a bill almost by unanimous consent which has the potential of bringing about some dramatic and realistic changes for this country which we will see well into the 21st century.

Mr. Speaker, I will also conclude by saying that our former colleague, Bob Leggitt of California, was very instrumental in the early days doing work on this legislation. I remember many, many drafting sessions and many, many points in time where it looked like we would never see a national aquaculture bill. Today we are on the brink of having that become a reality and an accomplishment.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Speaker, I thank my colleague, the distinguished chairman of our subcommittee, for yielding.

Mr. Speaker, 2½ years ago, the House overwhelmingly supported legislation to establish a national aquaculture development plan. Unfortunately, the President pocket vetoed that bill as too costly and too far reaching.

Since that time, the House Merchant Marine and Fisheries Committee in concert with the House Agriculture Committee have worked together to fashion the legislation before us today, H.R. 20, the National Aquaculture Act.

Aquaculture has been in existence for about 4,000 years and is highly developed in other nations such as Japan and Russia. Unfortunately, aquaculture has been long overlooked in the United States even though it can be an important component of our Nation's agricultural industry. American aquaculture presently accounts for only 3 percent of all fish and shellfish consumed domestically. One reason for this is that previous efforts to develop a thriving aquaculture industry have been highly diffused. The necessary research and development in marine biology and related technology to make aquaculture successful have been almost nonexistent.

It makes sense to do something about this pattern. World production of seafood is on the wane. Certain stocks of fish of importance to the United States are either depleted already or seriously declining. Even so, the demand for these kinds of fish is increasing and that has created a potential shortage for U.S. consumers serving to drive the prices for shellfish to an all time high.

The United States is also faced with a terrific seafood import problem. An estimated 65 percent of the fish products consumed in the United States are imported. These fish products alone account for nearly $2 billion worth of fish.

If we are able to raise poultry, hogs, and beef for slaughter, we should be able to farm our waters methodically and scientifically as well. To accomplish the goals of increased fish production and a better trade balance, it is necessary for the Government to help the private sector get involved in the aquacultic cultivation of fish stocks. This requires advisory, educational, and technical assistance to those interested in becoming a part of the aquaculture industry.

With better coordination between the producers of fish and shellfish and the Government, we will be entering a new food producing era. A thriving aquaculture program can also take a good deal of the pressure off the commercial fishing and shellfish industries by complementing their endeavors. It will eventually help build up our depleted stocks and help compensate when clam and oyster beds are shut down because of pollution or disease.

Obviously, this rather modest bill will not solve every problem encountered by our commercial fishing industry but it can help insure that the United States holds its own in basic fish production both here at home and abroad. I strongly support H.R. 20 and urge my colleagues to join me in helping the United States regain her rightful position in the world's fishing community.

● Mr. FOLEY. Mr. Speaker, I rise in support of H.R. 20, as amended, the National Aquaculture Act of 1980. The version of H.R. 20 that appears before the House today represents a compromise between bills that have been reported by the Merchant Marine and Fisheries Committee and the Committee on Agriculture. The two committees have worked assiduously to provide a measure that would meet the objectives of the members of both committees and at the same time would be acceptable to the administration. The Senate recently passed a similar bill. S. 1650, and we have also worked with the representatives of the relevant committees in the Senate to strike a compromise that we believe will be acceptable to the other body.

This bill provides an important step in assuring a coordinated effort by agencies of the Federal Government in support of the development of the Aquaculture resources of the United States. The U.S. currently imports over 60 percent of its seafood requirements thus incurring a trade deficit of about 2 billion per year. Only 3 percent of our seafood needs are produced by aquaculture whereas the worldwide average is approximately 10 percent and in some countries the figure ranges upward to 40 percent. Our capture fish resources in many cases have been taxed to the limit. Any substantial improvement must come from aquaculture.

Today aquaculture in the United States produces such species as salmon, catfish, trout, oysters, shrimp, and other shell fish varieties. Estimates that domestic demand for seafood will grow 80 percent by the year 2000 have enhanced the market for aquaculture development.

The bill before the House today would require the Departments of Agriculture, Commerce, and Interior to formulate a National Aquaculture Development Plan within 18 months after enactment of the bill. It also encourages aquacultural activities and programs in both the public and private sector, increases coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, and the creation of new industries and jobs.

The bill requires the plan, among other things, to identify species that have significant potential for commercial cultivation, and set forth a research and development program. In implementing the plan, the Secretaries would provide educational and technical assistance on aquaculture to interested persons and to assess the feasibility of any aquaculture

system, the Secretaries could conduct tests and if necessary to demonstrate its feasibility, construct and operate developmental aquaculture facilities for testing laboratory results. H.R. 20 also requires periodic reviews of the plan to keep the list of aquatic species with commercial potential accurate, and requires the Departments, in implementing the plan, to provide advisory, educational, and technical assistance on aquaculture to interested individuals and to avoid duplication of other Federal programs relating to aquaculture.

An interagency aquaculture coordinating group would be established by the bill under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering, and Technology, and would consist of the heads of 13 agencies with aquaculture responsibilities. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis.

Finally, the bill authorizes to be appropriated: $7 million for fiscal year 1981, $10 million for fiscal year 1982, and $12 million for fiscal year 1983 to the Department of Agriculture; identical sums to the Department of Commerce; and $3 million for fiscal year 1981, $4 million for 1982, and $5 million for 1983 to the Department of the Interior.

The Committee on Agriculture has undertaken further efforts to assist in the development of an aquaculture industry in the United States. The conference report on the Federal crop insurance program which will be considered by the House this week, S. 1125, authorizes the Department to provide a crop insurance program for aquaculture financed in part by subsidies from the Federal Government on the same basis as provided for agricultural crops produced in the United States.

In addition, the committee has reported H.R. 7548, which amends the Farm Credit Act of 1971 that provides additional authority to the financial institutions that make up the Farm Credit System to offer financial assistance to those engaged in aquaculture. For example, with respect to producers and harvesters of aquatic products, the Farm Credit Act Amendments—

First, authorize Federal land banks to make real estate mortgage loans to producers or harvesters of aquatic products;

Second, authorize Farm Credit System institutions to provide to borrowers, members, and applicants financial-related services appropriate to their aquatic operations;

Third, authorize Federal intermediate credit banks to discount aquatic loans of lending institutions outside the Farm Credit System; and

Fourth, clarify that cooperatives engaged in furnishing aquatic business services are eligible to borrow from the banks for cooperatives.

Mr. Speaker, I urge the Members to join me in support of this important measure.●

● Mr. MURPHY of New York. Mr. Speaker, aquaculture in the United States accounts for only 3 percent of all fish and shellfish consumed domestically. With the U.S. importing over 60 percent of its fish for human consumption, it is immediately apparent that large economic benefits would accrue to this country in the forms of a healthier balance of trade and less strain on existing capture fisheries if this Government would encourage much more extensive acquaculture.

This is not being done, and what is being accomplished is taking place almost in spite of the diffusion of laws and agencies charged with responsibility for the aquaculture industry.

Annual landings of edible fish by U.S. fishermen have remained relatively constant since the 1960's. Traditional stocks of marine resources, once thought to be unlimited, are now estimated at a maximum level of global harvest of 100 to 150 million metric tons. Fish catches of such resources currently are around 70 million metric tons commercially and are increasing.

With finite marine resources and a seemingly infinitely expanding human appetite for protein due to population growth, it is incumbent on the United States to increase greatly its aquaculture production. It has been estimated that the potential protein production per unit area of water is up to 5,000 times that of a similar area in pasture used for beef production, and the conversion by fish of feed to edible protein is done much more efficiently than by those mammals husbanded by man on dry land.

Aquaculture needs firm, rational encouragement from the Federal Government if it is to succeed and grow in the way it should. It is hardly a risk-free business: Even under controlled circumstances aquaculture is at the mercy of nature, and it should be Government policy to aid in a fair way those entrepreneurs who take on the risks of the business.

However, at present, 11 Federal agencies have been identified as having direct involvement with aquaculture, and some 10 other agencies have programs which are indirectly related. Several of these agencies and components within these agencies have conducted research and development within the framework of specified missions, yet any coordination that has taken place has been primarily to avoid undesirable overlaps. However, far more serious than the overlaps have been the gaps because of lack of proper coordination and direction.

On January 15, 1979, I introduced H.R. 20, a bill which closely parallels legislation of the 95th Congress which was vetoed by the President. The Committee on Merchant Marine and Fisheries reported H.R. 20 on May 15, 1979. H.R. 20 was sequentially referred to the Agriculture Committee and that committee reported its version of the bill on July 16, 1979. Since that time, the two committees have negotiated a compromise version which is before the House for approval. The compromise version closely parallels my bill, as introduced, except it does not contain the features found objectionable by the President concerning loan guarantees and insurance.

Briefly explained, the compromise version would require the Secretaries of the Interior, Commerce, and Agriculture to develop a national aquaculture plan within 18 months. The plan would identify those aquatic species with a high potential for culturing on a commercial basis. For each identified species, the plan would set forth a research and development program.

The Secretaries would be authorized to appoint an Advisory Committee to assist in the initial development of the plan. An interagency aquaculture coordinating group would be established under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering and Technology, and would consist of the heads of 13 agencies with aquaculture responsibilities. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis. The bill also would authorize demonstration projects to test feasibility of aquaculture systems which would include production-scale facilities when deemed necessary by such Secretaries. There would be authorized to be appropriated a total of $70 million to carry out the legislation.

Aquaculture is an idea whose time is overdue. H.R. 20, as amended, proposes an all-out effort in the direction of creating a widespread vital aquaculture industry.

I urge the prompt passage of H.R. 20, as amended.●

● Mr. ASHLEY. Mr. Speaker, traditional stocks of marine resources, once thought to be unlimited, are now estimated by experts to be capable of yielding a maximum global harvest of 100 to 150 million metric tons per year. More conservative estimates rarely exceed 100 million metric tons, including that of the National Oceanic and Atmospheric Administration which estimates the 100 million figure will be reached in the 1980's. World fish catches are currently around 70 million metric tons.

The present world population is approximately four billion and is expected to expand to 6 billion by the year 2000. What these figures mean is that, on a worldwide basis, we can expect a shortage of fisheries products within the next decade.

Currently, more than 60 percent of all fish consumed in the United States is imported and aquaculture accounts for 3 percent of the approximately 40 percent produced domestically.

With limited traditional stocks of marine resources to meet this increased need for fisheries products, it is apparent that

the potential for aquaculture in the United States is enormous. However, that potential can become a reality only if our government takes the necessary steps to encourage more extensive aquaculture in the United States and this is what H.R. 20 is intended to accomplish.

H.R. 20, as reported by the Committee on Merchant Marine and Fisheries, closely parallels this committee's bill of the 95th Congress that was vetoed by the President. Under this legislation, the Secretary of Commerce would be designated as the lead agency and authorized to guarantee loans for the construction of aquaculture facilities and acquisition of stocks and provide insurance to owners of aquaculture facilities when insurance is not reasonably available in the commercial market.

H.R. 20 was sequentially referred to the Committee on Agriculture. As reported by that committee, it closely parallels the bill as reported by the Merchant Marine and Fisheries Committee except it does not contain the loan guarantee and insurance provisions, which were found objectionable by the President in the 95th Congress bill. Instead, it would call for a study to be carried out within 12 months to determine if there is a need for such assistance. Also, it would require a study to be carried out to identify the legal and regulatory constraints to the development of aquaculture to be followed by a plan of action to remove such obstacles. In addition, the Secretaries of Commerce, Agriculture, and the Interior would be given equal authority in carrying out the legislation.

During the past several months, the committees have met on a number of occasions with a view toward negotiating a compromise version of H.R. 20. A compromise has been reached which is in essence the Agriculture Committee's version of the bill with certain clarifying and technical amendments.

Under the compromise version, which is before the Members for approval today, the Secretaries of Commerce, Agriculture, and the Interior would be required to develop a national aquaculture plan within 18 months, identify those aquatic species with a high potential for culturing on a commercial basis, and set forth a research and development program for each identified species. The Secretaries would be authorized, for the purpose of assessing the biological, technical, and economic feasibility of an aquacultural system, to conduct tests of such system and, if necessary to demonstrate its feasibility, to construct, operate, and maintain developmental aquaculture facilities. It should be emphasized that such demonstration facilities could include production-scale facilities when it is deemed necessary by the Secretaries, in the furtherance of the development of certain aquatic species.

To assist in coordinating aquaculture activities among the various agencies, the compromise version would provide for the establishment of an interagency coordinating group under the direction of the Office of Science and Technology Policy within the Executive Office of the President. This coordinating group would consist of the heads of 13 agencies with aquaculture responsibilities.

The compromise bill would adopt the Merchant Marine and Fisheries Committee's funding authorization as it relates to the three Secretaries except that it would increase the funding by $5 million bringing the total amount authorized to $70 million over 3-year life of the legislation.

H.R. 20, as amended, has the strong support of the Committees on Merchant Marine and Fisheries and Agriculture and the aquaculture industry. Because of prior consultations with in the Senate and the administration when developing the compromise version of the bill, it is anticipiated that the Senate will agree to the compromise version and that the President will sign it when it reaches him for signature. In fact, the compromise version is practically identical to the Senate bill, S. 1650, which the administration strongly supports.

Mr. Speaker, I urge the prompt passage of H.R. 20, as amended.●

Mr. BREAUX. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORSYTHE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. BREAUX) that the House suspend the rules and pass the bill, H.R. 20, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. BREAUX. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1650) and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1650

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 "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and that may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national policy for aquaculture;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) the term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law);

(2) the term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;

(3) the term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile or aquatic plant;

(4) the term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any States;

(5) the term "Plan" means the National Aquaculture Development Plan required to be established under section 4;

(6) the term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior; and

(7) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, and the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers or employees of the Federal Government), while away from their homes or regular places of business in the performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine to have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential. The Plan shall address the following matters, taking into account the status of aquaculture regarding the aquatic species concerned:

(A) aquaculture facility design and operation;

(B) water quality management;

(C) use of waste products (including thermal effluents);

(D) nutrition and the development of economical feeds, including natural food sources;

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans);

(F) processing and market development;

(G) production management and quality control; and

(H) the development of adequate supplies of seed stock;

(3) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(4) include, where appropriate, programs to analyze, and to formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture, and

(5) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practical, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person; and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquacultural assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the Joint Subcommittee on Aquaculture established in section 6, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system and, if necessary, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economical information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and

(ii) recommended measures to ameliorate any such effect;

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting pe-

riod, and explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretaries deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 6. (a) ESTABLISHMENT.—There is established a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereafter in this section referred to as the "Subcommittee") that shall be composed of the following members or their designees:

(1) the Secretary of Agriculture,
(2) the Secretary of Commerce,
(3) the Secretary of the Interior,
(4) the Secretary of Energy,
(5) the Secretary of Health and Human Resources,
(6) the Administrator of the Environmental Protection Agency,
(7) the Chief of Engineers,
(8) the Administrator of the Small Business Administration,
(9) the Administrator of the Agency for International Development,
(10) the Chairman of the Tennessee Valley Authority,
(11) the Director of the National Science Foundation,
(12) the Governor of the Farm Credit Administration, and
(13) the heads of other Federal agencies as appropriate.

(b) PURPOSE AND FUNCTIONS.—The purpose of the Joint Subcommittee on Aquaculture is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the Subcommittee shall—

(1) review the national needs for aquaculture research, transfer, and assistance;
(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;
(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;
(4) collect, compile, and disseminate information on aquaculture;
(5) encourage joint programs among Federal agencies in areas of mutual interest; and
(6) recommend to the two sponsoring Committees (the Committee on Atmosphere and Oceans and the Committee on Food and Renewable Resources) and the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) CHAIRMAN.—The Chairman of the Joint Subcommittee on Aquaculture shall serve a term of two years and shall be selected by the mutual agreement of the Chairmen of the sponsoring committees of the Federal Council.

(d) REPORTS.—The Subcommittee shall regularly report to the Chairman of the two sponsoring Committees and through them to the Chairman of the Federal Council, on the Subcommittee's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) FEDERAL CONSISTENCY.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the Subcommittee and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

CONTRACTS AND GRANTS

SEC. 7. (a) IN GENERAL.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) LIMITATION.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

SEC. 8. (a) CAPITAL REQUIREMENTS STUDY.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and
(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) CAPITAL REQUIREMENTS PLAN.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

SEC. 9. (a) REGULATORY CONSTRAINTS STUDY.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall conduct within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—
(A) $7,000,000 for fiscal year 1981;
(B) $10,000,000 for fiscal year 1982; and
(C) $12,000,000 for fiscal year 1983;
(2) to the Department of Commerce—
(A) $7,000,000 for fiscal year 1981;
(B) $10,000,000 for fiscal year 1982; and
(C) $12,000,000 for fiscal year 1983;
(3) to the Department of the Interior—
(A) $3,000,000 for fiscal year 1981;
(B) $4,000,000 for fiscal year 1982; and
(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or action authorized under any other provision of law.

MOTION OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BREAUX moves to strike out all after the enacting clause of the Senate bill, S. 1650, and to insert in lieu thereof the provisions of the bill, H.R. 20, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid upon the table.

A similar House bill, H.R. 20, was laid on the table.

GENERAL LEAVE

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 6790, FOREIGN SERVICE ACT OF 1980

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 695 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 695

Resolved, That upon the adoption of this resolution is shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, the first reading of the bill shall be dispensed with, and all points of order against the bill for failure to comply with the provisions of clause 5, rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be considered as having been read for amendment under the five-minute rule. It shall be in order to consider the amendments recommended by the Committees on Foreign Affairs and Post Office and Civil Service now printed in the bill, and all points of order against said amendments for failure to comply with the provisions of clause 5, rule XXI are hereby waived. It shall be in order to consider en bloc any of the amendments recommended by the Committee on Post Office and Civil Service now printed in the bill, in an order recommended by the chairman of that committee. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

□ 1550

The SPEAKER pro tempore. The gentleman from California (Mr. BEILENSON) is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield the usual 30 minutes for purposes of debate only to the gentleman from Mississippi (Mr. LOTT), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 695 is the rule providing for the consideration of H.R. 6790, the Foreign Service Act of 1980. It is an open rule providing for 2 hours of general debate. One hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, and the other hour is to be equally divided and controlled by the chairman and ranking minority member of the committee on Post Office and Civil Service.

The rule waives clause 5 of rule XXI, which prohibits appropriations in a legislative bill, against consideration of the bill and the reported amendments of both the Foreign Affairs and Post Office and Civil Service Committees. This waiver is necessary because the bill and the amendments make various changes in the Foreign Service compensation and benefits structures. Such changes may result in the use of funds already appropriated for purposes other than originally intended. Technically, such changes are considered appropriations and thus a point of order would lie against the bill or the amendments without the waiver.

The rule also allows the amendments reported by the Post Office and Civil Service Committee to be considered en bloc in an order recommended by the chairman of the committee. This en bloc provision allows the combination of committee amendments dealing with the same issue. It will simplify floor consideration but will not have a restrictive effect during the amendment process.

Finally, the rule provides for one motion to recommit.

Mr. Speaker, H.R. 6790 is the first comprehensive revision of Foreign Service legislation since 1946. It will modernize the basic personnel management rules in the Foreign Service by tracking many of the policies contained in the Civil Service Reform Act of 1978. For example, the bill creates a senior Foreign Service along the lines of the recently created senior executive service. At the same time, the bill addresses those matters unique to the Foreign Service. It takes steps, for example, to reaffirm the requirement that membership in the Foreign Service means availability for worldwide service and seeks to improve the so-called "up or out" promotion system.

The bill is the product of extensive work by two House committees and will result in a simplified and clear governing statute for the Foreign Service. I urge my colleagues to support both the bill and the open rule under which it is to be considered.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 695 is the rulemaking in order consideration of the Foreign Service Act of 1980. It is an open rule and provides for 2 hours of debate. One hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs and 1 hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service. Clause 5 of rule XXI prohibiting appropriations in a legislative bill is waived against consideration of the bill. This is necessary since the bill makes changes in pay and benefits which would allow previously appropriated funds to be used for new purposes. The rule makes in order consideration of the amendments recommended by the Committees on Foreign Affairs and Post Office and Civil Service and waives clause 5 of rule XXI against the amendments. This is necessary since the amendments also make changes in pay and benefits which could constitute the use of existing appropriations for new purposes. Lastly, it shall be in order to consider en bloc the Post Office and Civil Service Committee's amendments and they shall be in an order recommended by the chairman of that committee.

Mr. Speaker, the primary purpose of this bill is to codify into statute the various laws and rules governing the Foreign Service. The last major revision of Foreign Service law took place in 1946, and it is clear that changes are needed. Although most of the bill's provisions are sound, there does appear to be some controversy about certain parts of the bill. For example, the Foreign Service pay schedule is in need of revisions which will make it more realistic in view of the economic changes which have taken place. However, the bill seems to have gone far beyond what was needed and adopted linkages between the GS and Foreign Service schedules which result in increases for Foreign Service personnel of nearly 12 percent in addition to whatever general pay raise is provided in October. In addition, 17 percent of Foreign Service employees would receive increases of between 20 and 25 percent. These pay provisions are an impediment to passage of this legislation and invite a veto of the bill. It is my understanding that an amendment to restructure this section will be offered.

A number of other amendments to the bill are anticipated, including one which affects the automatic entitlement for former spouses. Rather than automatically entitling a divorced spouse to a substantial portion of a Foreign Service officer's pension, the amendment would allow the courts to order such payments, as is the current practice approved by the 95th Congress.

Mr. Speaker, although there are several amendments likely to be offered to this legislation, this is an open rule and consequently I have no objection to its passage.

Mr. Speaker, I yield back the balance of my time.

Mr. BEILENSON. Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 7301, MILITARY CONSTRUCTION AUTHORIZATIONS, FISCAL YEAR 1981

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 696 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 696

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, the bill shall be read for amendment under the five-

minute rule by titles instead of by sections. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas (Mr. FROST) is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 969 is an open rule providing for the consideration of H.R. 7301 authorizing appropriations for certain construction at military installations in fiscal year 1981, and for other purposes.

The rule provides for 2 hours of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services and further provides that the bill shall be read for amendment under the 5-minute rule by titles rather than by sections.

Mr. Speaker, H.R. 7301 authorizes $5.538 billion for military construction projects in fiscal year 1981. This amount is $707,000 less than the total requested by the administration in its January budget request, March amended request and fiscal year 1980 supplemental request. The Committee on Armed Services has combined these three budget requests and the authorization level contained in H.R. 7301 reflects the committee's judgment on the programs requested by the administration for fiscal year 1981 as well as for the remainder of fiscal year 1980. I should note that H.R. 7301 does not make funds specifically available for fiscal year 1980, rather the Committee on Armed Services has made adjustments to the fiscal year 1981 authorization levels to accommodate the supplemental requests.

My colleagues will recall that the House has previously passed the fiscal year 1981 military construction appropriation without benefit of this authorization. It is therefore especially important that the House consider this legislation so that the appropriation approved in June be properly authorized.

Mr. Speaker, House Resolution 696 is a simple open rule and I would urge my colleagues to adopt it so that we may proceed to the consideration of H.R. 7301.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the notable thing about this rule is that it contains no waivers of points of order and no restrictions on amendments.

It provides 2 hours of general debate for the consideration of the military construction authorization for fiscal year 1981 and provides that this bill will be read for amendment by titles instead of by sections.

Mr. Speaker, the bill made in order by this rule authorizes a total of $5,538,003,000 for military construction. The Committee on Armed Services reported the bill by a vote of 41 to 0, with 1 voting "present."

The Rules Committee reported the rule by a voice vote.

I support the rule so that the House may proceed to consider the bill.

Mr. FROST. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1600

FOREIGN SERVICE ACT OF 1980

Mr. FASCELL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FASCELL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DERWINSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 2, answered "present" 2, not voting 103, as follows:

[Roll No. 523]

YEAS—325

Abdnor	Bonior	Daniel, R. W.
Addabbo	Bouquard	Danielson
Akaka	Bowen	Dannemeyer
Albosta	Brademas	Daschle
Alexander	Brinkley	Davis, Mich.
Anderson, Calif.	Brodhead	Davis, S.C.
	Brooks	Deckard
Andrews, N.C.	Broomfield	Dellums
Andrews, N.Dak.	Brown, Calif.	Derrick
	Brown, Ohio	Derwinski
Annunzio	Broyhill	Devine
Anthony	Buchanan	Dickinson
Archer	Burton, Phillip	Dixon
Ashley	Byron	Dornan
Aspin	Carney	Downey
Atkinson	Carr	Drinan
AuCoin	Carter	Duncan, Oreg.
Badham	Cavanaugh	Duncan, Tenn.
Bafalis	Cheney	Early
Bailey	Clausen	Edgar
Barnard	Cleveland	Edwards, Ala.
Barnes	Clinger	Edwards, Calif.
Bauman	Collins, Ill.	English
Bedell	Collins, Tex.	Erdahl
Beilenson	Conable	Erlenborn
Benjamin	Conte	Ertel
Bennett	Corcoran	Evans, Del.
Bereuter	Cotter	Evans, Ga.
Bethune	Coughlin	Evans, Ind.
Bevill	Courter	Fascell
Bingham	Crane, Daniel	Fazio
Blanchard	Crane, Philip	Fenwick
Bolling	D'Amours	Fisher
Boner	Daniel, Dan	Fithian
Flippo	Leath, Tex.	Rosenthal
Florio	Lee	Roth
Foley	Lent	Roybal
Ford, Mich.	Levitas	Rudd
Ford, Tenn.	Lewis	Sabo
Forsythe	Livingston	Santini
Fowler	Loeffler	Sawyer
Frenzel	Long, La.	Scheuer
Frost	Long, Md.	Schroeder
Fuqua	Lott	Schulze
Garcia	Lujan	Sebelius
Gaydos	Luken	Sensenbrenner
Gephardt	Lungren	Sharp
Gibbons	McCormack	Shelby
Gilman	McDade	Shumway
Gingrich	McDonald	Shuster
Ginn	McEwen	Simon
Glickman	McHugh	Skelton
Goldwater	McKay	Smith, Iowa
Gonzalez	Madigan	Smith, Nebr.
Goodling	Maguire	Snowe
Gore	Markey	Snyder
Gradison	Marks	Solarz
Gramm	Marlenee	Solomon
Gray	Martin	Spence
Green	Matsui	Stack
Grisham	Mavroules	Staggers
Guarini	Mazzoli	Stangeland
Gudger	Mica	Stanton
Guyer	Michel	Stark
Hagedorn	Mikulski	Stenholm
Hall, Tex.	Miller, Calif.	Stewart
Hamilton	Miller, Ohio	Stratton
Hammer-schmidt	Mineta	Studds
	Mitchell, N.Y.	Stump
Hance	Moakley	Swift
Hanley	Mollohan	Symms
Hansen	Montgomery	Synar
Harris	Moore	Tauke
Harsha	Moorhead, Calif.	Taylor
Hawkins		Thompson
Heckler	Moorhead, Pa.	Traxler
Hefner	Mottl	Trible
Heftel	Murphy, Pa	Udall
Hightower	Murtha	Ullman
Holland	Musto	Van Deerlin
Hollenbeck	Myers, Ind.	Vander Jagt
Holt	Natcher	Vanik
Hopkins	Nichols	Vento
Horton	Nowak	Volkmer
Howard	O'Brien	Walgren
Huckaby	Oakar	Wampler
Hughes	Oberstar	Watkins
Hutchinson	Obey	Waxman
Hutto	Panetta	Weaver
Hyde	Pashayan	Weiss
Ichord	Patterson	White
Ireland	Pease	Whitehurst
Jacobs	Pepper	Whitley
Jeffords	Petri	Whittaker
Jeffries	Pickle	Williams, Mont.
Jenkins	Preyer	Wilson, Tex.
Johnson, Calif.	Price	Winn
Johnson, Colo.	Pritchard	Wirth
Jones, N.C.	Quillen	Wolff
Jones, Okla.	Rahall	Wolpe
Jones, Tenn.	Rangel	Wright
Kazen	Ratchford	Wyatt
Kildee	Regula	Wydler
Kindness	Reuss	Wylie
Kostmayer	Rhodes	Yates
Kramer	Rinaldo	Yatron
LaFalce	Roberts	Young, Fla.
Lagomarsino	Robinson	Young, Mo.
Latta	Roe	Zablocki
Leach, Iowa	Rose	

NAYS—2

Lloyd	Mitchell, Md.

ANSWERED "PRESENT"—2

Neal	Ottinger

NOT VOTING—103

Ambro	Coelho	Hall, Ohio
Anderson, Ill.	Coleman	Harkin
Applegate	Conyers	Hillis
Ashbrook	Corman	Hinson
Baldus	de la Garza	Holtzman
Beard, R.I.	Dicks	Hubbard
Beard, Tenn.	Dingell	Jenrette
Biaggi	Dodd	Kastenmeier
Boggs	Donnelly	Kelly
Boland	Dougherty	Kemp
Bonker	Eckhardt	Kogovsek
Breaux	Edwards, Okla.	Leach, La.
Burgener	Emery	Lederer
Burlison	Fary	Lehman
Burton, John	Ferraro	Leland
Butler	Findley	Lowry
Campbell	Fish	Lundine
Chappell	Fountain	McClory
Chisholm	Giaimo	McCloskey
Clay	Grassley	McKinney

Marriott	Porter	St Germain
Mathis	Pursell	Steed
Mattox	Quayle	Stockman
Minish	Railsback	Stokes
Moffett	Richmond	Tauzin
Murphy, Ill.	Ritter	Thomas
Murphy, N.Y.	Rodino	Walker
Myers, Pa.	Rostenkowski	Whitten
Nedzi	Rousselot	Williams, Ohio
Nelson	Royer	Wilson, Bob
Nolan	Russo	Wilson, C. H.
Patten	Satterfield	Young, Alaska
Paul	Seiberling	Zeferetti
Perkins	Shannon	
Peyser	Spellman	

□ 1610

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 6790, with Mr. KAZEN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida (Mr. FASCELL) will be recognized for 30 minutes; the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 30 minutes; the gentlewoman from Colorado (Mrs. SCHROEDER) will be recognized for 30 minutes; and the gentleman from Iowa (Mr. LEACH) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. FASCELL).

□ 1620

Mr. FASCELL. Mr. Chairman, I want to rise in support of H.R. 6790, the Foreign Service Act of 1980.

Mr. Chairman, I yield such time as he may consume to the chairman of the full committee, the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980.

At the outset, I want to commend those of our colleagues whose diligent and untiring efforts have brought this landmark legislation to the floor today. Particularly the joint floor managers of the bill, the Honorable DANTE B. FASCELL, chairman of the Subcommittee on International Operations; the Honorable PAT SCHROEDER, chairman of the Subcommittee on Civil Service; and their respective ranking minority members, the Honorable JOHN BUCHANAN and the Honorable JIM LEACH. I also want to express my thanks to the distinguished chairman of the full Committee on Post Office and Civil Service, the Honorable JAMES HANLEY for his cooperation in permitting our two subcommittees to meet jointly for the purpose of taking testimony on and marking up the legislation. Without this joint effort, it is doubtful whether action on the bill could have been completed this year.

Mr. Chairman, the distinguished joint managers of the bill have thoroughly explained the provisions of H.R. 6790. I would like, however, to emphasize the importance of three of the bill's features.

First, in the area of compensation, the bill mandates pay comparability linkage between the new Foreign Service pay schedule and the pay grades of the civil service schedule. By requiring a clear and precise linkage between the two pay schedules, the bill brings Foreign Service salaries into compliance with the intent of the Pay Comparability Act of 1970. Under the present system, salaries of Foreign Service personnel lag behind comparable civil service positions and the variance between the two schedules is increasing. By rectifying this inequity, we will halt the trend in declining applications for the Foreign Service by those American men and women best qualified to steward our relations abroad.

Second, the bill as reported by the Committee on Foreign Affairs, raises the mandatory retirement age for the Foreign Service from 60 to 65. By raising the mandatory age 5 years, the bill brings into balance the competing factors underlying this issue. First, it gives those members of the service who do not want to retire at age 60 an opportunity to stay on the job an additional 5 years. Moreover, the bill gives the Secretary of State the discretion to extend the service of Foreign Service personnel beyond the age of 65. Second, by retaining a specified mandatory retirement age, the provision insures that those men and women entering the Foreign Service will be able to advance their careers without the impediment of compaction at the top levels.

Finally, the bill sets forth worldwide availability as the fundamental criterion for membership in the Foreign Service. The bill requires that all career members of the service shall be obligated to serve abroad. The so-called domestic Foreign Service category will be abolished and those current members not willing to serve overseas will be converted to the civil service.

Mr. Chairman, I am pleased to note that all of the differences between the two versions of the bill as reported by the Foreign Affairs Committee and the Post Office and Civil Service Committee have been resolved except for the issue of benefits for former spouses which will be resolved by a vote of the Committee of the Whole when the committee amendments are offered. I am advised that the full Senate is ready to consider this legislation as soon as it clears the House. I would, therefore, hope that we can complete our action on the bill today.

Mr. Chairman, the enactment of H.R. 6790 will provide a much needed boost in the morale of the Foreign Service, attract the best qualified personnel to the Foreign Service and improve the conduct of our foreign policy. I strongly urge the adoption of the bill.

Mr. BUCHANAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 6790 and to associate myself with the remarks of the gentleman from Florida (Mr. FASCELL).

The bill before us today represents more than 18 months of work by our subcommittee and the Civil Service Subcommittee. At the same time, it also addresses issues with which our subcommittee has been concerned for many years.

In drafting this legislation, the subcommittee provided a forum for all who wished to be heard. We took all viewpoints into consideration in drafting this legislation and considered more than 100 proposed amendments. We worked closely with the agencies involved and with the unions representing their personnel.

In my judgment, the resultant legislation is a good bill which will help to strengthen and improve the Foreign Service with regard to both its efficiency and the morale of its members.

Because of mandated reductions in personnel levels, increased workloads, low pay and increased hardships involved with service abroad, the morale of the Foreign Service is extremely low.

These factors have resulted in increasing numbers of midlevel officers leaving the service for higher paying less demanding jobs in the civil service or in the private sector.

During the years that it has been my privilege to serve in this body, I have had the opportunity to meet many Foreign Service officers, both here and abroad. I continue to believe that the United States has the best Foreign Service in the world and I believe that we have not done right by these people who are putting their lives on the line for us every day.

The Foreign Service is unique in that its members are expected to spend the overwhelming majority of their careers abroad in cultures, climates and political conditions substantially different from and sometimes hostile to those in the United States.

I have here, in my hand, a newspaper article about a Foreign Service family and I think the headline reflects the reality of Foreign Service life today. The headline reads, "Overseas and Under Fire for Uncle Sam."

Mr. Chairman, the days of the pinstriped cookie pusher, if they ever existed, are long past. The days of terrorism, increasing family hardships and other problems are more reflective of the reality of the Foreign Service today.

With H.R. 6790, we attempt to address these realities—the realities of Foreign Service officers held hostage in Tehran who are paid less for performing their jobs than civil service personnel on a comparable level here in Washington; the realities of life abroad which contribute to increased divorce rate and separation of family members, the realities of Americans who are doing their best for our country but who are too often ignored or forgotten.

The numbers about which we are talking are not large. Indeed, the Department of State is the smallest Federal department. The Foreign Service personnel in the Department of State, the International Communication Agency, and the other agencies are fewer in number than the staff serving the Congress.

What we are addressing is a very small department with a very large mandate.

H.R. 6790 is an effort to address some of the most pressing problems facing personnel today. It tracks the civil service reform legislation enacted in 1978 with alterations to reflect the different nature of the Foreign Service. It is supported by the American Foreign Service Association which represents the majority of the Foreign Service members today.

I urge its adoption.

□1630

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe the Foreign Service Act of 1980, H.R. 6790, is sound, responsible, and progressive legislation properly focused on a number of problems which have afflicted the Foreign Service. Enactment of this legislation will—

Codify existing but far-flung laws governing the Foreign Service;

Provide increased promotion opportunities for members of the Service;

Simplify and rationalize the numerous current categories of employment;

Increase the compatability of the personnel systems in the various agencies authorized to use the Foreign Service personnel authorities;

Facilities interchange of employees between agencies and between personnel systems;

Link the pay of the Foreign Service to that of the general schedule, to assure comparable pay for comparable work;

Establish a senior Foreign Service, parallel to the Senior Executive Service created by the Civil Service Reform Act of 1978, in which increased pay is available for outstanding performance;

Foster broad employee participation in determination of the conditions of employment affecting them by establishing a statutory framework for labor-management relations;

Authorize pension benefits for former spouses of members of the Foreign Service; and

Strengthen provisions of law designed to minimize the disruptive effect of a Foreign Service career on family life.

The Committee on Foreign Affairs and the Committee on Post Office and Civil Service, to which this legislation was jointly referred, worked closely to iron out potential problems. The disagreements between the two committees are limited in number and, for the most part, not over central issues in the legislation.

There are, however, two significant issues which may be debated on the floor. First, both subcommittees adopted a provision, which I sponsored, to provide pension benefits to former spouses of members of the Foreign Service. Unlike spouses of private sector employees, who are covered by social security, spouses of Government workers gain no retirement benefits based on their working spouse's contributions. So, in traditional role model families, where the husband works for a salary and the wife works for free in the house, death of or divorce from a Government-employed husband could leave the wife penniless. In the Foreign Service, members are rotated throughout the world often on a biennial basis. The wife or husband, who follows his or her Foreign Service spouse, can never build an independent career and is unlikely to have a retirement plan of his or her own. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation reports on her performance of representational duties. In effect, Foreign Service wives were impressed into Government service as unpaid representatives. The tradition of unpaid service continues.

The subcommittee provision established a presumption of a prorata division, based on the number of years of marriage, for both retirement and survivor's benefits. Only spouses of over 10 years would be eligible for an automatic share. Further, the former spouse and any current spouse had the right to veto any waiver of survivor's benefits by the member of the Service. While this provision was retained by the Foreign Service Committee, the Post Office and Civil Service Committee, by a vote of 12 to 11, adopted a weakening amendment offered by Mr. FORD of Michigan.

Under the Ford amendment, State courts are permitted to divide both retirement and survivor's benefits, but without benefit of any Federal guidance on the appropriate division. Recent experience with State family law judges and lawyers makes it clear that only self-executing legislation of the type adopted by the subcommittees is certain to vindicate the rights of former spouses. By eliminating the right of the current and former spouse to veto waiver of survivor's benefits, the Ford amendment may render the purported availability of a survivor's benefits for a former spouse a fraudulent promise. Finally, in limiting the effectiveness to future divorces and retirements, the Ford amendment provides no relief for the dozens of Foreign Service former spouses, with whom I have personally talked, who are destitute.

For these reasons, I urge your support for the Foreign Affairs Committee provision on former spouse pension benefits and your opposition to the Ford (Post Office and Civil Service Committee) amendment.

Second, the subcommittee adopted a provision linking the pay of the Foreign Service to that of the general schedule The original administration bill allowed the President to set the pay. We rejected this proposal because Foreign Service pay has, over the last decade, fallen well behind the general schedule. Unfortunately, the rather ill-defined concept of comparability has not been used to keep Foreign Service pay even with that of other Federal workers. Given the increased dangers faced by members of the Foreign Service and the decreased buying power of the dollar abroad, this erosion of Foreign Service pay is operating to make the Foreign Service a less desirable career.

At this point, it is not clear whether there will be an amendment to change the pay provisions of H.R. 6790 and keep down Foreign Service pay. There is a non-controversial Post Office and Civil Service Committee amendment to correct an oversight in the subcommittee adopted pay amendment. I will vigorously oppose any attempt to cut the pay of members of the Foreign Service and urge your opposition as well.

No agency will go out of business if we do not pass this bill today. No authorization will expire. Yet, I believe that there is a special sort of urgency to this legislation. The lot of a Foreign Service officer or staff member is on the decline. Pay is less attractive than a few years ago; career promotion opportunities are limited due to a glut of senior officers; being an American evokes hostility and suspicion, rather than friendship and respect, in an increasing number of posts; physical safety is a real and ever-present concern. If we need a Foreign Service, and I think we do, we must do something quickly to convince present and would-be members of the Service to pursue a career in the Foreign Service. The quality of our foreign policy depends in large part on the quality of those who implement it. If we do not act to maintain the quality of a Foreign Service career, we will only have ourselves to blame for poor international relations.

Mr. Chairman, I would like to compliment everyone involved in this whole process. I think we broke all records for the amount of time involved in legislation in both committees working together without the typical jurisdictional disputes or making witnesses duplicate their testimony. I think that was very noteworthy and everyone involved in the process should be really complimented.

Mr. Chairman, at this time I would yield such time as he may consume to our chairman of the Post Office and Civil Service Committee, JIM HANLEY. I also want to compliment him. This is probably one of the last major pieces of legislation coming out of his committee under his chairmanship, and he has been most cooperative during this whole process. I personally, therefore, would like to take the time of this body to compliment him and thank him. I yield to him such time as he may need.

Mr. HANLEY. Mr. Chairman, I would very much like to take this time to extend my congratulations to the gentlewoman for the yeoman work she has performed on this legislation. I would also like to thank again the gentleman from Florida (Mr. FASCELL) for his cooperation. This really is one of the classic demonstrations of teamwork.

Mr. Chairman, I take this time to congratulate and commend the Representative from Colorado and the Representative from Florida for their fine work on this legislation. This is much needed legislation, and I am hopeful that it will improve the Foreign Service personnel system and the conduct of the foreign affairs of the Nation.

This bill makes many improvements. It would:

Extend the "selection out" system, which allows for the removal of person-

nel for poor performance or nonpromotion, to all American career personnel in the service, and extend certain due process protections to that system in accordance with recent court decisions;

Establish a bill of rights for members of the Foreign Service, prohibiting discrimination and granting protection from reprisal for dissenting political views or good faith disclosures of information concerning violations of law, mismanagement, and abuse of authority;

Create a Senior Foreign Service, similar to the Senior Executive Service with difficult entry requirements, performance pay for outstanding performance, and the possibility of limited career extensions for service beyond expiration of time in class;

Directly link the Foreign Service pay schedule to the general schedule;

Provide for the more extensive hiring of Foreign Service family members, as opposed to foreign nationals, in noncareer positions at overseas posts; and

Convert employees of the foreign affairs agencies who are not available for worldwide service over to the general schedule.

I particularly want to commend the Representative from Colorado for her work on the labor-management relations provisions of this legislation. As many Members will remember, during the last Congress we passed the Civil Service Reform Act, and a major portion of that legislation involved establishing a statutory basis for labor-management relations in the Federal Government. The Committee on Post Office and Civil Service spent many, many hours fashioning a labor-management relations title which is now known as title VII of the Civil Service Reform Act. When the bill reached the House floor, title VII was further refined, and the labor-management relations provisions which passed the House were adopted by a record vote of 381 to 0. The House position on all important aspects of labor-management relations, such as management rights, was sustained in conference and is now law.

I say all this by way of background because, frankly, it is my judgment that the labor-management relations provisions of the Foreign Service Act of 1980 (H.R. 4674) proposed by the administration would never have made it through our committee, the committee with jurisdiction over the labor-management relations program for the Federal Government. The administration proposal simply differed too much from title VII of the Reform Act, and in some instances, even attempted to place in law for the Foreign Service some administration proposals which this House, during the last Congress, rejected when those proposals were submitted as part of the Civil Service Reform Act.

It is here that the Representative from Colorado played a key role. She drafted a complete substitute for the labor-management relations provisions of the administration bill, a substitute which was based on title VII of the Reform Act, and which adopted the provisions of that act except for the few cases where the unusual nature of the Foreign Service personnel system justified different treatment. That substitute was adopted by both committees and incorporated as chapter 10 of H.R. 6790.

The substitute brought the Foreign Service under the umbrella of the Federal Labor Relations Authority, and by so doing, insures that labor law in the Foreign Service will be administered consistently with that in the rest of the civil service. It conformed the management rights provisions of the Foreign Service Act with those of the Civil Service Reform Act, and in construing those provisions the legislative history of the Reform Act and the report of the Committee on Post Office and Civil Service on H.R. 6790 should be consulted, as well as decisions of the Federal Labor Relations Authority. It is certainly not the intent of the legislation to undo any decisions of the Authority and the provisions of H.R. 6790 should be interpreted consistently with that intent.

In closing, I urge the House to adopt this legislation. The other body is likely to act on it this week, and the differences between the two Houses are few. Enactment of H.R. 6790 will be a mark on the right side for the 96th Congress, and the legislation deserves your support.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe the Foreign Service Act of 1980, H.R. 6790, is sound, responsible, and progressive legislation properly focused on a number of problems which have afflicted the Foreign Service. Enactment of this legislation will—

Codify existing but farflung laws governing the Foreign Service;

Provide increased promotion opportunities for members of the Service;

Simplify and rationalize the numerous current categories of employment;

Increase the compatability of the personnel systems in the various agencies authorized to use the Foreign Service personnel authorities;

Facilitate interchange of employees between agencies and between personnel systems;

Link the pay of the Foreign Service to that of the General Schedule, to assure comparable pay for comparable work;

Establish a Senior Foreign Service, parallel to the Senior Executive Service created by the Civil Service Reform Act of 1978, in which increased pay is available for outstanding performance;

Foster broad employee participation in determination of the conditions of employment affecting them by establishing a statutory framework for labor-management relations;

Authorize pension benefits for former spouses of members of the Foreign Service; and

Strengthen provisions of law designed to minimize the disruptive effect of a Foreign Service career on family life.

The Committee on Foreign Affairs and the Committee on Post Office and Civil Service, to which this legislation was jointly referred, worked closely to iron out potential problems. The disagreements between the two committees are limited in number and, for the most part, not over central issues in the legislation.

There are, however, two significant issues which may be debated on the floor. First, both subcommittees adopted a provision, which I sponsored, to provide pension benefits to former spouses of members of the Foreign Service. Unlike spouses of private sector employees, who are covered by social security, spouses of Government workers gain no retirement benefits based on their working spouse's contributions. So, in traditional role model families, where the husband works for a salary and the wife works for free in the house, death of or divorce from a Government employed husband could leave the wife penniless. In the Foreign Service, members are rotated throughout the world often on a biennial basis. The wife or husband, who follows his or her Foreign Service spouse, can never build an independent career and is unlikely to have a retirement plan of his or her own. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation reports on her performance of representational duties. In effect, Foreign Service wives were impressed into Government service as unpaid representatives. The tradition of unpaid service continues.

The subcommittee provision established a presumption of a pro rata division, based on the number of years of marriage, for both retirement and survivor's benefits. Only spouses of over 10 years would be eligible for an automatic share. Further, the former spouse and any current spouse had the right to veto any waiver of survivor's benefits by the member of the Service. While this provision was retained by the Foreign Service Committee, the Post Office and Civil Service Committee, by a vote of 12 to 11, adopted a weakening amendment offered by Mr. FORD of Michigan.

Under the Ford amendment, State courts are permitted to divide both retirement and survivor's benefits, but without benefit of any Federal guidance on the appropriate division. Recent experience with State family law judges and lawyers makes it clear that only self-executing legislation of the type adopted by the subcommittees is certain to vindicate the rights of former spouses. By eliminating the right of the current and former spouse to veto waiver of survivor's benefits, the Ford amendment may render the purported availability of a survivor's benefits for a former spouse a fraudulent promise. Finally, in limiting the effectiveness to future divorces and retirements, the Ford amendment provides no relief for the dozens of Foreign Service former spouses, with whom I have personally talked, who are destitute.

For these reasons, I urge your support for the Foreign Affairs Committee provision on former spouse pension benefits and your opposition to the Ford (Post Office and Civil Service Committee) amendment.

Second, the subcommittee adopted a provision linking the pay of the Foreign Service to that of the general schedule. The original administration bill allowed

the President to set the pay. We rejected this proposal because Foreign Service pay has, over the last decade, fallen well behind the general schedule. Unfortunately, the rather ill-defined concept of comparability has not been used to keep Foreign Service pay even with that of other Federal workers. Given the increased dangers faced by members of the Foreign Service and the decreased buying power of the dollar abroad, this erosion of Foreign Service pay is operating to make the Foreign Service a less desirable career.

At this point it is not clear whether there will be an amendment to change the pay provisions of H.R. 6790 and keep down Foreign Service pay. (There is a noncontroversial Post Office and Civil Service Committee amendment to correct an oversight in the subcommittee adopted pay amendment). I will vigorously oppose any attempt to cut the pay of members of the Foreign Service and urge your opposition as well.

No agency will go out of business if we do not pass this bill today. No authorization will expire. Yet, I believe that there is a special sort of urgency to this legislation. The lot of a Foreign Service officer or staff member is on the decline. Pay is less attractive than a few years ago; career promotion opportunities are limited due to a glut of senior officers; being an American evokes hostility and suspicion, rather than friendship and respect, in an increasing number of posts; physical safety is a real and ever-present concern. If we need a Foreign Service, and I think we do, we must do something quickly to convince present and would-be members of the Service to pursue a career in the Foreign Service. The quality of our foreign policy depends in large part on the quality of those who implement it. If we do not act to maintain the quality of a Foreign Service career, we will only have ourselves to blame for poor international relations.

Mr. LEACH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I will be brief. I would just make two observations.

There are two unique features of this presentation today. One is the manner in which the bill was brought to the House floor under joint jurisdiction of two committees. I have never before worked under that procedure, but I am most impressed and indebted for the work of the gentleman from Florida (Mr. FASCELL), the gentlewoman from Colorado (Mrs. SCHROEDER) and, of course, the ranking member from Alabama (Mr. BUCHANAN) for their work on this legislation.

The second feature is we are dealing with a very unusual institution, the U.S. Foreign Service. I happen to be a frequent critic of American foreign policy over the last several decades, but the fact is that the United States today has the finest Foreign Service in the world. We should be careful about doing anything that upsets the applecart, and the aim of this legislation is to improve and refine and make a service that is very strong even stronger.

Mr. FASCELL. Mr. Chairman, will the gentleman from Iowa yield?

Mr. LEACH of Iowa. I am delighted to yield.

Mr. FASCELL. I thank the gentleman for yielding, because I think he has made a very important point that needs to be emphasized. That is the reason I take this time. I would hope that our colleagues would follow the gentleman's advice and if they have disagreements with respect to foreign policy that they do not try to change the policy by voting against the Department of State and the people who are trying to do their very best to represent the U.S. Government; namely, the Foreign Service of the United States.

Mr. LEACH of Iowa. I appreciate that. I would just follow up with one final observation of perhaps prejudice of my own and that is that the primary problem in foreign policy in the last several decades has been the politicization of foreign policy. What we must strive to do in the decades ahead is to professionalize foreign policy decisionmaking, bring the people that are competent in the area into the forefront of policy determination as well as execution.

Mr. Chairman, with those comments I will be happy to yield such time as he may consume to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Chairman, I, too, want to commend the distinguished chairman of the subcommittee and the ranking members of both the Foreign Affairs Committee and the Post Office and Civil Service Committee, the two committees which considered this legislation.

Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980. As a member of the Committees on Foreign Affairs and Post Office and Civil Service, the two committees which favorably reported this legislation, I have had the opportunity to review the merits of this legislation and the needs it addresses.

Among the key aspects of this measure are provisions which: First, establish a set of merit principles governing personnel actions in the Foreign Service, and require protection against discrimination for applicants and employees of the Foreign Service; second, create a new Senior Foreign Service; third, link Foreign Service salaries to general schedule salaries; fourth, provide for performance pay compensation; and fifth, establish the Foreign Service Labor Relations Board, a statutory framework for labor-management relations in the Foreign Service.

The Foreign Service Reform Act of 1980 codifies and revises the various statutes governing Foreign Service operations and personnel administration. In light of the fact that the last major revision of Foreign Service legislation took place in 1946, it is clear that revisions are necessary to promote the effective conduct of our State Department and Nation's foreign policy.

There are several provisions of this measure that my colleagues must consider by way of amendment. However, I commend to my colleagues the general thrust of this comprehensive measure.

Accordingly, I urge my colleagues to support this important measure providing the Foreign Service with an effective and long overdue reorganization.

Mr. LEACH of Iowa. Mr. Chairman, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. PEPPER).

☐ 1640

Mr. PEPPER. Mr. Chairman, in 1978 the Members will recall that upon the initiative of the Committee on Aging of the House, working in cooperation with the gentleman from Illinois (Mr. FINDLEY) we recommended to the House and the House and the Congress adopted, and the President signed, a bill banning mandatory retirement from Federal employment at any age and generally in non-Federal employment below 70. Since that time especially our Select Committee on Aging has worked very diligently to try to eliminate other ceilings on employment. That is to make possible anybody doing a creditable job, and qualified to do that job, who wanted to keep on doing it to do so without any mandatory retirement from either public or private authority. One of those who at first did not subscribe to the principle that we were pressing was the State Department because it did not feel at the time that the age limit should be lifted above 60. The mandatory retirement age for the Foreign Service was 60. There were many members of the Foreign Service in many parts of the world where I had the privilege to make a visit and listen to who told me about the hardships inflicted upon them by that mandatory retirement rule that they had to retire at age 60.

So we on the Aging Committee had some hearings about the matter. As a matter of fact, our counsel participated in a case before the U.S. Supreme Court. The Supreme Court held under existing law that that mandatory retirement provision was valid; but the committee that is handling this bill today, the subcommittee of which is chaired by my distinguished colleague, the gentleman from Florida (Mr. FASCELL) responded to an appeal that we addressed to them. Your committee through the very able and lovely gentlewoman from Colorado (Mrs. SCHROEDER) is going to offer an amendment that is agreed to now by the State Department as I understand it, raising the mandatory retirement age from 60 to 65. That is not everything we would like, but that is a good beginning.

I rise to commend your distinguished committee and all who had a part in making that salutary step forward to make it possible for more people to continue doing a good job when they are competent and qualified to do so, and not to be thrown out of that job because of some arbitrary and meaningless criterion of age. Thank you very much for the proposed amendment.

Mr. BUCHANAN. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, I rise in basic support of H.R. 6790, the Foreign Service Act of 1980. This is the first major update and codification of Foreign Service laws and rules in 34 years. As the only member of both committees of jurisdiction, I call your attention to the fact that we have put over a year of work into this bill, and it is, for the most part, a balanced, progressive piece of legislation which should govern the Foreign Service well for many years to come. It is a necessary measure, I think, because although small as Government departments go the Department of State has become a cumbersome bureaucracy overaddicted to paper. There are significant defects in State Department personnel management, some of which this bill addresses.

Specifically, the reconciliation of civil service reform with the uniqueness of the Foreign Service and its mission was accomplished in a practical fashion at the subcommittee level.

The bill establishes statutory labor-management relations on the Civil Service reform model, but without ignoring the obvious differences between the 2.2-million employee domestic civil service and a 9,000-employee Foreign Service facing the responsibility of representing our country abroad.

We create a mandatory Senior Foreign Service as a rough equivalent of the voluntary domestic Senior Executive Service. The Senior Foreign Service is not a mere extension of the more loosely organized domestic group because the Foreign Service has long had a more grueling, up-or-out system than the civil service.

In the area of job classification the bill abolishes the so-called Domestic Foreign Service as it developed, rather by accident, over the years. We are all agreed that a Foreign Service career must mean that a person is worldwide available and willing to adjust himself and his family to whatever assignment he receives anywhere.

We further recognize the increasing incidence of divorce in the Foreign Service and authorize a new survivor benefit for former spouses, which a court may order the State Department to pay as part of a divorce settlement. The bill codifies the existing practice of awarding an annuity to an employee's former spouse when a court so orders.

Perhaps the most practical part of the bill is its raising of the mandatory retirement age from 60 to 65. Here we have succeeded, I believe, in balancing the issue of age discrimination with the decline in worldwide availability of older Foreign Service employees.

One of the important features of this legislation is its commitment to the principle of merit in recruitment and all aspects of Foreign Service employment. At the same time, the bill properly emphasizes the continued use of affirmative action, minority recruitment programs, and all other aspects of the Federal equal employment opportunity effort.

The Foreign Service was once justly criticized for its narrow base, a small select group which dominated the formation and conduct of U.S. diplomacy. Over the years, however, the Foreign Service changed as applicants—women, as well as men—of diverse ethnic, racial, and religious origins entered the diplomatic service. New forms of discrimination must not be permitted to deflect the thrust of further equal opportunity efforts. In this legislation, we make clear the intent of the Congress that the principle of merit will motivate the employment decisions of the Foreign Service. This concept is thoroughly compatible with a bona fide equal employment opportunity program which includes conscientious affirmative action and a vigorous minority recruitment program. We intend the Foreign Service of the future to be representative of the American people, free of discrimination by virtue of race, religion, gender, or ethnic origin and highly professional in character.

Our supplemental views in the Post Office and Civil Service Committee's report to this bill outlined three areas where the legislation could be improved. One of these areas, the unity of the Peace Corps personnel system, has already been settled pretty much to our satisfaction. In another, the Secretary's ability to acknowledge certain Selection Board decisions without merely rubberstamping them, compromise language will be offered and if the Department of State says it can live with such language, I will not oppose it. Third is the issue of pay. I maintain that it will always be a better idea to allow the President to administratively establish and revise the linkage of Foreign Service with civil service pay, under the general provisions of pay comparability. There are other problems, nonetheless, which are not addressed in the bill—cost-of-living allowances abroad and differences in posts around the world, for example.

My two committees have not reported identical versions of this bill, and as a member of both I will be taking positions on amendments as they are proposed. I will confine myself at this point to repeating to the House what I said so many times during our civil service reform debates in 1978: We must let managers manage in the executive branch if we expect to constructively criticize them later. Only if we give them the tools now will we be able to properly blame or commend them in the future.

Another important consideration is that, among other things, the Foreign Service Act of 1980 rearranges the categories and designations of Foreign Service employees. The Department of State's application of the FSO designation does not really take into account the complexities of the status of various U.S. Government officials who serve abroad. The Department should undertake to accommodate the real needs of the diverse Government agencies serving under Foreign Service aegis overseas and modify its career service designations accordingly.

Mr. Chairman, I will have further comments during the amendment procedure.

Mr. FASCELL. Mr. Chairman, I want to thank my colleagues for their participation in this legislation. As somebody said, it was kind of unique coming out here with two committees working on this bill, and the cooperation has, indeed, been excellent, the bulk of the work falling on the chairperson of the Subcommittee on Post Office and Civil Service and the Subcommittee on International Operations which held joint hearings and markup on the legislation, and the cooperation of the full Committee on Post Office and Civil Service and the full Committee on Foreign Affairs. It has been unusual for a bill of this magnitude.

Mr. Chairman, this is a large bill and as has already been pointed out, it is an attempt to modernize the legislation which has not been done since 1946. Those of us who have now worked on this bill can understand why our predecessors were reluctant to get into this complex area, which involves many agencies and many differing opinions.

I want to acknowledge on the record the excellent effort and hard work of the staff of both committees, the subcommittee and the full committee, as well as the organizational groups. I simply repeat this so that the record will reflect and my colleagues will get some of the flavor involved in what is really not only a major piece of legislation but a very important piece of legislation, with all of the agencies involved who have some responsibility in this area other than the State Department—the International Communication Agency, the Agency for International Development, the Arms Control and Disarmament Agency, Commerce, Agriculture, and the Peace Corps. Those are just the Agencies involved in this effort. There are also many different organizational groups who have some interest in what happens to the Foreign Service. All of their interests are affected by this.

Suffice it to say that there was a great deal of testimony, and a great many suggestions. I want our colleagues, Mr. Chairman, to know that between the two committees we considered every single suggestion that was submitted to the committees either by way of separate legislation, amendments or testimony. They totaled approximately 400 suggested changes. I just repeat that. They totaled 400. I have never been involved with a piece of legislation that received as much careful, thoughtful consideration, despite the fact that even at this moment there may be some differences of opinion about which is the best thing to do about one problem or another that still remains. We do not claim to be perfect; we just tried to get as perfect as we could get, but all of those elements were very carefully considered. Every single word of this bill was read by both committees. Every single word, sentence, paragraph and punctuation mark was analyzed as to where it came from, what it means, what changes were involved, what effect it would have. I cite that thoroughness and that careful approach to the problem because we are codifying all of this law applying to the Foreign Service in one place. Some of these pro-

visions were law; some of them were regulations; some of them were executive orders; some of them were matters of precedent.

We then also provided pay comparability for the Foreign Service which we as Members of Congress laid down in the law, but which for 10 years has not been implemented. During this long process, we found that we were all going in the same direction, which was an admission—an admission that we in this country—and I say that in the broad general sense, not just the Congress—had literally ignored the people who represent us in the State Department, for whatever reason, whether it was bias or just because we did not want to get to it, or because we do not like the way things are going in foreign policy, or for whatever reason. The fact is that we put, rightly or wrongly, purposefully or not, an absolutely indescribable burden on people who were trying to do their very level best to represent the United States through our Foreign Affairs agencies—our Foreign Service.

In the smallest executive department with the fewest people—the State Department—the pay is not comparable to others in the Government. Involved are dangerous assignments, rotation, completely tearing up families, all kinds of personal psychological problems. We have arrived at the point where people coming into the Foreign Service who have any talent see no daylight and no reason to sacrifice his entire life for a career that could not promise him anything in 20 years. Today, ambassadors are shot, consuls are shot, people are kidnaped, terrorists take over, embassies are sacked, and we have 52 hostages.

□ 1650

The world has changed and this legislation is absolutely essential.

Mr. Chairman, in closing I want to again reiterate my gratitude to the gentlewoman from Colorado who chaired the Subcommitee on Civil Service of the Committee on Post Office and Civil Service, the staff on that committee and the staff on my own committee and all of the agencies and the organizations through their representatives who worked through the months to bring this piece of legislation to the point where it is today.

Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980. At any time, this legislation would be of vital importance. But it is particularly timely and significant today as we continue to count the days of captivity of our Foreign Service Officers and military personnel in Iran. It is now 310 days since the takeover of November 4, 1979. One of my former staff is the ranking officer being held.

Unfortunately, the present crisis is not the first instance of an attack on U.S. personnel and installations overseas. In the past 10 years, 14 U.S. officials, including 5 Ambassadors, were murdered overseas—an average of 1 death every 260 days. Thirty-eight kidnapings have occurred, making an average of 1 every 96 days. Thirty-two personnel have been seriously wounded—an average of 1 every 114 days. And in the same period, 208 attacks have been made on our people and our installations in 43 countries, making an average of 1 terrorist attack every 17½ days. In the past 12 months, more than 3,500 U.S. employees and their dependents have been evacuated from post under emergency circumstances. In the 13 years since 1967, we have lost almost as many people as in the first 180 years of this Nation's existence. It is my strong conviction, Mr. Chairman, that the dangers of the Foreign Service life can no longer be ignored.

Indeed, over the past few months, the American people have been shown graphically that the Foreign Service is not composed of so-called "striped-pants cookie pushers" who spend their time at cocktail parties. On the contrary, it is a small, very capable group of motivated and hard-working individuals who have been asked to accept increasing responsibilities overseas to represent U.S. foreign policy interests, but who have not been given the human and financial resources with which to do the job.

Mr. Chairman, this bill begins to address these problems by reorganizing the Foreign Service to encourage more workable career patterns, providing a more rational set of allowances and benefits, and finally providing pay comparability with the Civil Service—a 10-year requirement of law which has too long been ignored. There is much that we as a Congress need to do to provide the solid foundation on which U.S. foreign policy interests can be represented effectively and efficiently. This bill is a vital beginning.

H.R. 6790 is the product of 3 years of study and review within the executive branch, at the urging of the Foreign Affairs Committee, and a full additional year of deliberation on the part of our committee and the Post Office and Civil Service Committee, including 14 days of hearings, and 5 days of subcommittee and committee markup.

I would like at this point to express my deep appreciation to my colleague, JOHN BUCHANAN, the ranking minority member of the Subcommittee on International Operations for his invaluable help and expertise. I also want to thank Congresswoman PAT SCHROEDER, chairman of the Subcommittee on Civil Service, and her ranking minority member, Congressman JIM LEACH. Their patience and willingness to devote countless hours of member and staff time to this legislation has helped produce a bill of which we can justly be proud.

I also want to express my deepest appreciation and admiration especially to the Department of State and the International Communication Agency, as well as to the other agencies who have so ably assisted us. My respect for the unsung abilities of our foreign affairs agencies has reached new highs. Former Secretary of State Cyrus Vance and Under Secretary of State Ben Read made personal and long-standing commitments to this legislation which demonstrate the importance which they attach to it. Secretary of State Muskie has continued that commitment.

I also want to thank the American Foreign Service Association and the American Federation of Government Employees for their able assistance. Because of the significance of this legislation to the Foreign Service as a whole, their memberships should be proud of the hard work and productive suggestions made by those unions.

Mr. Chairman, as my colleagues can see, this legislation is the product of exhaustive efforts. We took some 400 suggestions made by every witness who appeared before us or who submitted a written statement and either adopted, rejected or modified them. We heard from every group who had any interest in this legislation, as well as from numerous individual members of the Foreign Service and personnel experts from across the country.

Mr. Chairman, this legislation is vitally important not only to individual Foreign Service members, but also to the Foreign Service as an entity responsible for representing U.S. foreign policy interests. The Foreign Service as a whole is this Nation's most important resource of qualified professional personnel available to assist the President and the Secretary of State in the formulation and conduct of the foreign relations of the United States. Yet today's Foreign Service is operating under the structure and philosophy of 1946, when the last comprehensive revision of Foreign Service legislation was accomplished.

At that time, the United States maintained relations with only 71 nations, and international organizations played a very limited role in international affairs. Today, the United States maintains relations with 144 nations and participates in approximately 46 international organizations. The Department of State and the other foreign affairs agencies provide the foreign policy personnel who staff 283 posts abroad. Ironically, they represent only 20 percent of the total American civilian presence overseas, while at the same time possessing the major foreign policy responsibility. Indeed, only the Department of State, among all the foreign affairs and nonforeign affairs agencies of this Government, staffs all 283 U.S. posts abroad.

In 1946, there were 4,285 Foreign Service officers and staff. The United States conducts its foreign relations today with almost the same number of Foreign Service members it had in 1959, 21 years ago, when the United States maintained relations with only 85 nations.

Further eroding our ability to mount an effective foreign policy effort are the problems of inflation and dwindling resources. While the Department of State is the senior department of Government, it has the smallest budget among the Cabinet departments. Since 1967, when the Department of State had a personnel level of 18,628, there has been an 8.4-percent decrease in personnel, while larger Cabinet departments have increased their personnel numbers, in some instances by as much as 44 percent.

This erosion has occurred at the same time that the responsibilities, burdens and risks of Foreign Service life have increased enormously. More Americans

are traveling overseas than ever before, with resulting problems which must be handled by members of the Foreign Service. In the past 12 years, five U.S. Ambassadors and five Foreign Service officers have been killed by terrorists. As we debate this bill, 52 Americans are still being held hostage in Tehran.

The dangers and hardships endemic to the Foreign Service, taken together with the resource cutbacks of recent years, have produced the most serious morale problem in the 200-year history of the Foreign Service. In 1979, for the first time in its history, the Foreign Service received more rejections than acceptances from those who were offered positions. At the same time, only 11,000 people took the Foreign Service examination, compared with 20,000 in 1963. Ironically, the major reason for this new phenomenon is not the increased danger, but the low pay of the Foreign Service compared with the Civil Service, and the overwhelming fact that the Government service in these highly inflationary times, is no longer financially competitive with the private sector. The Foreign Service has always attracted highly intelligent and motivated people. Such individuals are equally attractive to the private sector. Yet today, only the private sector is willing to provide adequate salaries and benefits to able people, so it is not surprising that the Government is losing the battle for good personnel. This bill attempts to redress that imbalance by mandating pay comparability between the Foreign Service and the Civil Service and providing a more rational system of allowances and benefits which recognizes the realities of Foreign Service life.

At this point, Mr. Chairman, let me highlight the major provisions of the bill as reported by the Foreign Affairs Committee:

First. Requiring worldwide availability for all members of the Foreign Service and converting to the Civil Service those individuals who are not worldwide available.

Second. Extending to the Departments of Commerce and Agriculture the authority to utilize the Foreign Service Act for personnel serving overseas.

Third. Creating a Senior Foreign Service, similar to the Senior Executive Service, with vigorous entry requirements, performance pay for outstanding service, and the possibility of limited career extensions.

Fourth. Providing pay comparability for the Foreign Service with the civil service.

Fifth. Extending the "selection-out" system, which provides for removal of personnel for substandard performance, to all career U.S. personnel in the Service, and to provide due process protections for that system.

Sixth. Establishing a bill of rights for members of the Foreign Service which emphasizes existing prohibitions against discrimination, encourages recruitment of women and minorities, and provides protection from reprisals for dissenting views or good faith disclosures of information concerning violations of law, mismanagement or abuse of authority.

Seventh. Raising the mandatory retirement age for the Foreign Service from 60 to 65.

Eighth. Providing a legislative division of retirement and survivor's annuities for former spouses of member of the Foreign Service.

Ninth. Encouraging and facilitating the assignment of Foreign Service members to Government agencies, and to the private sector.

Mr. Chairman, this bill is vital to the Foreign Service and constitutes a very important recognition by the Congress of the need for a strong and motivated Foreign Service. The bill builds incentives into the foreign policy effort to stop the exodus of talented people and reverse the trend away from Government service.

Secretary of State Muskie's strong support for this bill reflects the foreign policy philosophy expressed by him during his confirmation hearings:

> The Secretary of State must make sure that the State Department and the Foreign Service, as a whole, are fully engaged in the processes by which policy is made and in discussion of foreign policy with the Congress and our public.

I urge my colleagues to support this bill.

● Mr. WOLFF. Mr. Chairman, I rise in support of the Foreign Affairs Committee amendment to raise the mandatory retirement age for Foreign Service officers from 60 to 65 years. In fact, Mr. Chairman, I would prefer to see the mandatory age lifted altogether.

Obviously, foreign service officers serve in sometimes dangerous posts, some of which demand top physical condition. However, all officers at 60 or 65 are not incapable of serving in such posts. Aging, like every other human factor, is a very individual matter. We should not toss aside the considerable expertise of an entire career simply because someone has reached a certain age. In addition, it seems that one should not have to leave the service simply because he or she cannot serve in a few difficult posts.

In lieu of lifting the mandatory nature of this provision, it is useful to raise the mandatory retirement age from 60 to 65. While many dream of the day of retirement, there are those who would prefer to work as long as they possibly can. Many people have such a personal investment in their work that mandatory retirement is literally a death sentence, not a release to freedom and leisure.

I have often seen the tragedy of bright and capable people who retire, only to drift and disintegrate, like a ship without anchor. Why must this Nation structure our work patterns as to make the years after 65, for some, simply a useless period—a professional put out to pasture.

Very appropriately, today is the birthday of one of our distinguished colleagues, Congressman CLAUDE PEPPER. Today he is 80 years old, and serving his country with distinction and competence. I would submit that the job of being a Member of Congress is every bit as demanding as any position in the Foreign Service—and after this summer the Washington, D.C., post may also qualify as a hardship assignment.

Throughout my 16 years in Congress, while I have had my disagreements with the State Department, I have recognized the top caliber of many Foreign Service officers. They have served their country well and competently. I do not agree that the expertise amassed during years of service should be lost to the Foreign Service and the country because of a mandatory retirement age.

Therefore, I support at least raising the mandatory retirement age to 65, and urge my colleagues to support the committee amendment.●

● Mr. HARRIS. Mr. Chairman, I rise in support of H.R. 6790 because it will assure that merit is the middle name of the Foreign Service. It will also simplify the diverse categories of employment and facilitate the most effective utilization of employees by making the divergent personnel systems of various agencies more compatible.

I want to commend Chairwoman SCHROEDER and Chairman FASCELL for the comprehensive approach they have used in considering this legislation which was referred jointly to two committees. I participated in the joint subcommittee actions which, although they were exhaustive, resulted in the two full committees acting favorably on very similar provisions.

I would like to direct the attention of my colleagues to an amendment which will be offered by the Post Office and Civil Service Committee concerning the recommendations of the selection boards. I successfully offered this amendment during full committee consideration. This amendment will insure that career appointments will be extended based on merit as recognized by duly established selection boards. This is the key to maintaining merit in the Foreign Service personnel system, and I urge my colleagues to support it.

Mr. FASCELL will be offering an amendment to allow management flexibility in extending appointments in very limited situations when such action is determined by the Secretary to be in the public interest or when Presidential appointees would be terminated due to time-in-class limitations. I have been assured that this flexibility could have no adverse effect on individuals recommended for extensions by the selection boards, and I have no problem with the amendment based on that assurance.

I think it is important that the House pass this legislation because it will make the Foreign Service personnel system more understandable, and aid in recognizing and rewarding the very valuable services performed by our career Foreign Service employees.

I am also pleased to offer full support for the proposed Simon amendment. I think that the time has come to establish at least two model foreign language competency posts. As a member of the House group studying the state of foreign languages and international studies in the United States and its impact on the Nation's internal and external strength, I realize the importance of having all embassy personnel proficient in their host country lan-

guage. These models will be an excellent start.

This amendment is not a response to a specific threat, but a recognition that America will continue to be faced with political crises around the world whose solutions will definitely require a capacity to understand the language and cultures of other global actors. The ability to speak a foreign language and understand other cultures is an important tool in America's ability to conduct foreign policy. I want to assure my friends, Congressman SIMON and Congressman PANETTA, that I will continue to work with them in all ways to improve international education.●

● Mr. WOLFF. Mr. Chairman, I rise in opposition to the Ford amendment, and in support of section 814 as reported of H.R. 6790. Section 814 establishes Federal guidelines for the State divorce court to encourage equitable distribution of retirement and survivor's benefits for Foreign Service officers and their current and former spouses. It establishes a presumption that former spouses, married 10 years or longer, would be entitled to a pro rata share of the Foreign Service members' retirement and survivors annuities.

Mr. Chairman, the spouses of Foreign Service officers suffer from special hardships by virtue of the career of their husband or wife. Generally the spouse is not able to pursue a career or paid professional activity while the Foreign Service officer is overseas. Often the spouse performs voluntary work which supports the career of the officer. This work is an important service to our country, and to our diplomatic service.

In addition, Foreign Service spouses suffer the further hardship of frequent moves from the United States to various foreign posts. The impossibility of pursuing a continuous and consistent career is obvious.

There have been many tragic cases of spouses, primarily women, who have accepted the hardships of their husband's careers. These women have often fulfilled the demanding functions of homemaker in the sometimes difficult circumstances of foreign posts. When these marriages end in divorce, after many years, the divorced spouse has too often found herself completely out in the cold, without retirement or survivors benefits from her divorced spouse, without a career background, and thus without her own retirement benefits.

In addition to these considerations, we must remember that the Foreign Service career itself can cause added adversity for a marriage, creating pressures which may lead to divorce.

I think that the Schroeder provision, section 814 makes sense. The argument that this provision in any way infringes on State divorce courts does not hold water. The Schroeder provision establishes a presumption that former spouses who were married for 10 years or more would be entitled to a pro rata share of retirement or annuities, unless it is modified or revoked by court order.

Thus, what the Schroeder provision does is to provide Federal guidance, so that the outcome in each case does not depend entirely on the underlying marital property law of the State in which the divorce happened to be heard. Yet, it does not preclude the court from preventing the divorced spouse from receiving these funds, if the particular case is severe enough to require that step.

I urge the defeat of the Post Office and Civil Service Committee amendment.●

Mr. FASCELL. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. BUCHANAN. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. LEACH of Iowa. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read for amendment. It shall be in order to consider en bloc any of the amendments recommended by the Committee on Post Office and Civil Service now printed in the bill in an order recommended by the chairman of that committee.

The bill is as follows:

H.R. 6790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Foreign Service Act of 1980".

SEC. 2. TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

Sec. 101. Findings and objectives.
Sec. 102. Definitions.
Sec. 103. Members of the Service.
Sec. 104. Functions of the Service.
Sec. 105. Merit principles; protections of members of the Service; and minority recruitment.

CHAPTER 2—MANAGEMENT OF THE SERVICE

Sec. 201. The Secretary of State.
Sec. 202. Other agencies utilizing the Foreign Service personnel system.
Sec. 203. Compatibility among agencies utilizing the Foreign Service personnel system.
Sec. 204. Consolidated and uniform administration of the Service.
Sec. 205. Compatibility between the Foreign Service and other Government personnel systems.
Sec. 206. Regulations; delegation of functions.
Sec. 207. Chief of mission.
Sec. 208. Director General of the Foreign Service.
Sec. 209. Inspector General of the Foreign Service.
Sec. 210. Board of the Foreign Service.
Sec. 211. Board of Examiners for the Foreign Service.

CHAPTER 3—APPOINTMENTS

Sec. 301. General provisions relating to appointments.
Sec. 302. Appointments by the President.
Sec. 303. Appointments by the Secretary.
Sec. 304. Appointment of chiefs of mission.
Sec. 305. Appointment of the Senior Foreign Service.
Sec. 306. Career appointments.
Sec. 307. Entry levels for Foreign Service officer candidates.
Sec. 308. Recall and reemployment of career members.
Sec. 309. Limited appointments.
Sec. 310. Reemployment rights following limited appointment.
Sec. 311. Employment of family members of Government employees.
Sec. 312. Diplomatic and consular commissions.

CHAPTER 4—COMPENSATION

Sec. 401. Salaries of chiefs of mission.
Sec. 402. Salaries of the Senior Foreign Service.
Sec. 403. Foreign Service Schedule.
Sec. 404. Assignment to a salary class.
Sec. 405. Performance pay.
Sec. 406. Within-class salary increases.
Sec. 407. Salaries for Foreign Service personnel abroad who perform routine duties.
Sec. 408. Local compensation plans.
Sec. 409. Salaries of consular agents.
Sec. 410. Compensation for imprisoned foreign national employees.
Sec. 411. Temporary service as principal officer.
Sec. 412. Special differentials and premium pay.
Sec. 413. Death gratuity.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

Sec. 501. Classification of positions.
Sec. 502. Assignments to Foreign Service positions.
Sec. 503. Assignments to agencies, international organizations, and other bodies.
Sec. 504. Service in the United States and abroad.
Sec. 505. Temporary details.

CHAPTER 6—PROMOTION AND RETENTION

Sec. 601. Promotions.
Sec. 602. Selection boards.
Sec. 603. Basis for selection board review.
Sec. 604. Confidentiality of records.
Sec. 605. Implementation of selection board recommendations.
Sec. 606. Other bases for increasing pay.
Sec. 607. Retirement for expiration of time in class.
Sec. 608. Retirement based on relative performance.
Sec. 609. Retirement benefits.
Sec. 610. Separation for cause.
Sec. 611. Termination of limited appointments.
Sec. 612. Termination of appointments of consular agents and foreign national employees.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

Sec. 701. Foreign Service Institute.
Sec. 702. Foreign language requirements.
Sec. 703. Training authorities.
Sec. 704. Training grants.
Sec. 705. Career counseling.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec. 801. Administration of the System.
Sec. 802. Maintenance of the Fund.
Sec. 803. Participants.
Sec. 804. Definitions.
Sec. 805. Contributions to the Fund.
Sec. 806. Computation of annuities.
Sec. 807. Payment of annuity.
Sec. 808. Retirement for disability or incapacity.
Sec. 809. Death in service.
Sec. 810. Discontinued service retirement.
Sec. 811. Voluntary retirement.
Sec. 812. Mandatory retirement.
Sec. 813. Retirement of former Presidential appointees.

Sec. 814. Former spouses.
Sec. 815. Lump-sum payments.
Sec. 816. Creditable service.
Sec. 817. Extra credit for service at unhealthful posts.
Sec. 818. Estimate of appropriations needed.
Sec. 819. Investment of the Fund.
Sec. 820. Assignment and attachment of moneys.
Sec. 821. Payments for future benefits.
Sec. 822. Unfunded liability obligations.
Sec. 823. Annuity adjustment for recall service.
Sec. 824. Reemployment.
Sec. 825. Voluntary contributions.
Sec. 826. Cost-of-living adjustments of annuities.
Sec. 827. Compatibility between civil service and Foreign Service retirement systems.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

Sec. 901. Travel and related expenses.
Sec. 902. Loan of household effects.
Sec. 903. Required leave in the United States.
Sec. 904. Health care.
Sec. 905. Representation expenses.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

Sec. 1001. Labor-management policy.
Sec. 1002. Definitions.
Sec. 1003. Application.
Sec. 1004. Employee rights.
Sec. 1005. Management rights.
Sec. 1006. Foreign Service Labor Relations Board.
Sec. 1007. Functions of the Board.
Sec. 1008. Functions of the General Counsel.
Sec. 1009. Judicial review and enforcement.
Sec. 1010. Foreign Service Impasse Disputes Panel.
Sec. 1011. Exclusive recognition.
Sec. 1012. Employees represented.
Sec. 1013. Representation rights and duties.
Sec. 1014. Resolution of implementation disputes.
Sec. 1015. Unfair labor practices.
Sec. 1016. Prevention of unfair labor practices.
Sec. 1017. Standards of conduct for labor organizations.
Sec. 1018. Administrative provisions.

CHAPTER 11—GRIEVANCES

Sec. 1101. Definition of grievance.
Sec. 1102. Grievances concerning former members.
Sec. 1103. Freedom of action.
Sec. 1104. Time limitations.
Sec. 1105. Foreign Service Grievance Board.
Sec. 1106. Board procedures.
Sec. 1107. Board decisions.
Sec. 1108. Access to records.
Sec. 1109. Relationship to other remedies.
Sec. 1110. Judicial review.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

Sec. 2101. Pay and benefits pending conversion.
Sec. 2102. Conversion to the Foreign Service Schedule.
Sec. 2103. Conversion to the Senior Foreign Service.
Sec. 2104. Conversion from the Foreign Service.
Sec. 2105. Conversion of certain positions in the Department of Agriculture.
Sec. 2106. Preservation of status and benefits.
Sec. 2107. Regulations.
Sec. 2108. Authority of other agencies.

CHAPTER 2—AMENDMENTS RELATING TO FOREIGN AFFAIRS AGENCIES

Sec. 2201. Basic authorities of the Department of State.
Sec. 2202. Peace Corps Act.
Sec. 2203. Foreign Assistance Act.
Sec. 2204. Arms Control and Disarmament Act.
Sec. 2205. Repealed provisions.
Sec. 2206. Other conforming amendments.

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

Sec. 2301. Reemployment rights.
Sec. 2302. Salary for ambassadors at large.
Sec. 2303. Advances of pay incident to departures from posts abroad.
Sec. 2304. Premium pay.
Sec. 2305. Attorneys fees in backpay cases.
Sec. 2306. Separate maintenance allowance.
Sec. 2307. Education allowance.
Sec. 2308. Posts requiring special incentives.
Sec. 2309. Advances of pay.
Sec. 2310. Danger pay allowance.
Sec. 2311. Leave.
Sec. 2312. Retirement credit for imprisoned foreign nationals.
Sec. 2313. Conforming amendments to title 5.

CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

Sec. 2401. Saving provisions.
Sec. 2402. Congressional oversight of implementation.
Sec. 2403. Effective date.

TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. FINDINGS AND OBJECTIVES.—(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this Act is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service personnel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. DEFINITIONS.—(a) As used in this Act, the term—

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency as defined in section 552(e) of title 5, United States Code;

(3) "chief of mission" means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) to be temporarily in charge of such a mission or office;

(4) "Department" means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) "employee" (except as provided in section 1002(8)) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atomospheric Administration;

(6) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) "Government" means the Government of the United States;

(8) "merit principles" means the principles set out in section 2301(b) of title 5, United States Code;

(9) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) "Secretary" means the Secretary of

State, except that (subject to section 201 (b)) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such terms means the head of that agency;

(11) "Service" or "Foreign Service" means the Foreign Service of the United States; and

(12) "United States", when used in a geographic sense, means the several States and the District of Columbia.

(b) References in this Act or any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers.

SEC. 103. MEMBERS OF THE SERVICE.—The following are the members of the Service:

(1) Chiefs of mission, appointed under section 302(a)(1) or assigned under section 502(c).

(2) Ambassadors at large, appointed under section 302(a)(1).

(3) Members of the Senior Foreign Service, appointed under section 302(a)(1) or 303, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 302(a)(1), who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 303, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 303, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 303 by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. FUNCTIONS OF THE SERVICE.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

SEC. 105. MERIT PRINCIPLES; PROTECTIONS FOR MEMBERS OF THE SERVICE; AND MINORITY RECRUITMENT.—(a)(1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit priniciples.

(2) For purposes of paragraph (1), the term "personnel action" means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation, and

(B) any decision, recommendation, examination, or ranking provided for under this Act which relates to any action referred to in subparagraph (A).

(b) The Secretary shall administer the provisions of this Act and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited under section 2302(b)(1) of title 5, United States Code;

(2) are free from reprisal for—

(A) a disclosure of information by a member or applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5, United States Code.

(c) This section shall not be construed as authorizing the withholding of information from the Congress or the taking of any action against a member of the Service who discloses information to the Congress.

(d)(1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5, United States Code.

(2) Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report, signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.

(e) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), prohibiting discrimination on the basis of handicapping condition; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. THE SECRETARY OF STATE.—(a) under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this Act.

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Director of the International Communication Agency, the Director of the United States International Development Cooperation Agency, the Secretary of Agriculture, and the Secretary of Commerce may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(b) Subject to section 201(b)—

(1) the agency heads referred to in subsection (a), and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other Act),

shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act.

SEC. 203. COMPATIBILITY AMONG AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this chapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

SEC. 204. CONSOLIDATED AND UNIFORM ADMINISTRATION OF THE SERVICE.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695)) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

SEC. 205. COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel sys-

tem with other Government personnel systems to the extent practicable.

SEC. 206. REGULATIONS; DELEGATION OF FUNCTIONS.—(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.

(b) The Secretary may delegate functions under this Act which are vested in the Secretary to any employee of the Department or any member of the Service.

SEC. 207. CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(b) Any agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.

SEC. 209. INSPECTOR GENERAL OF THE FOREIGN SERVICE.—(a) There shall be an Inspector General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals exceptionally qualified for the position by virtue of their integrity, their knowledge and experience in the conduct of foreign affairs, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General shall report to and be under the general supervision of the Secretary of State. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe.

(b) Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the previous year;

(B) a description of the recommendations for corrective action made by the Inspector General during the previous year with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the previous year.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of the individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(f) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

SEC. 210. BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State and shall include one or more representatives of the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

SEC. 211. BOARD OF EXAMINERS FOR THE FOREIGN SERVICE.—(a) The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 301(b) to be given to candidates for appointment in the Service. The Board shall consist of 15 members appointed by the President (no fewer than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity). The Board shall include representatives of agencies utilizing the Foregin Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) The Board of Examiners shall periodically review the examinations prescribed under section 301(b) in order to determine—

(1) whether any such examination has an adverse impact on the hiring, promotion, or

other employment opportunity of members of any race, sex, or ethnic group;

(2) methods of minimizing any such adverse impact;

(3) alternatives to any examinations which have such an adverse impact; and

(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 301(b).

(c) Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

CHAPTER 3—APPOINTMENTS

SEC. 301. GENERAL PROVISIONS RELATING TO APPOINTMENTS.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) The Secretary shall prescribe, as appropriate, written, oral, physical, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term "veteran or disabled veteran" means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(d)(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment.

SEC. 302. APPOINTMENTS BY THE PRESIDENT.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B) The President may confer the personal rank of ambassador, to be effective for a period not exceeding six months, upon an individual who is undertaking a special mission for the President if the President, before conferring such rank, transmits to the Committee on Foreign Relations of the Senate a written report of his intent to confer the personal rank of ambassador upon such individual and transmits with that report all relevant materials concerning any potential conflict of interest which the proposed recipient of such personal rank may have with regard to the special mission.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

SEC. 303. APPOINTMENTS BY THE SECRETARY.—The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 302(a)) in accordance with this Act and such regulations as the Secretary may prescribe.

SEC. 304. APPOINTMENT OF CHIEFS OF MISSION.—(a)(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(b)(1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such individual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), and the term "immediate family" means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

SEC. 305. APPOINTMENT TO THE SENIOR FOREIGN SERVICE.—(a) Appointment to the Senior Foreign Service shall be to a salary class established under section 402, and not to a position.

(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

SEC. 306. CAREER APPOINTMENTS.—(a) Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 303, or

(2) to recommend to the President that the candidate be given a career appointment under section 302.

(b) Decisions by the Secretary under subsection (a) shall be based upon the recommendation of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

SEC. 307. ENTRY LEVELS FOR FOREIGN SERVICE OFFICER CANDIDATES.—A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 404 to a salary class higher than class FS–5 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications and experience of the candidate and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class FS–4 in the Foreign Service Schedule.

SEC. 308. RECALL AND REEMPLOYMENT OF CAREER MEMBERS.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be called to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

SEC. 309. LIMITED APPOINTMENTS.—A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in section 311(a), may not be extended or renewed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

SEC. 310. REEMPLOYMENT RIGHTS FOLLOWING LIMITED APPOINTMENT.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5, United States Code.

SEC. 311. EMPLOYMENT OF FAMILY MEMBERS OF GOVERNMENT EMPLOYERS.—(a) The Secretary, when employing individuals abroad in positions to which career members of the Service are not customarily assigned (including, when continuity over a long term is not

a significant consideration, vacant positions normally filled by foreign national employees), shall give equal consideration to employing available qualified family members of members of the Service or of other Government employees assigned abroad. Family members so employed shall serve under renewable limited appointments in the Service and may be paid either in accordance with the Foreign Service Schedule or a local compensation plan established under section 408.

(b) Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.

(c) The Secretary of State shall prescribe regulations governing the employment at Foreign Service posts abroad of family members of Government employees by all agencies and other Government establishments (including establishments in the legislative or judicial branch).

SEC. 312. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary of State shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. SALARIES OF CHIEFS OF MISSION.—(a) Except as provided in section 302(b), each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, United States Code.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

SEC. 402. SALARIES OF THE SENIOR FOREIGN SERVICE.—The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

SEC. 403. FOREIGN SERVICE SCHEDULE.—(a) There is hereby established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this chapter.

(b) The Foreign Service Schedule shall have 10 salary classes, designated FS–1 through FS–10, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

Salary class:	Shall correspond to grade:
FS–1	GS–15
FS–2	GS–14
FS–3	GS–13
FS–4	GS–12
FS–5	GS–11
FS–6	GS–9
FS–7	GS–7
FS–8	GS–6
FS–9	GS–5
FS–10	GS–4

(c) Each class in the Foreign Service Schedule shall have 14 salary steps. The first 10 salary steps in each class shall be equal to the steps for the corresponding grade in the General Schedule and the remaining 4 steps shall be in increments equal to the average increment of the first 10 steps in that class.

(d) Salary may not be paid under the Foreign Service Schedule at a rate in excess of the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(e) The Secretary of State shall prescribe regulations to carry out this section.

SEC. 404. ASSIGNMENT TO A SALARY CLASS.—(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 407 or who are family members of Government employees paid in accordance with a local compensation plan established under section 408) to appropriate salary classes in the Foreign Service Schedule.

(b)(1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under chapter 5.

(2) Except as authorized by subchapter I of chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with chapter 6. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5, United States Code, and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

SEC. 405. PERFORMANCE PAY.—(a) Members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 402 and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other members of the Service shall not preclude the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 50 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary of that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed $10,000 in any fiscal year, except that payments of up to $20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.

(4) The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, as in effect at the end of that fiscal year.

(c) The Secretary shall determine the amount of performance pay available under subsection (b)(2) each year for distribution among the members of the Senior Foreign service and shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602.

(d) The President may grant awards of performance pay under subsection (b)(3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

SEC. 406. WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the Foreign Service Schedule shall be advanced to the next higher salary step in the member's class at the beginning of the first applicable pay period following the completion by that member of a period of—

(1) 52 calendar weeks of service in each of salary steps 1 through 9, and

(2) 104 calendar weeks of service in each of salary steps 10 through 13,

unless the performance of the member during that period is found in a review by a selection board established under section 602 to fall below the standards of performance for his or her salary class.

(b) The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

SEC. 407. SALARIES FOR FOREIGN SERVICE PERSONNEL ABROAD WHO PERFORM ROUTINE DUTIES.—(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule by section 403 for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by

Foreign Service personnel assigned to class FS-10 in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

SEC. 408. LOCAL COMPENSATION PLANS.—(a)(1) The Secretary shall establish compensation plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government employees. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to those family members of Government employees who are paid in accordance with such plans at a rate which is no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)). Any compensation plan established under this section may include provisions for leaves of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, United States Code.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this Act.

(c) The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

SEC. 409. SALARIES OF CONSULAR AGENTS.—The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

SEC. 410. COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

SEC. 411. TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

SEC. 412. SPECIAL DIFFERENTIALS AND PREMIUM PAY.—(a) The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements. A special differential may not be paid under this subsection with respect to work which is the basis for premium pay under subsection (b).

(b) Members of the Service (other than members of the Senior Foreign Service) shall be entitled to receive premium pay to the extent provided under subchapter V of chapter 55 of title 5, United States Code.

SEC. 413. DEATH GRATUITY.—(a) The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) A death gratuity payment under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) As used in this section—

(1) the term "Foreign Service employee" means any member of the Service or United States representative to an international organization or commission; and

(2) each of the terms "widow", "widower", "child", and "parent" shall have the same meaning given each such term by section 8101 of title 5, United States Code.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. CLASSIFICATION OF POSITIONS.—(a) The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salaries established under chapter 4. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

SEC. 502. ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a)(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 501 in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 102(a)(3) by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

SEC. 503. ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—(a) The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b)(1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expense of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

SEC. 504. SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 505. TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this chapter.

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in this Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 303 to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the foreign Service Schedule, are promoted by appointment under section 302(a) as career members of the Senior Foreign Service or by assignment under section 404 to a higher salary class in the Foreign Service Schedule.

(b) Except as provided in section 606(a), promotions of—

(1) members of the Senior Foreign Service, and

(2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 602, except that the Secretary may by regulation specify categories of career members, and categories of career candidates, assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c)(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class FS–1 in the Foreign Service schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 607(a)) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion to the Senior Foreign Service.

(2) Decisions by the Secretary on the number of individuals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

(A) a regular, predictable flow of recruitment in the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

SEC. 602. SELECTION BOARDS.—(a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selected boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 601;

(2) awards of performance pay under section 405(c);

(3) denials of within class step increases under section 406(a);

(4) offer or renewal of limited career extensions under section 607(b); and

(5) such other actions as the Secretary may prescribe by regulation.

(b) All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

SEC. 603. BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Foreign Service, performance evaluation reports of supervisors, records of commendations, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service.

SEC. 604. CONFIDENTIALITY OF RECORDS.—The records described in section 603(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

SEC. 605. IMPLEMENTATION OF SELECTION BOARD RECOMMENDATION.—(a) Recommendations for promotions made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 606. OTHER BASES FOR INCREASING PAY.—The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 302(a);

(2) promote a member of the Service under section 303;

(3) grant performance pay to a member of the Senior Foreign Service under section 405(c); or

(4) grant a within-class salary increase under section 406 to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 605(b), the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

SEC. 607. RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a)(1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, while they are in salary classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Any member of the Service—

(1) whose maximum time in class under subsection (a) expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 608. RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 609. RETIREMENT BENEFITS.—(a) A member of the Service—

(1) who is retired under section 607(c)(2); or

(2) who is retired under section 607(c)(1) or 608(b)—

(A) after becoming eligible for voluntary retirement under section 811, or

(B) from the Senior Foreign Service or while assigned to class FS-1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 806.

(b) Any member of the Service (other than a member to whom subsection (a) applies) who is retired under section 607(c)(1) or 608(b) shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2) a refund as provided in section 815 of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 806, commencing at age 60.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60, his or her death shall be considered a death in service within the meaning of section 809.

SEC. 610. SEPARATION FOR CAUSE.—(a)(1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service.

(2) A member of the Service who is a member of the Senior Foreign Service or is assigned to a salary class in the Foreign Service Schedule and who either (A) is serving under a career appointment, or (B) if separation is to be by reason of misconduct, is serving under a limited appointment, shall not be separated from the Service under this section until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing. The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 1106 and shall be in lieu of any other administrative procedure authorized or required by this or any other law.

(b) Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 815 of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 806, commencing at age 60.

SEC. 611. TERMINATION OF LIMITED APPOINTMENTS.—Except as provided in section 610(a)(2), the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule, or who is a family member of a Government employee serving under a local compensation plan established under section 408.

SEC. 612. TERMINATION OF APPOINTMENTS OF CONSULAR AGENTS AND FOREIGN NATIONAL EMPLOYEES.—(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. FOREIGN SERVICE INSTITUTE.—(a) The Secretary of State shall maintain and operate the Foreign Service Institute (hereinafter in this chapter referred to as the "Institute"), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The Institute shall be headed by a Director, who shall be appointed by the Secretary of State.

(b) To the extent practicable, the Secretary of State shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the Institute and otherwise.

SEC. 702.—FOREIGN LANGUAGE REQUIREMENTS.—(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the Institute or otherwise in order to assist in meeting the requirements established under subsection (a).

SEC. 703. TRAINING AUTHORITIES.—(a) In the exercise of functions under this chapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the Institute, including functional and geographic area specializations;

(2) correlate training and instruction furnished by the Institute with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the Institute, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4)(A) employ in accordance with the civil service laws such personnel as may be neces-

sary to carry out the provisions of this chapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations), the services of individuals to serve as language instructors, linguists, and other academic and training specialists (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipment as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

(b) In furtherance of the objectives of this Act, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 411) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(c) In the implementation of this chapter, the Secretary shall seek to design training programs which will encourage and foster career development for the various categories of members of the Service.

(d) The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 311.

SEC. 704. TRAINING GRANTS.—(a) To facilitate training provided to memebrs of families of Government employees under this chapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) If a member of the Service who is assigned abroad, or a member of his or her family, is unable to participate in language training furnished by the Government through the Institute or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 705. CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause.

(b)(1) The Secretary may facilitate the employment of spouses of members of the Service by—

(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and non-governmental employment opportunities available to them abroad; and

(C) otherwise assisting them in obtaining employment abroad.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. ADMINISTRATION OF THE SYSTEM.—In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this chapter referred to as the "System"), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 802. MAINTENANCE OF THE FUND.—The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this chapter referred to as the "Fund"), originally created by section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 803. PARTICIPANTS.—(a) The following members of the Service (hereinafter in this chapter referred to as "participants") shall be entitled to the benefits of the System:

(1) Every member serving under a career appointment or as a career candidate under section 306—

(A) in the Senior Foreign Service, or

(B) who is assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 805.

(b) Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

SEC. 804. DEFINITIONS.—As used in this chapter, unless otherwise specified, the term—

(1) "annuitant" means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim for such annuity;

(2) "child" means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an indiviual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age, on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) "court" means any court of any State or of the District of Columbia;

(4) "court order" means any court decree of divorce or amendment, or any court order or court-approved property settlement agreement incident to any court decree of divorce or annulment;

(5) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) "former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 816;

(7) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) "lump-sum credit" means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration, or a predecessor organization, after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service of that participant is of (B) the total number of years of such creditable service;

(11) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bona fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(12) "surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding his or her death or is a parent of a child born of the marriage; and

(13) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined.

SEC. 805. CONTRIBUTIONS TO THE FUND.—(a) 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participants shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c)(1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d)(1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited,

may make a special contribution to the Fund equal to the following percentages of basic salary received for such service:

Time of service:	Percent of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 816.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(e) Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 816 for periods of internment during World War II.

(f) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

SEC. 806. COMPUTATION OF ANNUITIES.—(a) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years, not exceeding 35, of service credit obtained in accordance with sections 816 and 817, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment under section 302(b) in a position to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 805(d) which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(b)(1)(A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participants shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 814(b), or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 814(b) if the spouse later qualifies as a former spouse under section 804(6)), or to reduce such survivor annuity by designating a portion of the annuity of the participant as the base for the survivor benefit.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect in writing to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the 12-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 814(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600. The reduction under this paragraph shall be calculated before any reduction under section 814(a)(5).

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(b)(4)(B).

(C) An annuity payable from the Fund to a surviving spouse under this paragraph shall commence on the day the participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c)(1) If an annuitant who was a participant dies and is survived by a spouse and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

(A) $900, or

(B) $2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

(A) $1,080, or

(B) $3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 826(c)(3), and

(B) the minimum specified in subsection (l)(2) of this section.

(d) If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an an-

nuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 804(12)). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b) (2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to some one other than that participant.

(i) (1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 823 shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least one year at the time of death or who is a parent of a child born of the marriage.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 of this Act in any case in which an annuitant has a former spouse who was married to the participant during the period of recall service or who qualifies for an annuity under section 814 (a) or (b).

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 814(b)(5)), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) The Secretary of State shall, on an annual basis—

(1) inform each participant of his or her right of election under subsections (g) and (j); and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 814.

(l)(1) The monthly rate of an annuity payable under this chapter to an annuitant, other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) The monthly rate of an annuity payable under this chapter to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.) or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) This subsection does not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

SEC. 807. PAYMENT OF ANNUITY.—(a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this Act shall become effective on the day he or she attains age 60.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this chapter may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

SEC. 808. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 810 as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 815, except that he or she may elect voluntary retirement if eligible under section 811.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability

payments under section 8107 of title 5, United States Code. This subsection shall not bar the right to any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this subsection nor any provision of such subchapter shall be construed to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other individual.

(e) Notwithstanding any other law, the right of any individual entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this Act, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

SEC. 809. DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this Act, the lump-sum credit shall be paid in accordance with section 815.

(b) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 814(b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 806(a) and any surviving former spouse shall be entitled to an annuity under section 814(b) as if the participant died after being entitled to an annuity under this chapter. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant who elected a reduced annuity die in service after being recalled under section 308 and is survived by a spouse or former spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 823. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant during the period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 806(i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this chapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

(g) Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 814(b), the annuity of the spouse under this section shall be subject to the limitation of section 806(b)(3)(B).

(h) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 806, as appropriate.

SEC. 810. DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 815, or to leave his or her contributions in the Fund and receive an annuity, computed under section 806, commencing at age 60.

SEC. 811. VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 812. MANDATORY RETIREMENT.—(a) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant reaches age 60 if the participant has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and shall receive retirement benefits in accordance with section 806.

(b) Any participant who reaches age 60 while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated. In addition, whenever the Secretary determines it to be in the public interest, any participant who has reached age 60 may be retained on active service for a period not to exceed 5 years. Any participant who completes a period of service after reaching age 60 as authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 813. RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—If a participant completes an assignment under section 302(b) in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 814. FORMER SPOUSES.—(a)(1) Unless otherwise expressly provided by any court order under section 820(b)(1), a former spouse of a participant or former participant is entitled to an annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant through such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this title or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No court order under section 820(b)(1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such order relating to an annuity under this subsection be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant or former participant shall be reduced by the amount of an annuity under this subsection of any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this chapter, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 806(b)(3).

(B) If any annuitant whose annuity is re-

duced under subparagraph (A) is recalled to service under section 308, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 824, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the later of the date the participant would qualify on the basis of his or her creditable service for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 806(h) or any comparable provision of law.

(b)(1) Subject to any election under section 806(b)(1)(C) and unless otherwise expressly provided by any court order under section 820(b)(1), if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 806(a); or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 806(b)(3)) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806(a).

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 806(b)(3)) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 820(b)(1) may not adjust the amount of the annuity of any former spouse under this section.

(5) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless the participant is then married and elects in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b)(3) for any spouse of the participant.

(c)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a court order under section 820(b)(1) may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected or ordered under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 805(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(d) Section 806(1) shall not apply—

(1) to any annuity payable under subsection (a) or (b) to any former spouse if the amount of that annuity varies by reason of a court order under section 820(b)(1) from the amount which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such court order; and

(2) to any annuity payable under subsection (e).

SEC. 815. LUMP-SUM PAYMENTS.—(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this chapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i)).

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 823, the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i)).

(c) If all annuity rights under this chapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (f).

(d) If a participant or former participant dies and is not survived by an individual eligible for an annuity under this chapter or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Payments under subsections (c) through (e) shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 804(2)) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section

805 from the beginning of the first pay period after the participant has completed 35 years of service computed under section 816 (excluding service credit for unused sick leave under section 816(b)), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 805(d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (f).

(i) Unless otherwise expressly provided by any court order under section 820(b)(1), the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse.

SEC. 816. CREDITABLE SERVICE.—(a) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5, United States Code), shall be creditable for purposes of this chapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(b) In computing any annuity under this chapter, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 806(a)) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this chapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c)(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 805. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 805. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 805 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this chapter, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 815. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g)(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(1) of title 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited or annuity recomputed under this subsection of their entitlement to such credit or recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332(1) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this chapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i)(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this chapter relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this chapter a portion of the lump sum (or a court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant—

(A) for periods assumed to be creditable service under section 808(a) or section 809(e), or

(B) for any extra period of creditable service provided under section 817 for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.

SEC. 817. EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service.

SEC. 818. ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding $5,000 per year for the incidental expenses necessary in administering the provisions of this chapter, including actuarial advice.

SEC. 819. INVESTMENT OF THE FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 820. ASSIGNMENT AND ATTACHMENT OF MONEYS.—(a)(1) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3477 of the Revised Statutes of the United States (31 U.S.C. 203) or any other law, a member of the Service who is entitled to receive benefits under section 609(b)(1) may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be deposited with the Secretary of the Treasury by the member executing the assignment.

(b)(1)(A) In the case of any participant or annuitant who has a former spouse with respect to whom there is a court order—

(i) any right of any former spouse to any annuity under section 814(a) in connection with any retirement or disability annuity of

the participant, and the amount of any annuity under such section 814(a);

(ii) any right of a former spouse to a survivor annuity under section 814(b) or (c), and the amount of any such annuity under section 814(b) or (c) for any surviving former spouse of the participant or annuitant; and

(iii) any right of any former spouse to any payment of a lump sum credit under section 815(a) or (b);

shall be determined in accordance with a court order, if and to the extent expressly provided for in the terms of that court order.

(B) This paragraph shall not apply in the case of any court order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

(2) Except with respect to obligations between participants and former spouses, payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this chapter for periods beginning after the date of receipt by the Secretary of State of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(4) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 804(b)(6), or any other provision of this chapter, shall not be construed to affect the rights any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this chapter.

(c) None of the moneys mentioned in this chapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 821. PAYMENTS FOR FUTURE BENEFITS.—(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 825;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 805(a).

SEC. 822. UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service.

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 821(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 823. ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 308(a) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 805. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 825 that became effective during the recall period.

(b) If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 815. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 806 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least 5 years, the annuitant may elect to have his or her annuity determined anew under section 806 in lieu of any other benefits under this section. Any annuitant who is recalled under section 308 may upon written application count as recall service any prior service that is creditable under section 816 that was performed after the separation upon which his or her annuity is based.

SEC. 824. REEMPLOYMENT.—(a) Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this chapter, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary the member was entitled to receive under this Act on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this subsection shall be entitled to such salary in lieu of benefits under this chapter.

(b) When any such retired member of the Service is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such member the salary of the position in which he or she is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this chapter.

SEC. 825. VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to the effective date of this Act by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

(1) returned in a lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a)(2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 815(f).

SEC. 826. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(c) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 609(b)(2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or decreased participant on the effective date of the then last preceding gen-

eral annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

(2) Effective from its commencing date, an annuity payable from the Fund to the survivor of an annuitant, except a child entitled to an annuity under section 806(c) or 809 (c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 806 (c) or (d) or 809 (c) or (d), the items $900, $1,080, $2,700, and $3,240 appearing in section 806(c) shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the annuity of the child becomes effective.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least $1.

(f) Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

SEC. 827. COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE RETIREMENT SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) to the Foreign Service Retirement and Disability System so that it applies in like manner with respect to participants, former participants, annuitants, or survivors under that System.

(b) The President shall by Executive order prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;

(2) authorized or required home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service for purposes of family visitation in situations where the family of the member is prevented by official order from acompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed two round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship;

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to succesive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States, including assignments under subchapter VI of chapter 33 of title 5, United States Code (notwithstanding section 3375 (a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5, United States Code; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the port of entry in the contiguous 48 States which is nearest to that post.

SEC. 902. LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the

Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

SEC. 903. REQUIRED LEAVE IN THE UNITED STATES.—(a) The Secretary may order a member of the Service who is a citizen of the United States to take a leave of absence under section 6305 of title 5, United States Code (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Leave ordered under this section may be taken in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

(c) While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

SEC. 904. HEALTH CARE.—(a) The Secretary of State may establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or to provide survivor benefits under chapter 8.

(c) The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.

(e) Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

SEC. 905. REPRESENTATION EXPENSES.—Notwithstanding section 5536 of title 5, United States Code, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

SEC. 1001. LABOR-MANAGEMENT POLICY.—The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representating members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. DEFINITIONS.—As used in this chapter, the term—

(1) "Authority" means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) "Board" means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) "conditions of employment" means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 501;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) "dues" means dues, fees, and assessments;

(8) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) "General Counsel" means the General Counsel of the Authority;

(11) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) "management official" means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Foreign Service under section 209; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) "person" means an individual, a labor organization, or an agency to which this chapter applies.

SEC. 1003. APPLICATION.—(a) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b);

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(6) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

SEC. 1007. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligations to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

(c) In order to carry out its functions under this chapter—

(1) the Board shall be regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5, United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapter 71 of such title.

SEC. 1008. FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia, which shall conduct its review on the same basis as an appeal from a decision of a District Court.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

SEC. 1010. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);

(2) one individual employed by the Department of Labor;

(3) one member of the Federal Service Impasses Panel; and

(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

(c)(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

SEC. 1011. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit, or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

SEC. 1012. EMPLOYEES REPRESENTED.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1013. REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any separation described in section 1101(a)(1)(A) or any proceeding relating to such a separation; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to Government-wide or multi-agency matters affecting the rights, benefits, or obligations of individuals employed in agenices not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and

shall provide the exclusive representative a written statement of the reasons for taking the final action.

SEC. 1014. RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1015. UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the operations of the Department, but informational picketing in the United States which does not interfere with such operations shall not be considered an unfair labor practice; and

(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 1109(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure, issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

SEC. 1016. PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Any complaint under subsection (a) shall contain a notice—

(1) of the charge;

(2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and

(3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d)(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

SEC. 1017. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

(f) If the Board finds that any labor organization has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

SEC. 1018. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Department as a member of the Service; or

(3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a non-duty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 11—GRIEVANCES

SEC. 1101. DEFINITION OF GRIEVANCE.—(a)(1) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this chapter; and

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under chapter 10 (hereinafter in this chapter referred to as the "exclusive representative").

(b) For purposes of this chapter, the term "grievance" does not include—

(1) an individual assignment of a member under chapter 5, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 602, a tenure board established under section 306(b), or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 611, or the denial of a limited career extension or of a renewal of a limited career extension under section 607(b); or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1109(b).

(c) This chapter applies only with respect

to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

SEC. 1102. GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in section 1101(a)(1)(G).

SEC. 1103. FREEDOM OF ACTION.—(a) Any individual filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b)(1) Except with respect to grievances described in section 1101(a)(1)(A), a grievant who is a member of a bargaining unit represented by an exclusive representative shall be represented at every stage of the proceedings only if represented by that exclusive representative. Such a grievant has the right to represent himself or herself under departmental procedures with respect to a grievance; however, the exclusive representative shall have the right to be present during the grievance proceedings.

(2) Any grievant who is not a member of a bargaining unit, or whose grievance is described in section 1101(a)(1)(A), has the right at every stage of the proceedings to representation of his or her own choosing.

(3) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) or a grievant who is not a member of such bargaining unit or whose grievance is described in section 1101(a)(1)(A) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS–18 of the General Schedule under Section 5332 of title 5, United States Code.

(d) The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department of State for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

SEC. 1106. BOARD PROCEDURES.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Department of State.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5, United States Code.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceeding of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

SEC. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

SEC. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

SEC. 2101. PAY AND BENEFITS PENDING CONVERSION.—Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who are in the Foreign Service immediately before the effective date of this Act and who could be converted under section 2102 or 2103 shall be treated for purposes of salary, allowances, and all other matters as if they had been converted under section 2102 or 2103, as the case may be, on the effective date of this Act.

SEC. 2102. CONVERSION TO THE FOREIGN SERVICE SCHEDULE.—(a) Not later than 120 days after the effective date of this Act, the Secretary shall, in accordance with section 2106, convert to the appropriate class in the Foreign Service Schedule established under section 403 of this Act those individuals in the Foreign Service who are serving immediately before the effective date of this Act under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

(1) Foreign Service officers, or

(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after the effective date of this Act, Foreign Service Reserve officers and staff officers and employees who the Secretary determines under subsection (a)(2) are not available for worldwide assignment shall also be converted, in accordance with section 2106, to the appropriate class in the Foreign Service Schedule established under section 403 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

SEC. 2103. CONVERSION TO THE SENIOR FOREIGN SERVICE.—(a) Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before the effective date of this Act, are serving under appointments a class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appointment to the Senior Foreign Service.

(b) Except as provided in subsection (d), if a request is submitted under subsection (a) by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(c) If a request is submitted under subsection (a) by a Foreign Service officer or, except as provided in subsection (d), a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(d) If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after the effective date of this Act and before the end of the 3-year period beginning on such effective date, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 402 of this Act, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe consistent with the provisions of

chapter 6 of title I of this Act relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit a request under subsection (a), or

(2) who submits such a request more than 120 days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),

may not remain in the Foreign Service for more than 3 years after the effective date of this Act. During such period, the officer shall be subject to the provisions of title I of this Act applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 405, and shall not be eligible for a limited career extension as described in section 607(b). Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits determined in accordance with chapter 8 of title I of this Act.

SEC. 2104. CONVERSION FROM THE FOREIGN SERVICE.—(a) In the case of any individual in the Foreign Service who, immediately before the effective date of this Act, is serving under an appointment described in section 2102(a) or 2103(a) and who is not converted under section 2102 or section 2103 because such individual does not meet the conditions specified in section 2102(b) or 2103(d), the Secretary shall, not later than 3 years after the effective date of this Act, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b)(1) In the case of individuals in the Foreign Service in the International Communication Agency who immediately before the date of enactment of this Act are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals, the 3-year period referred to in subsection (a) shall begin on July 1, 1981. Prior to that date, any individual in the Foreign Service exempted from conversion by this subsection may elect to remain in the Foreign Service and, notwithstanding any other provision of law, the status, promotion, class, and tenure of such individuals shall continue to be governed by the Foreign Service Act of 1946 and Public Law 90–494 (as those Acts were in effect immediately before the effective date of this Act). This Act (except sections 402, 403, 404, and 405) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 504, 610, and 803 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are temporarily excepted from conversion under this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

SEC. 2105. CONVERSION OF CERTAIN POSITIONS IN THE DEPARTMENT OF AGRICULTURE.—(a) Not later than 15 days after the effective date of this Act, the Secretary of Agriculture shall—

(1) designate and classify under section 501 of this Act those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5, United States Code, which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 103 which will apply to such individual.

(b) Each employee serving in a position at the time it is designated under subsection (a) shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c); or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) apply.

(c)(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent to the Senate, those employees who elect conversion under subsection (a)(1).

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1)

(d) Any employee who declines conversion under subsection (b)(2) shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

SEC. 2106. PRESERVATION OF STATUS AND BENEFITS.—(a)(1) Subject to paragraph (2), every individual who is converted under this chapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this chapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2)(A) Conversion under section 2102 of any individual in the Foreign Service to the Foreign Service Schedule shall in each case be to a class determined on the basis of the rank held immediately before the effective date of this Act, in accordance with the following table:

If the rank held immediately before the effective date is:	The individual shall be converted to the following class:
FSO–3, FSR–3, FSRU–3, or FSS–1	FS–1
FSO–4, FSR–4, FSRU–4, or FSS–2	FS–2
FSO–5, FSR–5, FSRU–5, or FSS–3	FS–3
FSO–6, FSR–6, FSRU–6, or FSS–4	FS–5
FSO–7, FSR–7, FSRU–7, or FSS–5	FS–6
FSO–8, FSR–8, FSRU–8, or FSS–6	FS–7
FSS–7	FS–8
FSS–8	FS–9
FSS–9	FS–10
FSS–10	FS–10

(B) Each individual converted to a class under subparagraph (A) shall be placed in the salary step in that class which is the numerical equivalent of the step that individual was in immediately before such conversion unless the individual is entitled to be in a higher step under the provisions of paragraph (1).

(C) Any individual converted under this subsection whose basic rate of salary immediately before conversion exceeds the salary rate for the step to which he or she is converted shall be entitled to continue to receive salary at the former rate at time of conversion. Such salary rate shall be increased by 50 percent of the amount of each increase in the individual's new salary step until the rate is equal to the rate which would be applicable but for this paragraph.

(D) Not later than 6 months after the effective date of this Act, each career member of the Foreign Service holding the rank of FSO–6, FSR–6, FSRU–6, or FSS–4 immediately before such effective date shall be evaluated and considered for promotion to salary class FS–4 by a Foreign Service selection board in accordance with chapter 6 of title I of this Act.

(3) An individual converted under section 2104 to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b)(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion under section 2104 may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Individuals who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this chapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Any individual who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service or

(2) in any other office or posiiton continued by this Act,

may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Any individual in the Foreign Service—

(1) who is serving under a career appointment on the date of enactment of this Act, and

(2) who was not subject to section 633(a) (2) of the Foreign Service Act of 1946 immediately before the effective date of this Act,

may not be retired under section 608 of this Act until 10 years after the effective date of this Act or when such individual first becomes eligible for an immediate annuity under chapter 8 of title I of this Act, whichever occurs first.

SEC. 2107. REGULATIONS.—Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this chapter.

SEC. 2108. AUTHORITY OF OTHER AGENCIES.—The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this chapter in accordance with regulations prescribed by the Secretary of State under section 2107. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

CHAPTER 2—AMENDMENTS RELATING TO FOREIGN AFFAIRS AGENCIES

SEC. 2201. BASIC AUTHORITIES OF THE DEPARTMENT OF STATE.—(a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, is amended by adding at the end thereof the following new sections:

"SEC. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service) or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.

"(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d)(2)), the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.

"(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.

"(d)(1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).

"(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.

"(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

"(f) The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 26. (a) The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry on the member's work efficiently.

"(b) The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 27. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.

"(b) Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—

"(1) would violate any law of such country or of the United States; or

"(2) could, as certified in writing by the United States chief of mission to such country, damage the interests of the United States.

"SEC. 28. The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.

"SEC. 29. Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.

"SEC. 30. (a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or

"(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

"(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

"(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through pro-

ceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, the United States Code, and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

"(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

"(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

"SEC. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292–300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

"(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

"(d) Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

"SEC. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.

"SEC. 33. This Act may be cited as the 'State Department Basic Authorities Act of 1956'.".

(b) Section 13(a) of such Act (22 U.S.C. 2684(a)) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2202. PEACE CORPS ACT.—(a) Section 5 of the Peace Corps Act (22 U.S.C. 2504) is amended—

(1) in subsection (f)(1)—

(A) in subparagraph (A) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1))," and inserting in lieu thereof "section 816(a) of the Foreign Service Act of 1980", and

(B) in subparagraph (B) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980"; and

(2) in subsection (h)—

(A) by striking out "section 1091 of the Foreign Service Act of 1946" and inserting in lieu thereof "section 30 of the State Department Basic Authorities Act of 1956", and

(B) by striking out "Director of ACTION" and inserting in lieu thereof "President".

(b)(1) Section 7(a) of the Peace Corps Act (22 U.S.C. 2506(a)) is amended—

(A) in paragraph (1)—

(i) by striking out ", who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established under section 402 or 403 of the Foreign Service Act of 1980";

(ii) by striking out "section 528" and inserting in lieu thereof "section 310"; and

(iii) by striking out "Reserve" the last place it appears and all that follows and inserting in lieu thereof a period; and

(B) by amending paragraph (2) to read as follows:

"(2) The President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—

"(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and

"(B) no individual whose Foreign Service appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.

Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (i) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe.".

(2) Section 7(a)(4) of the Peace Corps Act (22 U.S.C. 2506(a)(4)) is amended—

(A) by striking out "Until" and all that follows through "paragraph or" and inserting in lieu thereof "An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years";

(B) by striking out "such person" and inserting in lieu thereof "such individual"; and

(C) by striking out "substantially continuous basis" and inserting in lieu thereof "continuous basis without a break in service of more than three days".

(c) Section 13(b) of the Peace Corps Act (22 U.S.C. 2512(b)) is amended by striking out "section 872 of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 824 of the Foreign Service Act of 1980,".

(d) Section 14(b) of the Peace Corps Act (22 U.S.C. 2513(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(e) Section 15(a) of the Peace Corps Act (22 U.S.C. 2514) is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

SEC. 2203. FOREIGN ASSISTANCE ACT.—(a) Section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)) is amended to read as follows:

"(d) For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service.".

(b) Section 629(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2389(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(c) Section 631(b) of such Act (22 U.S.C. 2391(b)) is amended by amending the second sentence to read as follows: "Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

(d) Section 631(c) of such Act (23 U.S.C.

2391(c)) is amended by amending the second sentence to read as follows: "Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

SEC. 2204. ARMS CONTROL AND DISARMAMENT ACT.—(a) Section 42 of the Arms Control and Disarmament Act (22 U.S.C. 2582) is amended to read as follows:

"FOREIGN SERVICE PERSONNEL

"SEC. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—

"(1) the authority available to the Secretary under the Foreign Service Act of 1980, and

"(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.

"(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.".

(b) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2205. REPEALED PROVISIONS.—The following are repealed:

(1) The Act entitled "An Act to improve, strengthen, and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration", approved August 13, 1946, titles I through X of such Act being the Foreign Service Act of 1946 (22 U.S.C. 801–810, 816, 817, 821, 826, 827, 841–843, 846, 861, 866–873, 876, 877, 881, 882, 886 889, 890, 896, 900, 901, 902, 906–915, 921–924, 926–928 936–939, 946, 947, 951, 961–966, 968, 981, 986, 987, 991–996, 1001–1009, 1016, 1017, 1021, 1022, 1026–1028, 1031, 1036, 1037–1037c, 1041–1048, 1061–1065, 1071, 1076, 1076a, 1081, 1082, 1084, 1086, 1091, 1093, 1095, 1101, 1103–1106, 1111, 1112, 1116, 1121, 1131, 1136–1138a, 1139, 1148–1151, and 1156–60.

(2) Sections 401 and 413 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 981, 986).

(3) Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 857).

(4) Section 117, 120, and 522 of the Foreign Relations Authorization Act, Fiscal Year 1977 (90 Stat. 827, 829, 846).

(5) Section 6 of the Department of State Appropriations Authorization Act of 1973 (87 Stat. 452).

(6) The Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968 (22 U.S.C. 929–932, 1221–1234).

(7) Section 104(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)).

(8) Subsections (e), (g), (j), and (k) of section 625 of the Foreign Assistance Act of 1961 (22 U.S.C. 2385 (e), (g), (j), and (k)), except that the repeal of subsection (k) shall not become effective until January 1, 1982.

(9) Section 7(b) of the Peace Corps Act (22 U.S.C. 2506(b)).

(10) Sections 14 and 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2679a, 2680a).

(11) Section 124(a)(2) of the International Development and Food Assistance Act of 1977 (91 Stat. 542).

(12) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 21, 1952 (22 U.S.C. 1077, 1078).

(13) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 1, 1956 (22 U.S.C. 1079–1079f).

(14) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved September 2, 1958 (22 U.S.C. 1079g–1079j).

(15) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved July 12, 1960 (22 U.S.C. 1079l).

(16) The Foreign Service Annuity Adjustment Act of 1965 (22 U.S.C. 1079m–1079s).

SEC. 2206. OTHER CONFORMING AMENDMENTS.—(a)(1) Section 3(b) of the Asian Development Bank Act (22 U.S.C. 285a(b)) is amended by striking out the "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(2) The United Nations Participation Act of 1945 is amended—

(A) in section 2(g) (22 U.S.C. 287(g)) by striking out "sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) for chiefs of mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 8 (22 U.S.C. 287e) by striking out "section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(3) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor", approved July 30, 1946 (22 U.S.C. 287n), is amended by striking out "Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or provided for Foreign Service officers under section 403 of that Act,".

(4) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor", approved June 14, 1948 (22 U.S.C. 290a), is amended by striking out "provided by section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "established under section 402 or 403 of the Foreign Service Act of 1980".

(5) Section 203(b) of the African Development Fund Act (22 U.S.C. 290g–1(b)) is amended by striking out "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(6) Section 408 of the Mutual Security Act of 1954 (22 U.S.C. 1928) is amended—

(A) in subsection (a) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801)," and inserting in lieu thereof "Foreign Service Act of 1980";

(B) in subsection (b) by striking out "chief of mission, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)" and inserting in lieu thereof "chief of mission under the Foreign Service Act of 1980"; and

(C) in subsection (c) by striking out "section 529 of this Act who are appointed as Foreign Service Reserve officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)" and inserting in lieu thereof "section 628 of the Foreign Assistance Act of 1961 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980".

(7) The International Atomic Energy Agency Participation Act of 1957 is amended—

(A) in section 2(d) (22 U.S.C. 2021(d))—

(i) in the first sentence by striking out "sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 866, 867), for Chiefs of Mission" and inserting in lieu thereof "sections 401, 402 and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,", and

(ii) in the second sentence by striking out "by Chiefs of Mission" and inserting in lieu thereof "under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 5 (22 U.S.C. 2024)—

(i) by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980", and

(ii) by striking "Foreign Service Act of 1946, as amended;" and inserting in lieu thereof "Foreign Service Act of 1980;".

(8) Section 704(b) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056(b)) is amended by striking out "title X, part C of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 25 of the State Department Basic Authorities Act of 1956".

(9) Section 104(d) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(d)) is amended by striking out "section 528" and all that follows through "such persons" and inserting in lieu thereof "section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service".

(10) Section 5(a) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2605(a)) is amended—

(A) in paragraph (1) by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service";

(B) in paragraph (2) by striking out "Foreign Service Reserve officers" and inserting in lieu thereof "members of the Foreign Service serving under limited appointments"; and

(C) in paragraph (4) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "Foreign Service Act of 1980".

(11) Section 403(c) of the International Development Cooperation Act of 1979 (22 U.S.C. 3503(c)) is amended by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

(b)(1) Section 605A(h) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes", approved August 28, 1954 (7 U.S.C. 1765a(h)), is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

(2) Section 606D of such Act (7 U.S.C. 1766c) is amended by striking out "title IX of the Foreign Service Act of 1946" and inserting in lieu thereof "chapter 9 of title I of the Foreign Service Act of 1980".

(c)(1) Section 2002(a) of title 10, United States Code, is amended—

(A) in the text preceding paragraph (1) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(b) of the Foreign Service Act of 1980"; and

(B) in paragraph (2) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(a) of the Foreign Service Act of 1980".

(d) Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 906(a)(1)) is amended by striking out "section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2)" and inserting in lieu thereof "section 5924 of title 5, United States Code".

(e)(1) Section 104(a)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) is amended by striking out "section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)" and inserting in lieu thereof "section 808 of the Foreign Service Act of 1980".

(2) Section 170(1) of the Internal Revenue Code of 1954 (26 U.S.C. 170(1)) is amended by amending paragraph (6) to read as follows:

"(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.".

(3) Section 912(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 912(1)(A)) is amended to read as follows:

"(A) chapter 9 of title I of the Foreign Service Act of 1980,".

(4) Section 2055(f)(5) of the Internal Revenue Code of 1954 (26 U.S.C. 2055(f)(5)) is amended to read as follows:

"(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises or bequests to or for the use of the United States, see section 25 of the States Department Basic Authorities Act of 1956.".

(f) Section 235 of title 38, United States Code, is amended—

(1) in paragraph (1) by striking out "Section 1131 of title 22" and inserting in lieu thereof "Section 905 of the Foreign Service Act of 1980";

(2) in paragraph (2) by striking out "Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22" and inserting in lieu thereof "Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980";

(3) in paragraph (3) by striking out "Section 1138 of title 22" and inserting in lieu thereof "Section 901(13) of the Foreign Service Act of 1980";

(4) in paragraph (4) by striking out "Section 1148 of title 22" and inserting in lieu thereof "Section 903 of the Foreign Service Act of 1980"; and

(5) in paragraph (5) by striking out "Section 1156 of title 22" and inserting in lieu thereof "Section 904(d) of the Foreign Service Act of 1980".

(g) Section 415(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5055(c)) is amended—

(1) in paragraph (1) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other" and inserting in lieu thereof "any"; and

(2) in paragraph (2) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 2301. REEMPLOYMENT RIGHTS.—(a) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"§ 3597. Reemployment following limited appointment in the Foreign Service

"An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employees former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.".

(b)) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"3597. Reemployment following limited appointment in the Foreign Service.".

SEC. 2302. SALARY FOR AMBASSADORS AT LARGE.—Section 5313 of title 5, United States Code, is amended by adding the following at the end thereof:

"Ambassadors at Large.".

SEC. 2303. ADVANCES OF PAY INCIDENT TO DEPARTURES FROM POSTS ABROAD.—(a) Section 5522(a) of title 5, United States Code, is amended—

(1) by striking out "evacuation" and inserting in lieu thereof "departure"; and

(2) by striking out "is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family" and inserting in lieu thereof "is officially authorized or ordered—

"(1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or

"(2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee".

(b) Section 5522(b) of title 5, United States Code, is amended by striking out "evacuation" and inserting in lieu thereof "departure".

(c) Section 5523(a)(1) of title 5, United States Code, is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) whose departure is authorized or ordered under section 5522(a) of this title; and"; and

(2) in subparagraph (B) by striking out "evacuation" and inserting in lieu thereof "departure".

(d) Section 5523(b) of title 5, United States Code, is amended by striking out "evacuation" both places it appears and inserting in lieu thereof "departure".

(e) Section 405a(a) of title 37, United States Code, is amended by striking out "evacuated" and "evacuation" wherever they appear and inserting in lieu thereof "to depart" and "departure", respectively.

SEC. 2304. PREMIUM PAY.—Paragraph (2) of section 5541 of title 5, United States Code, is amended—

(1) by striking out clauses (xiv) and (xv) and inserting in lieu thereof the following:

"(xiv) a member of the Senior Foreign Service; or"; and

(2) by redesignating clause (xvi) as clause (xv).

SEC. 2305. ATTORNEYS FEES IN BACKPAY CASES.—Section 5596(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A)(ii) by inserting "or under chapter 11 of title I of the Foreign Service Act of 1980," immediately after "chapter 71 of this title,"; and

(2) in paragraph (3)—

(A) by inserting "and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980" immediately after "section 7103 of this title"; and

(B) by inserting "and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980" immediately after "section 7116 of this title".

SEC. 2306. SEPARATE MAINTENANCE ALLOWANCE.—Section 5924(3) of title 5, United States Code, is amended—

(1) by inserting "or authorized" immediately after "compelled"; and

(2) by inserting "or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents," immediately after "for the convenience of the Government,".

SEC. 2307. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(i)" and by striking out "of the Department of State" and all that follows through "type of education".

SEC. 2308. POSTS REQUIRING SPECIAL INCENTIVES.—Section 5925 of title 5, United States Code, is amended—

(1) by striking out "A post" in the first sentence and inserting in lieu thereof "(a) A post";

(2) by inserting "under this subsection" immediately after "differential" in the last sentence; and

(3) by adding at the end thereof the following new subsection:

"(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

"(1) may be paid for each assignment to a post determined to have such conditions;

"(2) may be paid periodically or in a lump sum; and

"(3) may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment.".

SEC. 2309. ADVANCES OF PAY.—(a) Subchapter III of chapter 59 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5927. Advances of pay

"Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.".

(b) The analysis of chapter 59 of title 5, United States Code, is amended by inserting after the item relating to section 5926 the following:

"5927. Advances of pay.".

SEC. 2310. DANGER PAY ALLOWANCE.—(a) Subchapter III of chapter 59 of title 5,

United States Code, as amended by section 2309(a), is further amended by adding at the end thereof the following new section:

"An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee.".

(b) The analysis for chapter 59 of title 5, United States Code, as amended by section 2309(b), is further amended by inserting "§ 5928. Danger pay allowance"

after the item relating to section 5927 the following:

"5928. Danger pay allowance.".

SEC. 2311. LEAVE.—(a) Section 6301 of title 5, United States Code, is amended by adding at the end thereof the following new sentence:

"Notwithstanding clauses (x)–(xii) of paragraph (2), the term 'employee' includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position in the Department of State which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.".

(b) Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

(2) by adding at the end thereof the following new subsection:

"(g) Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

SEC. 2312. RETIREMENT CREDIT FOR IMPRISONED FOREIGN NATIONALS.—Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual.".

SEC. 2313. CONFORMING AMENDMENTS TO TITLE 5.—(a) Section 3323(c) of title 5, United States Code, is amended by striking out "Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22" and inserting in lieu thereof "member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980".

(b) Section 5102(c)(2) of title 5, United States Code, is amended by striking out "employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22" and insert in lieu thereof "members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980".

(c)(1) Section 5301(c) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(2) Section 5303(a) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by redesignating paragraph (3) as paragraph (2);

(C) by striking out "; or" at the end of such redesignated paragraph and inserting in lieu thereof a period; and

(D) by striking out paragraph (4).

(3) Section 5404 of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(d) Section 5724(g) of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(e) Section 5727(e)(2) of title 5, United States Code, is amended to read as follows:

"(2) This section, except subsection (a), does not affect section 403e(4) of title 50.".

(f)(1) Section 6301(2)(xii) of title 5, United States Code, is amended by striking out "an officer who receives pay under section 866 of title 22" and inserting in lieu thereof "a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980)".

(2) Section 6305(b) of title 5, United States Code, is amended by striking out "an officer" and inserting in lieu thereof "a chief of mission".

(g) Section 7103(a)(2)(iv) of title 5, United States Code, is amended by striking out "the Agency for International Development, or" and inserting before the semicolon ", the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce".

(h) Section 8501(1)(C) of title 5, United States Code, is amended by striking out "Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22" and inserting in lieu thereof "members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980".

CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

SEC. 2401. SAVING PROVISIONS.—(a) All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

(b) This Act shall not affect any increase in annuity or other rights to benefits, which was provided by any provision amended or repealed by this Act, with respect to any individual who became entitled to such benefit prior to the effective date of this Act.

(c) References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

SEC. 2402. CONGRESSIONAL OVERSIGHT OF IMPLEMENTATION.—(a) Within fifteen months after the effective date of this Act, the Secretary of State shall submit to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a report describing the implementation of this Act during the fiscal year 1981 by the agencies utilizing the Foreign Service personnel system. Such report shall—

(1) describe the steps taken and planned in furtherance of (A) maximum compatibility among such agencies, as provided for in section 203, and (B) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 204;

(2) indicate the progress made by each such agency in the conversion of personnel and position classifications in accordance with chapter 1 of this title; and

(3) specify the upper and lower limits planned by each such agency for recruitment, advancement, and retention of members of the Service, as provided for in section 601(c)(2), including with respect to each of the relevant promotion competition groups the projected ranges of rates of appointment, promotion, and attrition over each of the five fiscal years 1981 through 1985.

(b) Beginning in 1982, the Secretary of State shall submit each year to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a supplemental report describing any relevant developments with respect to the matters reported on under paragraphs (1) and (2) of subsection (a) and, with respect to paragraph (3) of such subsection, a revised projection of the ranges of rates of appointment, promotion, and attrition over each of the next five years, as well as a comparison of such projections with the projections for the preceding year and with actual rates of appointment, promotion, attrition. The report shall explain fully any deviations from projections reported in the preceding year.

(c) The Secretary shall consult, in accordance with the procedures set out in section 1013(g), with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 1003(a) with respect to steps to be taken in implementing this Act and reported under this section. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect on October 1, 1980.

(b)(1) Chapter 8 of title I of this Act shall take effect on the later of October 1, 1980, or the 90th day after the date of enactment of this Act. If such effective date is after October 1, 1980, the provisions of sections 519, 631, 632, and 636 and of title VIII of the Foreign Service Act of 1946, and the provisions of section 8 and 9 of Public Law 90–494, shall remain in effect until such effective date, notwithstanding the repeal of those provisions by section 2205.

(2) The provisions of such chapter regarding the rights of former spouses to any annuity under section 814(a) shall apply in the case of any individual who after such effective date becomes a former spouse of an individual who separates from the Service after such date.

(3) The provisions of such chapter regarding the rights of former spouses to receive survivor annuities under section 814(b) shall apply in the case of participants or former participants in the Foreign Service Retirement and Disability System who die after such effective date.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENT

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the committee amendment to page 18.

The Clerk read as follows:

Post Office and Civil Service Committee amendment: Page 18, strike out line 14 and all that follows down through line 21, and insert in lieu thereof the following:

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies, the Secretary of Agriculture with respect to the Foreign Agricultural Service, and the Secretary of Commerce with respect to those employees of the Department of Commerce performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979 may utilize the Foreign Service personnel system in accordance with this Act.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The CHAIRMAN. The gentlewoman from Colorado (Mrs. SCHROEDER) has 5 minutes to explain her amendment if that is her desire.

Mrs. SCHROEDER. Mr. Chairman, I would be more than happy to yield to the gentleman from Florida for his substitute. This amendment, which was adopted by the Committee on Post Office and Civil Service, was recommended by the administration. It places limits on the abilities of the Secretaries of Commerce and Agriculture to utilize the Foreign Service personnel authorities by saying that those authorities can only be used for certain foreign affairs related aspects of their Departments.

Subsequent to adoption by the committee, a series of discussions took place within the administration. As a result, the administration agreed to accept slightly more flexible language, which I understand will be offered by the gentleman from Florida (Mr. FASCELL). I have no problem with this change and will accept it.

AMENDMENT OFFERED BY MR. FASCELL AS A SUBSTITUTE FOR THE POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENT

Mr. FASCELL. Mr. Chairman, I offer an amendment as a substitute for the Post Office and Civil Service Committee amendment.

The Clerk read as follows:

Amendment offered by Mr. FASCELL as a substitute for the Post Office and Civil Service Committee amendment: In lieu of proposed new section 202(a) shown in italic type beginning in line 22 of page 18 and ending in line 8 of page 19, insert the following:

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a)(1) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to other personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment offered as a substitute for the committee amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. The gentlewoman from Colorado has explained what the substitute is about. The gentlewoman offered the committee amendment. This substitute represents a compromise between the two committee versions and would specifically permit use of the Foreign Service Act authorities by the Foreign Commercial Service and the Foreign Agricultural Service. It would also permit the President to direct the authorities to be used for other personnel in both Departments who serve abroad. This is consistent with our intent that a requirement of service abroad be central to the use of Foreign Service Act authorities. Therefore I urge support of the substitute.

Mr. BUCHANAN. Mr. Chairman, I rise in support of the substitute amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL) as a substitute for the Post Office and Civil Service Committee amendment.

The amendment offered as a substitute for the Post Office and Civil Service Committee amendment was agreed to.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendment, as amended.

The Post Office and Civil Service Committee amendment, as amended, was agreed to.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to observe that the committees involved would include at this point the Committee on Interior and Insular Affairs and the Ad Hoc Committee on Energy. They refer to this legislation as being on the fast track.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule which allows us to be on this fast track, I ask the Clerk to report the following committee amendments to be considered en bloc.

The amendments are to pages 47 and 222, relating to the Foreign Service schedule.

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Post Office and Civil Service Committee amendments: Page 47 in the table below line 19, strike out "GS–7", "GS–6", "GS–5", and "GS–4" and insert in lieu thereof "GS–8", "GS–7", "GS–6", and "GS–5", respectively.

Page 222, strike out line 3 and all that follows down through line 10.

Page 222, line 11, strike out "(D)" and insert in lieu thereof "(C)".

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, the amendment was adopted by the Committee on Post Office and Civil Service. It corrects a problem which we created in subcommittee in the statutory pay linkages. When we decided to link Foreign Service pay rates to the general schedule, we did so because the President has not used his authority over the past decade to keep Foreign Service pay rates comparable with the general schedule. However, in linking the rates, we pegged the lower paid Foreign Service staff to general schedule rates which were too low, given the knowledge, skill, and expertise of the positions. In the Post Office and Civil Service Committee, we corrected those linkages. This amendment makes the change.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were agreed to.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to page 60, relating to the designation of Foreign Service positions.

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Post Office and Civil Service Committee Amendments. Page 60, line 3, immediately before "The" insert "(a)". Page 60, after line 16, insert the following new subsection:

(b) A position in the United States may be designated as a Foreign Service position under subsection (a) only if the Secretary determines—

(1)(A) that the functions of the position cannot be performed without significant experience abroad in the conduct of foreign affairs, or

(B) that the position is required to be designated as a Foreign Service position—

(i) to provide opportunities for rotation of members of the Service from assignments abroad to assignments in the United States, or

(ii) to provide training for future assignments abroad, and

(2) that the advantages of continuity of incumbency or specialized skill in the position do not outweigh the advantages from its designation under this subsection.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, I now offer an amendment adopted by the Committee on Post Office and Civil Service which restricts the use of the Foreign Service personnel authorities to cases in which there is a clear need.

The amendment, adding a new section 501(b), serves as a limitation on authority of agency heads to use the Foreign Service personnel authorities. This section codifies existing regulations saying that positions in the United States can only be classified as Foreign Service positions if there is a need for foreign policy expertise, a need to provide rotational opportunities or a need for training for future overseas assignments. Also, the advantage of continued incumbency or specialized skills must be outweighed by the advantages of a Foreign Service designation.

The provision reflects a longstanding Federal policy of relying on the personnel authorities contained in title 5, United States Code, unless there is a strong reason to depart from these provisions. The need for rotation and the desirability of an up-or-out system serves to justify the existence of a Foreign Service personnel system. Where these factors are absent, employees should be subject to the same statutory requirements applicable to other government employees.

Despite the fact that section 501(b) is not intended to change the basic groundrules, some in the foreign affairs agencies have voiced concern that statutory limitations on use of Foreign Service authorities might invite legal action. They point to law suits that have been filed in the past on this issue, when there was no statutory limit.

I want to make my position clear: I oppose any unwarranted proliferation of use of the Foreign Service authorities. First, the primary motivation behind this bill was to clear up and simplify the existing rampant personnel categories in the Foreign Service. Currently, the Department of State has as many as 16 distinct personnel categories, each with its own rights and obligations. This chaos has resulted from the undisciplined way in which management has manipulated personnel rules to meet immediate needs or to respond to momentary shifts in personnel management philosophy. This legislation uses some strong medicine to cure this disease, including the involuntary conversion to the general schedule of some 1,200 to 1,500 Foreign Service employees who do not and are not required or expected to serve abroad. If we are going to clean up this system, let us do it right and prevent the recurrence of what has occurred over the last decade.

Second, the Foreign Service is designed for frequent rotation, worldwide availability, steady career progression within the system, and generalized skills. Under title 5 personnel authorities, employees develop specialized skills, are appointed to positions which contain clearly articulated duties, can only be assigned abroad with their consent, and win promotions through applying for new positions. The Foreign Service personnel system is designed for a specific and particular use, while the title 5 authorities are much more generally applicable. To use the Foreign Service authorities for other purposes undercuts the effectiveness or both systems and creates artificial distinctions between types of employees. Where misuse of the Foreign Service personnel authorities has occurred, poor morale and lower productivity has followed in its wake. Time and time again, agency management has failed to see the ramifications of sloppy usage of the Foreign Service personnel system. This bill is intended to preclude such sloppiness.

Mr. FASCELL. If the gentlewoman would yield, I do not have any problem with the philosophy behind this amendment. My problem is that I do not think these requirements should be in a statute. Rather, I think Congress should communicate its concern and oversee the Department's personnel management to make sure it complies with congressional intent.

There are numerous problems if we place these restrictions in statute. First, are we creating a new right of action by disgruntled employees against the foreign affairs agencies? At the least, I think this would certainly be tested in the courts.

Second, we just created a new personnel system at the Agency for International Development, under the Obey amendment to the foreign aid bill. Does this provision overrule the Obey amendment? The Post Office and Civil Service Committee Report indicates that the Obey amendment is not intended to be altered. Nevertheless, there are those in AID who are quite concerned about a possible change in the law.

Third, does this language cover the Peace Corps? Since 1965, the Peace Corps has had a unique personnel system which utilizes elements of the Foreign Service system for all employees. Does this amendment force the Peace Corps to create two personnel systems?

Because of all these problems, I would prefer to create legislative history on when it is appropriate to use the Foreign Service personnel authorities, rather than doing it by statute.

Mrs. SCHROEDER. I am sympathetic to what you suggest.

Let me clarify the three issues you raised. First, this position designation amendment is not intended to create any new legal rights. Indeed, the Office of Personnel Management, in answer to a query from Chairman HANLEY, believes that no new legal rights are created. I ask unanimous consent that a copy of that correspondence be made a part of the RECORD.

Second, our committee report is quite clear that this amendment does not change the Obey amendment. I know that concerns have been raised.

Third, our committee came out differently on this issue of the Peace Corps personnel system. The langauge in the Foreign Affairs Committee bill provides for a continuation of the status quo in the Peace Corps. I do not intend to contest this issue, although I find the current personnel system at the Peace Corps troublesome. If we adopt the Foreign Affairs language on the Peace Corps, I think our intention not to apply this section to the Peace Corps is quite clear.

Having said all that, I would be perfectly willing to agree to vote down this amendment with the understanding that we have created clear legislative direction to the agencies authorized to use the Foreign Service personnel authorities that they use those authorities in accordance with the criteria set out in the amendment; namely, that positions in the United States should be designated as Foreign Service positions only if the functions cannot be performed without significant experience abroad in the conduct of foreign affairs or if the position is needed for rotational purposes or for training for assignments abroad. Also, the advantage of continued incumbency or specialized skills must not outweigh the advantage of a Foreign Service designation.

Mr. FASCELL. That is fine with me. This gives the agencies the necessary flexibility to insure appropriate staffing.

Mr. Chairman, will the gentlewoman yield further?

Mrs. SCHROEDER. I will be happy to yield to the gentleman from Florida.

Mr. FASCELL. As the gentlewoman knows, I have had some reservations about writing this kind of concern ex-

plicitly in statute. I think that the general concept which is sought by the language is fine. I would have no trouble with that because it is rational and is essential.

The other aspect of it is, I just want to be sure we understand that there would be flexibility retained in making these decisions and the only way I could see that that could be done would be to oppose the amendment, although we would have the legislative history and the effort of the gentlewoman's committee to write it explicitly in the statute so that the agency knows exactly what the gentlewoman is talking about.

Mrs. SCHROEDER. Mr. Chairman, I certainly appreciate the gentleman pointing this out. I know we have had trouble deciding this. That is why I would like to put this in the debate as our legislative history on this position designation amendment.

I would be more than willing, I guess, to let the amendment go down to make sure we have not shutoff that flexibility about which the gentleman from Florida is so concerned and I think rightfully so.

Basically, I guess what we are agreeing to do is create legislative history as to where it is we hope we go and yet not put this into the cement at this time because it is still developing.

Mr. FASCELL. I thank the gentlewoman. As usual the gentlewoman is very concise and very thorough. I would hope, therefore, Mr. Chairman, for this legislative history being established, that the committee amendments would then be disagreed to.

□ 1700

The CHAIRMAN. Is the gentleman opposing the amendments?

Mr. FASCELL. I am opposing this amendment specifically that is before us.

The CHAIRMAN. They are en bloc, and the gentleman is opposing them?

Mr. FASCELL. Yes, that is correct, Mr. Chairman.

Mrs. SCHROEDER. Mr. Chairman, they are the amendments that we are offering as committee amendments en bloc, but we are understanding the problems and the State Department's problems. We want the legislative history here, but we are willing to have them go down. We are just offering them.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were rejected.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to pages 86, 88, 89, 93, and 100 (beginning in line 25), 101, 102, 109, and 111 (relating to rights of former spouses).

The Clerk read as follows:

Post Office and Civil Service Committee amendments: Page 86, line 20, strike out "for not less than 10 years".

Page 88, strike out line 4 and all that follows down through line 10.

Page 88, line 11, strike out "(11)" and insert in lieu thereof "(10)".

Page 89, line 1, strike out "(12)" and insert in lieu thereof "(11)".

Page 89, line 8, strike out "(13)" and insert in lieu thereof "(12)".

Page 93, strike out line 17 and all that follows down through line 20 on page 95 and insert in lieu thereof the following:

(b)(1)(A) Any married participant who retires shall receive a reduced annuity and provide a maximum survivor annuity for his or her spouse unless the participant elects in writing at the time of retirement to waive or reduce the maximum survivor annuity for his or her spouse. Any election by any participant under the preceding sentence shall not be considered valid unless the participant establishes to the satisfaction of the Secretary of State (i) that the spouse has been notified of the loss of or reduction in survivor benefits or (ii) that the participant has complied with such notification requirements as the Secretary of State shall, by regulation, prescribe.

(B) If a participant or former participant has a former spouse for whose benefit a survivor annuity is required to be provided by the terms of any court order under section 820(b)(2), the participant shall receive a reduced annuity and provide a survivor annuity for that former spouse under section 814(a).

(2) The annuity of a participant or former participant, excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600.

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(A).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(a) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(a)(4)(B).

(4) An annuity payable from the Fund to a surviving spouse shall commence on the day after the annuitant dies and shall terminate on the last day of the month before (A) the death of the surviving spouse, or (B) if the surviving spouse remarries prior to attaining the age of 60 years, such remarriage. If a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

Page 100, line 6, strike out "804(12)" and insert in lieu thereof "804(11)".

Page 100, line 15, strike out "or surviving former spouse".

Page 100, line 23, strike out "(1)".

Page 100, beginning on line 25, strike out "and his or her spouse jointly elect" and insert in lieu thereof "elects".

Page 101, strike out line 11 and all that follows down through line 16.

Page 101, line 23, after "reduced" insert ", subject to any reduction required to provide a survivor benefit under section 814(a)".

Page 102, line 8, strike out "814(b)(5)" and insert in lieu thereof "814(a)(5)".

Page 109, lines 10 and 14, strike out "814(b)" and insert in lieu thereof "814(a)".

Page 111, beginning on line 3, strike out "or surviving former spouse who was married to the participant during the period of recall service".

Page 111, beginning on line 11, strike out "or such a surviving former spouse".

Page 111, line 15, after the period insert the following new sentence:

"Any surviving former spouse who was married to the participant during the period of recall service shall be entitled to have the same election rights with respect to an annuity under section 814(a) that a surviving spouse has under this subsection if and to the extent expressly provided in a court order under section 820(b)(2).".

Page 111, line 24, strike out "814(b)" and insert in lieu thereof "814(a)".

Page 114, strike out section 814, beginning on line 1 and ending on line 8 of page 121 and insert in lieu thereof the following:

SEC. 814. FORMER SPOUSES.—(a)(1) If a court order under section 820(b)(2) expressly so provides, in the case of any participant who is entitled to receive an annuity and who is survived by a former spouse, the former spouse shall be entitled to a survivor annuity in an amount which shall be determined by or in accordance with the provisions of that court order if the court order is consistent with the provisions of this chapter.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or annuities for any spouse or former spouse or combination of such survivor annuities, under this subsection (and section 806) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806.

(B) Once a survivor annuity has been provided for under this subsection (or section 806) for any spouse or former spouse of a participant or former participant, a survivor annuity may thereafter be provided for a spouse or former spouse of that participant under this subsection (or section 806) only for that portion (if any) of the maximum available which is not committed for survivor benefits for any spouse or former spouse whose prospective right to such annuity has not terminated.

(C) After the death of a participant or former participant, a court order under section 820(b)(2) may not adjust the amount of the annuity of any former spouse under this subsection.

(5)(A) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless an election is in effect under subparagraph (B).

(B) Subject to paragraph (4)(B), the participant may elect in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity

under section 806(b)(3) for any spouse of the participant.

(b)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (a) for a former spouse pursuant to a court order under section 820(b)(2), such participant may elect an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State, and any annuity under this subsection shall not be considered as a survivor annuity for purposes of the provisions of section 806(h) requiring an election of certain survivor benefits.

(c) Section 806(1) shall not apply to any annuity payable under subsection (a) or (b).

Page 125, beginning on line 22, strike out "(and to any former spouse" and all that follows down through line 23 and insert in lieu thereof a period.

Page 126, strike out line 7 and all that follows down through line 9 and insert in lieu thereof a period.

Page 129, strike out subsection (i) of section 815, beginning on line 2 and ending on line 18 of page 129.

Page 134, strike out subsection (i) of section 816, beginning on line 8 and ending on line 2 of page 135.

Page 136, strike out line 21 and all that follows down through line 24 of page 137 and insert in lieu thereof the following:

(b)(1) Payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary to another person to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(2) Any former spouse of a participant or former participant shall be entitled to a survivor annuity under section 814(a) of this chapter if and to the extent expressly so provided for in the terms of a court decree of divorce or annulment, or the terms of any court order incident to such decree.

(3) This subsection shall not apply in the case of any court decree or order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

Page 18, line 138, strike out "(3)" and insert in lieu thereof "(4)".

Page 138, line 24, strike out "(4)" and insert in lieu thereof "(5)".

Page 24, strike out line 1 and all that follows down through line 6 on page 139.

Page 267, strike out line 16 and all that follows down through line 25 and insert in lieu thereof the following:

(2) The provisions of such chapter regarding the rights of any former spouse to any annuity under 814(a) shall apply only with respect to an individual who, after such effective date, becomes the former spouse of a participant or a former participant in the Foreign Service Retirement and Disability System.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The CHAIRMAN. The gentlewoman from Colorado is recognized for 5 minutes in support of the amendments.

Mrs. SCHROEDER. Mr. Chairman, I oppose this amendment that I am offering. I would like to reserve my 5 minutes for later. Is that possible?

The CHAIRMAN. The gentlewoman will be protected.

Mr. FORD of Michigan. Mr. Chairman, I rise to speak in favor of the committee amendments.

Mr. Chairman, I quite understand the discomfort of the gentlewoman from Colorado. We have been discussing this issue for several years. What really is before us is really rather simple, in a way, but far-reaching in its impact.

The bill that was presented to our committee by the gentlewoman's subcommittee proposed that after the expiration of a fixed period of time, the spouse of a Foreign Service officer would have a vested right in that Foreign Service officer's pension rights so that if the Foreign Service officer were to serve for, say, 30 years—15 of which he or she was married to wife No. 1 or husband No. 1, and 15 of which he or she was married to wife or husband No. 2, that the two respective spouses were to share in a vested interest in the pension not only during the surviving period of the Foreign Service officer while he was on retirement, where they would divide the retirement between them and the former spouse, but also with respect to the benefits at the time that the Foreign Service officer passed on.

Now, how did this come about? Actually, prior to 1978, for many years the Federal Code in title V provided that annuity benefits of Federal employees were not reachable by any kind of court process. They were insulated from being determined or distributed in divorce proceedings or any other kind of legal proceedings. In the 95th Congress, the gentlewoman proposed that all Federal annuities be prorated between two parties to a marriage for those years or that part of a total pension that was accumulated during those years that one of them worked for the Federal Government.

We chose instead, in the committee, to provide that a court, when it was determining what should be done in a divorce separation or some other disposition of the property of the parties, should look at the individual parties, the circumstances pertaining to those parties, and be able to take into account all of their assets, including any rights they had in a pension fund. And so, as a result of that the House overwhelmingly passed the bill. The Senate agreed with us, and on September 15, 1978, we made annuities for all Federal employees except Foreign Service officers subject to legal process.

So, since that time all other Federal annuities can be the subject of consideration by the court when awarding property or support, and so forth, in a divorce proceeding. Now, there is no Federal divorce law. There are no Federal courts to grant divorces. That is a matter for State courts, and as the lawyers and others in this Chamber know, the variation between States is sometimes very great. As a matter of fact, that whole field of law has been turning over very rapidly in the last two or three decades, and old and very revered ideas about the respective rights of people because of their sex at the time of a divorce have been turned over very rapidly. We now see the phenomena of females paying child support, and males getting child custody—things that did not happen a few years ago.

What the gentlewoman is doing now is trying to extend this idea to the Foreign Service, and the argument Members will see in the committee report is that this is a little different because Foreign Service officers have spouses who have special kinds of duties, and as the report says, until 1972 the wife, but not the husband, of a Foreign Service officer used to get a report card on how nice she was in terms of entertaining at social events, and so forth. Thank goodness, that kind of archaic thinking has left most of our society, including the Foreign Service, so the gentlewoman's amendment is not intended to get to that problem. That is behind us.

What we discovered, however, was that after we enacted the law to permit all other annuities to be dealt with by the courts, it was discovered that unintentionally we had excluded Foreign

Service officers, so what we now are suggesting in the committee amendment that is before us is that we provide exactly what we have made the law to be for all other Federal annuitants, and apply that same law to Foreign Service officers.

Very simply, it is this: If a Foreign Service officer, just like any other person who acquires the right in the military and civilian service of the Federal Government, acquires a property right in an annuity, whether it be for retirement or payment as a survivor's benefit, that that interest can be examined by a court during a divorce proceeding, and the court can award a portion of that to the nonfederally employed spouse, whether it is male or female, if it is, in the opinion of the court, the appropriate thing to do.

A court might, on the other hand, decide that the $250,000 home that they have over here in Arlington should go to the wife, and that the Foreign Service officer, who has been living without his wife for 10 years overseas, should at least have his pension, even though he has no home.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. That is perfectly all right with me as long as that is what that judge, under those circumstances with respect to those people, believes is equity at that time. Plain and simple, what the committee amendments ask us to do is leave to the domestic relations courts, or court, the disposition of this property right as they dispose of other property rights, and I would suggest to those who are concerned about the plight of poor spouses who have not been able to acquire any rights heretofore, that since July of this last year, by Executive order signed by President Carter, Foreign Service officers' pension rights have been reachable by the courts.

The gentlewoman sent all of us a letter and said that this has not worked because only one court has given a wife a property settlement involving the pension, but the fact is that it has only been on the books since last July, and it has not had time to do much of anything yet. Some of the people involved, I suppose, have not had time to catch up with it. There have been very few divorces that have occurred since the change in the law, so if we come back a year from now and we find out that the courts are willy-nilly, wholesale disregarding this annuity and refusing to take it into account, that might be the time for us to meddle.

□ 1710

But I am pleading with the House not to get us into the domestic relations business and leave that to the State legislatures.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, let me ask, when would the property right vest under the amendment that is being considered now?

Mr. FORD of Michigan. Well, I understand it is still 10 years. After 10 years of marriage the nonfederally employed spouse, male or female, would have a vested interest in the pension, and that portion would be determined by the relative number of years they were married as against the total years the annuity accrued. In other words, if one worked for the Federal Government for 30 years and had a 30-year pension, the former spouse would be entitled to up to 50 percent. At the time of retirement 50 percent would go to the former spouse and 50 percent would be shared by the annuitant and possibly a new spouse or a new family.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, suppose there were children of the first marriage and the mother died within the 10-year period; would those children stand in the stead of their mother or the wife?

Mr. FORD of Michigan. No; I do not believe so. It would not affect the survivor's rights at all or the children.

Mr. HALL of Texas. It would not?

Mr. FORD of Michigan. This only creates a right for a surviving spouse, not for surviving family members.

Mr. HALL of Texas. If the party has a vested interest, how could we keep it from descending on the children upon the death of their mother?

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. HALL of Texas, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, in answer to the gentleman's question, I have to tell him honestly that I cannot give him a good legal reason for it. I can only tell him that it is in fact what happens at the present time, and am not really sure why.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, this is a personal right fixed by law. We are not talking about testimentary rights to property. Unless the statute makes it devolve on the children, it does not.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. Mr. Chairman, first, before I yield let me see if I can unscramble it in this way for the gentleman.

We are talking about two kinds of rights acquired. One is the so-called pension right for the person fortunate enough to live past retirement and collect a monthly annuity during the balance of their life. They leave to their spouse a survivor's right that goes only to that spouse, and that does not become a right until the annuitant dies. That is a separate right which we are not affecting with this amendent.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, the gentleman from Michigan (Mr. FORD) is correct because the law establishes this right.

If the annuity could be inherited by the wife and children, we would not need this law to start with; everything would be taken care of.

Mr. HALL of Texas. But, Mr. Chairman, if the gentleman will yield further. if the property vests in the wife and that wife dies, under the community property statutes of my State the interest that the mother had would vest by descendant distribution in her children or by a will to whomever she may will that property.

Mr. FORD of Michigan. Mr. Chairman. the property does not really vest. The right to collect the annuity vests, and the right to collect the annuity is still contingent upon the annuitant's reaching retirement age. What it really says is that if he or she, the Foreign Service officer, lives long enough to collect the pension, the former spouse, regardless of the vesting status, has the right to collect the vested portion of that.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has again expired.

(On request of Mr. HALL of Texas, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. HALL of Texas. Mr. Chairman, if the gentleman will yield for one additional question. may I ask, will this amendment, if it passes, affect the substantive law of the various 50 States in which rights to community property or separate property rights might exist presently in those States, or would it supersede what we now have?

Mr. FORD of Michigan. Only to this extent: The gentlewoman is opposing the committee amendments. If we strike the committee amendents and then go back to her original proposal, that creates a vested right without regard to what a court does in terms of the divorce.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. The gentlewoman is going to correct me and say, however, that a court could come in later and change it.

Mrs. SCHROEDER. No.

Mr. FORD of Michigan. Go ahead, Mr. Chairman, I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I think what we are saying is that there is an entitlement subject to a court review. I think what we are doing is just shifting the presumption.

I want to compliment the gentleman from Michigan (Mr. FORD). I think what we have is two different approaches to the problem. What the gentleman is saying is that the court must act in all cases first. I am saying there is a presumption of an entitlement after 10

years of marriage subject to the court review. That is the difference.

Mr. FORD of Michigan. Mr. Chairman, if I may recapture a moment or a second of my time, I would just say that belongs in the closet with the presumption that the mother is always entitled to custody because mothers are better than fathers.

The domestic law in this country is changing more rapidly than anything else to reflect the changes in our society. I suggest that we have no business meddling in it. This is a perfect example of how dangerous it is for us to reach out there to the domestic relations courts and try to tell the judges what to do. We should let them take care of the divorce cases and effect proper settlements and the like, and we will do well if we can take care of those things that are within our jurisdiction.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition to the committee amendments.

Mr. Chairman, we have before us two somewhat different proposals for dealing with the same serious problem. I will, first, set out the problem and, then, explain why the Foreign Affairs Committee language is a better solution than the Post Office and Civil Service Committee scheme.

The need to provide pension benefits to former spouses of members of the Foreign Service was clearly spelled out in the hearings held on the Foreign Service Act. There is a general need to provide these benefits to the spouses of all Federal employees. In the private sector, employees are required to participate in the social security system. Nonworking spouses gain retirement benefits, based on the contributions of their working spouses. In the Federal sector, social security is not mandatory and the retirement systems for Federal workers do not provide retirement benefits for spouses. Hence, in traditional role model families; that is, where the husband works for a salary and the wife works for free in the house, a death of the husband or a divorce could leave the wife penniless.

The nature of the Foreign Service makes this need far more acute. All members of the Foreign Service are subject to frequent and continual rotation throughout their careers. The spouse has no opportunity to build an independent career, if he or she accompanies the member of the Service. Following death or divorce, the spouse has insufficient work experience to find a job, no retirement benefits in his or her own right, and no right to a portion of the benefits of the member of the Service.

Wives of Foreign Service officers have a special claim to this protection. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation report on their performance of representational duties. In effect, Foreign Service wives were impressed into service as unpaid representatives of the U.S. Government. This tradition of unpaid service continues, although the appraisals are no longer officially made.

The need is clear; the size of the problem is growing. No-fault divorce produces over a million divorces a year, nationwide. The ease with which these divorces can be achieved has left thousands of women without adequate economic protection. Indeed, only 5 percent of divorcees over aged 30 receive alimony and the mean level of child support received is a puny $2,430 per year.

Now, let me explain why the provisions of the Foreign Affairs Committee bill are better than those adopted by the Committee on Post Office and Civil Service.

H.R. 6790, as reported by the Committee on Foreign Affairs, provides for a pro rata division of retirement and survivor's benefits, based on the number of years of marriage, between the member of the Foreign Service and the former spouse. This pro rata division is a presumption, subject to affirmation, modification, or vitiation by the State family law court. The bill gives the current spouse and former spouses of over 10 years a right to sign off before the participant waives all survivor's benefits. Also, former spouses of all participants in the Foreign Service retirement system, whether active duty or retired, are able to use this law.

The Post Office and Civil Service Committee amendment changes these provisions. Rather than establishing a presumption for division, the Post Office amendment merely permits courts to divide both retirement and survivor's benefits without any Federal guidance. In a world of universally competent judges and well-informed domestic relations lawyers, the presumption for pro rata distribution would be unnecessary. Recent experience with reforms in divorce law makes it very clear that self-executing legislation, such as this pro rata distribution presumption, is essential to assure that the law is followed.

The Post Office amendment also eliminates the right of a current former spouse to sign off on a waiver of survivor's benefits. By so doing, the Post Office amendment may render the supposed ability of a former spouse to share in survivor's benefits a hollow right. Under the Post Office amendment, the member of the Foreign Service retains the unilateral right to cut off whatever share of survivor's benefits a spouse may have thought he or she had.

Additionally, the Post Office amendment only applies to future divorces and future retirements. This leaves numerous former spouses of Foreign Service officers destitute. By using this effective date, the Post Office amendment cuts off from benefits those already divorced.

Let me expand on the question of effective date. The Foreign Affairs version provides survivor's benefits in the case of former spouses of members of the Service and retirees who die after the effective date. It provides a retirement annuity for spouses who are divorced from active duty members of the Service after the effective date. Providing survivor's benefits for former spouses of current retirees is essential to reduce the hardship on dozens of former Foreign Service wives who are now living at or near poverty. This group of would-be beneficiaries are easily identified and clearly deserving. To provide benefits for these former spouses, however, requires a rule which may provide benefits for others who do not have the same equities on their side. This latter group includes former spouses who have been out of the picture for many years.

To deal with this dilemma, I intend to offer an amendment after the Ford amendment is, I hope, voted down. My amendment will assure that former spouses who were divorced prior to the effective date get notice of the new law. If they do not promptly file a claim, they will be cut off from all benefits. If they do file a claim, the active duty member or retiree can go back to the court of jurisdiction and seek to cut off the former spouse. Any slight reduction in current retirement benefits which might be needed to pay for previously unelected survivor's benefits for a former spouse would not be retroactive under this formula. This means that if a current retiree has a qualifying former spouse and if that retiree is one of the 5 percent who do not elect survivor's benefits, the maximum 10 percent reduction in retirement annuity would start from the the claim is honored.

One point should be made very clearly in connection with the foreign affairs language. It creates a new entitlement for a former spouse. The entitlement for survivor's benefits should be considered by state courts as newly discovered marital property. If the value of the survivor's benefits were not taken into account at the time of divorce and property settlement, State courts should be expected to reopen divorce decrees to include this property in a settlement. As I said before, I would prefer them State courts to allocate retirement benefits rather than relying on a somewhat arbitrary pro rata formula. Without the pro rata formula, however, I think it is very unlikely that state courts will consider retirement benefits as marital property.

The Post Office amendment also does not remove the prohibition on a Foreign Service retiree assigning his or her survivor's benefits to a former spouse. The Foreign Affairs Committee bill permits this freedom of choice to the retiree.

Adoption of the Post Office amendment would result in grossly unequal treatment of Foreign Service spouses, depending upon the practice and laws in the states in which they are divorced. The General Accounting Office recently released a report on the implementation of Public Law 95–366, the law enacted in 1978 to permit courts to divide Federal civilian pensions upon divorce. The GAO reports that in the first 1½ years after enactment, 261 court orders were received, 62 of which predated passage of the act. Moreover, 40 percent of these court orders came from three States—California, Texas, and Washington State. Even more alarming is the fact that there were no orders from Maryland or the District of Columbia, and only one from Virginia—all of which have large concentrations of Federal employees and retirees.

The most important point is that both H.R. 6790, as reported by the Foreign

Affairs Committee, and the bill as reported from the Post Office and Civil Service Committee adopt the policy that retirement and survivor's benefits should be split between the member of the Foreign Service and his or her spouse, based on the equity of the situation. The language in the Foreign Affairs Committee bill is a far more effective way of accomplishing that policy than is the Post Office Committee amendment.

□ 1720

Mr. HALL of Texas. Mr. Chairman, will the gentlewoman yield for a question?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, the gentlewoman indicated forum shopping. As I understand the law of my State and other States, when a person is serving in Foreign Service, if he lived in Texas when he went to that foreign country, or if he lived in the State of Louisiana, or some other State, he cannot go back to anyplace except the State where he lived when he went into the Foreign Service, unless he or she might have established a residence at some other locale, at some other State.

Now, does the gentlewoman's amendment allow a Foreign Service officer or his spouse to go to any area of the United States and file a suit for divorce, or would they be relegated to go back to the State where they lived prior to going into the Foreign Service?

The CHAIRMAN. The time of the gentlewoman from Colorado has expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. We do nothing in the amendment to deal with where you are domiciled. That is a matter of State law. As the gentleman knows, there are as many different domicile laws as there are different States. We do not touch that at all. We are only trying to deal within the very narrow confines of retirement rights and survivors' rights. We are only saying that, in the case of the divorce, when it goes into the State court, where it will have to go, whatever State it is, dealing with domicile of whatever State they came from, or what have you, when they go in there, that there is a presumption that it should have vested some kind of entitlement after 10 years of marriage, unless the court finds a reason to go the other way. That is all.

Mr. HALL of Texas. If the gentlewoman will yield for one additional question, what is the basic reason for having a difference in the vestiture proceedings on a Foreign Service officer, as opposed to a civil service employee?

Mrs. SCHROEDER. The basic reason is not so much Foreign Service versus Civil Service because the civil service employee is, No. 1, stateside, and No. 2, not being moved all over the world. It is very possible for that spouse to have an independent career.

But, No. 3—and I think most important—is Foreign Service versus private sector. If these people were in the private sector, there would be a vesting after 10 years of marriage that we are extending to them. They are working in the States and they could have their own separate career. But for a Foreign Service spouse, who follows that Foreign Service officer around the world, it is almost impossible to have any kind of rights of your own.

So I think there is a much stronger case that could be made for that type of service versus someone who is in the continental United States.

Mr. HALL of Texas. If the gentlewoman will yield, do we have civil service employees who serve abroad? How would that be handled?

Mrs. SCHROEDER. This act is trying to deal with that.

The CHAIRMAN. The time of the gentlewoman from Colorado (Mrs. SCHROEDER) has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. I just want to answer the gentleman's question. One of the things we are trying to do in this legislation is clarify, so that Foreign Service authorities will be used for people who are abroad. That is one of the very important reforms in this act.

Mr. HALL of Texas. I have one additional question.

The date of marriage of the parties would not be a compelling determination of whether or not property acquired after the marriage would be community or separate, but whether or not they served in a particular locale would be the controlling interest?

Mrs. SCHROEDER. Whether they are in the Foreign Service, yes.

Mr. FASCELL. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, we have to clarify it, because the gentleman from Texas is talking about a particular locale for residence, which does not have a thing to do with the Foreign Service. It does not have anything to do with this bill. It does not have anything to do with the issue.

Mr. HALL of Texas. Why are we talking about it?

Mr. FASCELL. The State court, if and when the parties ever get into court, will make the decisions based on whatever the law of that court is.

The CHAIRMAN. The time of the gentlewoman from Colorado (Mrs. SCHROEDER) has expired.

(On request of Mr. FASCELL and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 4 additional minutes.)

Mr. FASCELL. By the way, Mr. Chairman, in case there is any doubt about it, I rise in opposition to the committee amendment offered by Post Office and Civil Service. On the Foreign Affairs Committee we went through this whole fight and we decided just the opposite of what the Committee on Post Office and Civil Service did. We felt there was a reason to make a distinction with respect to the presumptions that should apply to a spouse with respect to annuities and survivors' benefits, because of the fact that that individual, married to a Foreign Service officer, does not have the same opportunity or right that some other person would have to either establish a separate career or become a two-person working family or otherwise make an individual contribution toward earnings. The very nature of the service, the demand for responsibility on the spouse to the Service itself and to the individual Foreign Service Officer was that that spouse would have to make a contribution in terms of service.

Mrs. SCHROEDER. Mr. Chairman, I want to thank the gentleman from Florida for pointing that out. I would like to state that what the gentleman said is very, very important. We do nothing to domicile. We are just talking about the Foreign Service Retirement Survivors Act.

No. 2, in Post Office and Civil Service this amendment under consideration only passed by one vote. It was 11 to 12. The Senate has stayed with the original language. The Foreign Affairs Committee has stayed with the original language. I really urge this body to listen to my plea to turn down this amendment. I think it makes sense, and I think that the way the world has changed, we really, really need to take this into consideration.

Mr. LEACH of Iowa. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. Mr. Chairman, I would like to rise in support of the gentlewoman's position and say that this is an unprecedented position that this Congress is about to take and one of the most important women's issues, in a symbolic sense, that we will be voting on in this session. I would hope, on those grounds as well as on merit grounds, that this body deals with this amendment very seriously. I would only like to underscore what the gentlewoman has been saying.

Mrs. SCHROEDER. I thank the gentleman from Iowa. I think the gentleman from Iowa has seen how difficult it is for families who are in the Foreign Service to have two careers. They are paying a penalty that other people do not have to pay in the civilian sector and in the private sector. That is basically why we are saying that this is unique and this is different.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise to support the position of the gentleman from Michigan (Mr. FORD).

Mr. Chairman, let us appreciate the fact that this, by its very nature, is a difficult and emotional issue; but there are some facts to keep in mind.

First, as I understand it, as a general rule, divorce laws in the United States have always been under the jurisdiction of State legislative bodies and courts. I am not so sure that at this time in the Foreign Service personnel bill we should be involving ourselves in what could become, by virtue of taking the wrong position, a national divorce law. I really do not think we are moving in the right di-

rection unless we support the gentleman from Michigan (Mr. FORD).

Let me point out that the very difficulty of this lies in the understanding of what transpires in the Foreign Service.

In an individual divorce case, under all circumstances, courts will take into account the individual financial factors, the decision as to who was or was not at fault, the contribution or lack of a contribution of an individual, the individual financial position of one or the other parties. That is what the divorce court is for.

I am not aware that Foreign Service personnel are in any way shortchanged in the courts.

So the whole thrust of this amendment, as I see it, is to see to it that the decision as to how to divide the annuity properly be left to the court at the time of divorce settlement.

I do not think that the Congress should arbitrarily dictate a condition of settlement. That is the real issue before us.

I yield to the gentlewoman from Colorado (Mrs. SCHROEDER).

□ 1730

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Illinois for yielding.

I just want to say that I do not think we are changing one single divorce law in any State. I want to make it very clear that we are not doing a Federal divorce law. We are only talking about rights which we set out under the statute as to how they might vest in the same manner that we do with social security and other areas.

We have no intention of changing any State law. We leave it in there that it is subject to the court, so the court would clearly consider this as a portion of the property, but then when they get down to allocating it, they could clearly change it around.

I want the legislative history to reflect that if the gentleman's position loses and mine wins, that that is clearly what we had intended in my position and in the gentleman's committee's position, because we do not want to write a national divorce law. We have no intention of doing that. We want to leave it in the State court.

It is just that we want to have this fairness doctrine cranked in so that it can be considered, so that after 10 years of marriage, which I think is a long period of time and analogous to social security once again.

Mr. DERWINSKI. My summation of what the gentlewoman is trying to do is that she would dictate a condition in the divorce case. The Ford amendment, on the other hand, permits the equity to be settled in each individual case, which under normal circumstances I presume is the logical course of action.

Now, we did debate this vigorously in both committees. I think we would all be honest and say that there is a national emotional factor involved in a situation like this; but the Ford amendment, as I interpret the amendment, is an amendment of reason. It allows the laws of particular States to legitimately prevail.

The only possible concern that someone should have is that somehow, by the very virtue of being in the Foreign Service, a divorce proceeding involving a Foreign Service officer somehow would not have the legitimate attention of divorce authorities in any State. That is not so.

We have to assume, and I think properly so, especially in the case of negotiated settlements, that the legal rights of everyone are going to be fully protected. I would think then that the Ford amendment falls on the side of equity, practicality, and what would be really commonsense.

Mrs. SCHROEDER. Mr. Chairman, would the gentleman yield again?

Mr. DERWINSKI. If I have any time, I yield to the gentlewoman.

Mrs. SCHROEDER. I just want to say that maybe reasonable women might differ with reasonable men and hope that the gentleman will support my position instead of the Ford position.

Mr. DERWINSKI. Well, I would like to point out, and I realize that bad examples make bad law.

To recap, Mr. Chairman, this amendment authorizes the courts to divide the retirement and survivor benefits of a member of the Service to provide an annuity for a former spouse as part of an alimony or property settlement.

Divorce in the United States has always been a matter for State legislatures and the courts. For civil servants, the Congress limited itself to obligating the Office of Personnel Management to pay annuities to former spouses under State divorce decrees on a case-by-case basis. Under this amendment we are extending this requirement of law to the Department of State and the Foreign Service.

Perhaps the most emotional and misunderstood controversy in the Foreign Service Act, concerns annuities for former spouses of Foreign Service personnel. The Ford amendment, adopted by the Post Office and Civil Service Committee, logically and compassionately allows the divorce courts in each State to divide both retirement and survivor annuities in order to create separate annuities for former spouses in those cases where they are justified.

Neither the Ford nor the Schroeder language is going to make divorce less expensive or traumatic. The issue is whether we will defer to the State courts which examine these important matters on a case-by-case basis, or whether we plunge into legislating a national divorce law which blissfully ignores such crucial divorce factors as the independent wealth, desertion, or previous settlement advantages of the spouses.

For this reason, the American Foreign Service Association (AFSA), the only major Foreign Service union, rejects the Schroeder amendment and supports the Ford approach. Military personnel are also alarmed at the Schroeder amendment's precedent of partitioning annuities without regard to the circumstances of each case.

The Ford amendment lets the equities of each case dictate the existence and amount of any annuities, and I feel it is the only practical solution to a difficult issue.

Mr. BUCHANAN. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the Post Office Committee amendment.

Mr. Chairman, I would submit that the language in the bill which was stricken and replaced by the Post Office Committee amendment was carefully considered by both subcommittees, the Subcommittee on Post Office and Civil Service and the Foreign Affairs Subcommittee and approved by the Foreign Affairs Committee.

The gentlewoman from Colorado, I think in the language that we suggested, indeed, served a very important purpose and equity is on her side.

In the case of survivor annuity, this provision, I might say, is in line as the gentlewoman has made clear with existing provisions of the social security law, which permits nonworking spouses to acquire benefits based on the working spouse.

It is also in keeping with recent recommendations of the President's Commission on Pension Policy.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. BUCHANAN. Yes; certainly, I will yield.

Mr. FORD of Michigan. The gentleman is one of the dearest and closest friends that I have in this House. I know the gentleman would not want to mislead this House. He drew an analogy with the social security law. That is the best way to recognize what is wrong with what the gentlewoman is doing. In the social security law, the amendment originally was put in by the same gentlewoman who passed the ERA in this House, the gentlewoman from Michigan, Martha Griffiths. We from Michigan are very proud of her contribution in this regard. That provided that a woman who was unable to acquire a vested right in social security benefits because of years of taking care of children while the husband was out working would be able to draw as if she had been working during those years; but here is a distinct difference. In the case of a woman who is divorced from her husband after 10 or 15 or 20 years and then collects social security, if there is a second family and children in the second family, they also draw social security.

Under the gentlewoman's amendment, the Foreign Service officer would have half of his money go to him and his present family and half go to his former spouse, regardless of the circumstances that destroyed that marriage, regardless of fault, regardless of how many years they have been separated and what the equities might be. That does not happen with social security, I suggest to the gentleman from Alabama. There is no problem, because both the former spouse and the present spouse have equal rights and both of them get a full social security benefit.

The taxpayers paid for that treatment; but in this case you are taking away from the annuitant a part of his annuity and giving it to somebody as a property right.

I thank the gentleman for yielding.

Mr. BUCHANAN. Certainly, the gentleman is my dear friend, but let me respond in two ways.

First of all, let me respond as to why I believe equity would demand some consideration for the Foreign Service spouse. As too often has been the case, the wife has accompanied her husband on a tour overseas, giving up opportunities for a career of her own. Frequent transfers to posts around the world mitigate against the establishment of careers or the opportunity to develop marketable skills.

At the same time, this wife is expected to do things like planning and hosting social functions, attending various official functions and other duties that might interfere with an independent career.

A survey within the Department of State, I would point out to the gentleman, indicated that the wife of an Ambassador or Charge often devotes an estimated 167 hours per month, or more than a 40-hour week to official functions, for which she receives no compensation.

As the law now stands, this spouse can provide all of these functions for years and then, upon divorce, be left with nothing.

Up until 1972, the wives, although not the husbands of Foreign Service officers, were considered in the efficiency reports of those officers as a part of how they were rated in their own careers.

I would say that equity says these spouses should be covered and there should be a presumption that after 10 years they would begin to be vested with pension rights of their own.

I would point out that we in no way interfere with the divorce process or the actions of the courts. Indeed, the language which is stricken by the Post Office Committee language states, and I quote, in section 814(A)(1):

> Unless otherwise expressly provided by any court order under section 820(B)(1) a former spouse or participant is entitled to an annuity,

And so forth.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(By unanimous consent, Mr. BUCHANAN was allowed to proceed for 2 additional minutes.)

Mr. BUCHANAN. If you look over to the section to which that refers, in the case of any participant or annuitant who has a former spouse with respect to whom there is a court order, any right of any former spouse to any annuity under section 814, and so forth, shall be determined in accordance with a court order if and to the extent expressly provided for in the terms of that court order.

We do not disturb that in the least. We are seeking equity for spouses who have not received in the past and otherwise may not receive.

I urge defeat of the Post Office Committee amendment and support for the original language of the two subcommittees of the Foreign Affairs Committee.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for purposes of getting the attention of the distinguished chairman of the subcommittee, because I have a few questions I would like to ask him to try to clarify what this information does.

The first question is, does this amendment apply, I ask the attention of the gentleman from Florida (Mr. FASCELL), does this amendment apply to those foreign service officers who are already retired?

□ 1740

I think that is a fairly simple yes or no answer.

Mr. FASCELL. Well, now, let us not get carried away, Mr. DINGELL. I am just going to find the section in the law because you read it just as well as I did. So we will just read it again.

Mr. DINGELL. Does it apply to those retired?

Mr. FASCELL. At page 267.

Mr. DINGELL. I will yield to the gentleman if he can tell me.

Mr. FASCELL. That is what I thought the gentleman was doing. On page 267 it makes it quite clear that the provision is retroactive with respect to survivor annuities, but not retirement annuities. I just want our colleagues listening to understand.

Mr. DINGELL. Then it does cover those who are retired?

Mr. FASCELL. Why, of course—for survivor annuities.

Mr. DINGELL. Does it apply to those who are already divorced?

Mr. FASCELL. Sir?

Mr. DINGELL. Does it apply to Foreign Service officers who are already divorced?

Mr. FASCELL. Already what? Already in force?

Mr. DINGELL. Does this change in the law apply to Foreign Service officers who are already divorced?

Mr. FASCELL. Divorced?

Mr. DINGELL. Divorced.

Mr. FASCELL. For the purpose of survivors annuities, yes.

Mr. DINGELL. So a Foreign Service officer who might——

Mr. FASCELL. Retirement, no.

Mr. DINGELL. So if you have a Foreign Service officer who has been divorced for a period of 10 or 12 years and has a second family, it would already apply, it would apply to that Foreign Service officer and would permit his pension to be apportioned between his first wife and himself?

Mr. FASCELL. Just the survivor annuity, not his pension.

Mr. DINGELL. Not his pension?

What about the situation where a property settlement has already been made by the parties under a divorce?

Mr. FASCELL. If the court has jurisdiction, the court would still have jurisdiction.

Mr. DINGELL. But, as I understand it, then the provisions say that unless otherwise expressly provided by court order, so that the Foreign Service officer would then have to go into court.

Mr. FASCELL. He does not have to.

Mr. DINGELL. Well, if he was going to get relief, he would have to go back to court.

Mr. FASCELL. It depends on what you call relief.

Mr. DINGELL. If he had already paid alimony for years, if he had made a lump sum cash settlement.

Mr. FASCELL. But if you want to say it the other way, I am not being smart, I am trying to answer the gentleman's question.

Mr. DINGELL. Do you mind if I say it my way?

Mr. FASCELL. Just so you do not put words in my mouth, yes, you can say it any way you want to.

Mr. DINGELL. I am not trying to put words in your mouth. I am trying to find out what the proposal does. If the Foreign Service officer had already been divorced and had made a cash settlement in lieu of alimony, he would still be subject to the provisions of this proposal and compelled to then go into court to have this action set aside by the court; is that correct?

Mr. FASCELL. If he deemed it essential he could get the relief he wants.

Mr. DINGELL. So essentially what you are doing then is amending the earlier decree by this action in compelling the Foreign Service officer then to come back in to request that this action by the Congress be set aside; is that correct?

Mrs. SCHROEDER. Will the gentleman yield?

Mr. DINGELL. I will yield first to the gentleman from Florida who is handling the bill, I am told.

Mr. FASCELL. I am just handling one part of it.

Mr. DINGELL. I know.

Mr. FASCELL. I will say to my colleague from Michigan, there are two committees. I do not think I can help you. But the answer is yes, unless the court orders otherwise, the language is explicit.

Mr. DINGELL. So then a Foreign Service officer——

Mr. FASCELL. The presumption is rebutable, the gentleman knows that.

The CHAIRMAN. Let us have regular order.

Mr. FASCELL. I am trying to answer the question.

Mr. DINGELL. So if a Foreign Service officer had been divorced and had made a lump sum settlement with his former wife, to avoid coming under the provisions of the new language of the Foreign Affairs Committee bill he would have to go in then to court and ask to have himself expressly ordered excluded from this section, even though he might have made an earlier cash lump-sum settlement with his former wife? Is that not a fact?

Mrs. SCHROEDER. Will the gentleman yield to me?

Mr. DINGELL. I yield to the gentleman from Florida who is handling the bill.

Mr. FASCELL. I will yield.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am glad to, yes.

Is the answer yes or no?

Mrs. SCHROEDER. The gentleman

knows the State courts continue to entertain jurisdiction in divorce cases.

Mr. DINGELL. I am not unaware of that, but what I am trying to figure out is if he has made a lump-sum settlement earlier—maybe the gentleman from Michigan, (Mr. FORD) can help me. I do not think I am getting much help.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 5 additional minutes.)

Mr. FORD of Michigan. Will the gentleman yield?

Mr. DINGELL. I am glad to yield to the gentleman.

Am I correct in my understanding a lump-sum settlement that had been made in connection with the earlier divorce decree, that that is, in effect, set aside by this language and the individual who has made that lump-sum settlement, to come out from under the provisions of section 814 of the Foreign Affairs Committee bill, has to go in and has to solicit, has to solicit the court to remove him from the coverage?

Mr. FORD of Michigan. There is one further condition that the gentleman should add to his conditions, and that is that he must live long enough to get the court to do it after this bill is signed by the President because the right will be created when this act is passed. If he does not live long enough to go to court and get an order his annuity is going to be split between his former family that he may not have seen for the last 20 years and his present family.

Mr. DINGELL. I will yield to the gentleman, but first have some other questions and the gentleman from Michigan (Mr. FORD) has been giving me rather helpful answers. I would like to persist on that course.

Mrs. SCHROEDER. Will the gentleman from Michigan yield?

Mr. DINGELL. I will yield as soon as I finish with the gentleman from Michigan (Mr. FORD), I will assure the gentlewoman.

Now let us say that Mr. John F. Service has divorced his wife because she has abandoned him and his five minor children. Is he also still subject to the provisions of this if he has gotten a divorce?

Mr. FORD of Michigan. If the divorce——

Mr. DINGELL. So that his pension will be apportioned half to that former wife who has abandoned him and his minor children?

Mr. FORD of Michigan. No, with respect to the apportionment of the annuity paid during his lifetime. It will only be prospective. Divorces that occur after the active date of this law. It is the survivor's annuity that is retroactively disposed of.

Mr. DINGELL. But it would be, it would be retroactively apportioned even if he had had a lump-sum settlement?

Mr. FORD of Michigan. Exactly, without regard.

Mr. DINGELL. Or even if his former wife has abandoned him and his minor children; is that right?

Mr. FORD of Michigan. Without regard to any circumstances leading to divorce or that occurred during the proceedings or any determination made by the court.

Mr. DINGELL. Would the court be able to take these matters into consideration in connection with the negotiations which would go on between the parties regarding the property settlement?

Mr. FORD of Michigan. No; what would have to happen, I suppose, and it would depend on how long a court in a respective State would entertain jurisdiction, I suppose if you still had jurisdiction in the court in the State where you got the original order you could go back, as you do now, to modify the decision. I must caution my colleague by saying that, that many States will not let you reopen property settlements, they will only let you reopen life rights such as support or alimony where you have a changing circumstance to deal with. They will not let you go back and retry the facts on the property settlement.

Mr. DINGELL. So in many instances the question of reopening the property settlement would not be available to the person who was going to be compelled to pay additional benefits to a former wife; is that correct?

Mr. FORD of Michigan. I think the question should be addressed to the gentlewoman from Colorado. She is a competent and distinguished lawyer.

Mr. DINGELL. I am more comfortable getting the views of the gentleman from Michigan. I will yield to the gentlewoman in just a minute.

Now let us assume Mr. John F. Service has gotten divorced and he remarries and has a second spouse and children by the second spouse. Then he gets married a third time and gets divorce and has a wife and children by that third spouse. How is that annuity of his apportioned among the sundry partners?

Mr. FORD of Michigan. Each of the former wives or former husbands in the case of a female Foreign Service officer would be entitled to their respective proportion of the number of years it took to acquire the annuity that they were married to that person.

Mr. DINGELL. The next question is——

Mr. FORD of Michigan. If it is a 30-year annuity you could have a 10, 10, and 10 arrangement.

Mr. DINGELL. Does this amendment distinguish between the wife or the spouse who has his or her own retirement or who has substantial means where a subsequent spouse might not have these available and might be entirely dependent upon the Foreign Service officer's annuity?

Mr. FORD of Michigan. No, because the allocation of the right is based on time in service and not quality of service. It does not, it does not distinguish between a loyal spouse, a helpful spouse, a disloyal spouse, or a guilty spouse.

Mr. DINGELL. The gentleman says it does not distinguish between the helpful spouses and the disloyal spouses or the guilty spouses? In other words, under this a Foreign Service officer could divorce his wife because she had shot him and not killed him?

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 3 additional minutes.)

□ 1750

Mr. FORD of Michigan. If the gentleman will yield, I think that the gentleman should not pass this opportunity to recognize that the gentlewoman is now asserting the absolutely perfect example of perfection by seniority, because seniority is the only consideration that applies in acquiring these rights. It has nothing at all to do with the quality of service or the equity circumstances at the time of the divorce.

Mr. DINGELL. If I can ask another question here that troubles me, I note that a former spouse shall not become qualified for an annuity if before the commencement of the annuity, the former spouse marries after 60 years of age, but if a former spouse marries after 60 years of age, they continue to derive the benefits of this and are able to support their second husband in greater comfort because of the annuity which is being taken from a subsequent wife and children of the Foreign Service Officer; is that right?

Mr. FORD of Michigan. Yes; but in all kindness, one must expect that the kind of spouse that the gentlewoman is trying to protect would not do that.

Mr. DINGELL. Excepting that we are here passing a uniform law and taking from the courts the orderly discretion to consider divorces and to consider all aspects of the courts which the States have done splendidly, and which is a matter on which I am aware of no expertise in the Federal Government and no constitutional power in the Federal Government to deal with matters of domestic relations. Am I in error on this?

Mr. FORD of Michigan. The gentleman raises a good question which I posed a few moments ago. It is not at all clear to me what is meant in the gentlewoman's proposed language that you could overcome the presumption by going to court, since courts do not exercise jurisdiction over divorce proceedings in perpetuity. Usually if there are no children involved, once the property is disposed of and the status has been established, the court cleans its hands of the case.

Mr. DINGELL. Even where there are minor children the jurisdiction lies not over the marriage but lies over the persons and security of the minor children, and it expires when those minor children reach 18 years of age. Is that correct?

Mr. FORD of Michigan. Yes. So I do not know what court you would go to to overcome this presumption.

Mr. DINGELL. Now I yield to the gentlewoman from Colorado (Mrs. SCHROEDER). If she can help me, I will be very grateful on the points I raised.

Mrs. SCHROEDER. I thank the gentleman for yielding. I just want to make several points. I think the gentleman has got several things confused.

Mr. DINGELL. I do not believe I am confused.

Mrs. SCHROEDER. On the retirement portion prospectively is the only way it applies. The only thing it makes a difference in is with the survivor's benefits, and that is what we are talking about. I think we just want to make that very clear. We are not talking about amending State divorce laws.

Mr. DINGELL. That is a very good point. That is a very good point. I have this curiosity. The gentlewoman says this covers retirement.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. If Mr. John F. Service has, let us say, 29 years and 9 months at which time he divorces his wife of, let us say, 10 years standing. For that 1 month time does that wife procure full rights under this bill for that remaining 1 month of his 30-year service before he does retire?

Mrs. SCHROEDER. Will the gentleman yield?

Mr. DINGELL. Certainly I will yield.

Mrs. SCHROEDER. I think if the gentleman read the bill, it is 10 years of creditable service that counts, and that is what counts for the presumption. The courts can undo the presumption if the Member happens to marry someone who was terribly wealthy or did not follow him or her around. We are just talking about a presumption.

Mr. DINGELL. I am glad the gentlewoman raised that question, because what court would Mr. John F. Service go to to get the relief specified here? Would he go to a Federal court? Would he go to the court where he got his divorce 30 years ago?

Mrs. SCHROEDER. We do nothing to change State court jurisdiction. The jurisdiction of the courts is the State court. It has always been the State court. It will always be the State court. There is nothing in here dealing with that issue, because the State court has the jurisdiction.

Mr. DINGELL. If he comes from a State where the jurisdiction over the marriage is terminated by reason of a property settlement, a final divorce decree, and maturity of the children so that there is no jurisdiction of the court, coupled with the subsequent remarriage, what court does Mr. John F. Service go to to get this relief? Does he go to the court of his home State? Does he go to the Federal court? Does he go to the court of some other State? Let us say he got divorced in Nevada and retired in Washington, D.C.

Mrs. SCHROEDER. The gentleman goes to the court of competent jurisdiction. We are not overriding that decision. I think he would have to find that out.

Mr. DINGELL. What is the court of competent jurisdiction? I am trying to find out what is the court of competent jurisdiction he goes to? Is it the court that gave the divorce?

The CHAIRMAN. The time of the gentleman has expired.

The question is on the Post Office and Civil Service Committee amendments.

The question was taken, and the chairman being in doubt, the committee divided, and there were—ayes 16, noes 7.

RECORDED VOTE

Mrs. SCHROEDER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 229, noes 111, not voting 92, as follows:

[Roll No. 524]

AYES—229

Abdnor	Ford, Tenn.	Moorhead, Pa.
Akaka	Forsythe	Mottl
Albosta	Fountain	Murtha
Alexander	Frenzel	Musto
Andrews, N.C.	Fuqua	Myers, Ind.
Andrews, N. Dak.	Gaydos	Natcher
	Gingrich	Neal
Annunzio	Ginn	Nedzi
Anthony	Glickman	Nichols
Applegate	Goldwater	Nowak
Archer	Gonzalez	O'Brien
Ashley	Gradison	Oberstar
Aspin	Gramm	Ottinger
Atkinson	Grisham	Pashayan
Badham	Guarini	Patterson
Bafalis	Gudger	Paul
Bailey	Guyer	Pepper
Barnard	Hagedorn	Preyer
Bauman	Hall, Tex.	Price
Bedell	Hammer-schmidt	Pritchard
Benjamin		Quillen
Bennett	Hanley	Regula
Bereuter	Hansen	Rhodes
Bethune	Harkin	Roberts
Bevill	Harsha	Robinson
Boland	Hefner	Roe
Boner	Heftel	Roth
Brademas	Hightower	Rudd
Breaux	Holland	Santini
Brinkley	Hopkins	Sawyer
Brooks	Horton	Scheuer
Broyhill	Howard	Schulze
Burlison	Huckaby	Sebelius
Butler	Hughes	Sensenbrenner
Carney	Hutchinson	Shelby
Carter	Hutto	Shumway
Cheney	Hyde	Shuster
Clausen	Ichord	Simon
Cleveland	Jeffries	Skelton
Clinger	Jenkins	Snyder
Coleman	Johnson, Calif.	Solomon
Collins, Tex.	Johnson, Colo.	Spence
Cotter	Jones, N.C.	Staggers
Coughlin	Jones, Okla.	Stangeland
Crane, Daniel	Jones, Tenn.	Stanton
Crane, Philip	Kindness	Stenholm
D'Amours	Kramer	Stewart
Daniel, Dan	LaFalce	Stockman
Daniel, R. W.	Lagomarsino	Stratton
Danielson	Latta	Stump
Dannemeyer	Leath, Tex.	Swift
Daschle	Lee	Symms
Davis, Mich.	Lent	Synar
de la Garza	Lewis	Tauke
Derrick	Livingston	Taylor
Derwinski	Loeffler	Thomas
Devine	Lott	Trible
Dickinson	Lujan	Udall
Dicks	Luken	Vander Jagt
Dingell	McCormack	Volkmer
Dixon	McDade	Walgren
Dornan	McDonald	Wampler
Duncan, Oreg.	McEwen	Watkins
Duncan, Tenn.	McHugh	White
Eckhardt	McKay	Whitehurst
Edwards, Ala.	Madigan	Whitley
English	Marlenee	Whittaker
Erdahl	Mathis	Williams, Mont.
Erlenborn	Mazzoli	Wilson, Tex.
Ertel	Mica	Winn
Evans, Ga.	Michel	Wright
Fenwick	Miller, Ohio	Wyatt
Fish	Mitchell, N.Y.	Wylie
Fithian	Mollohan	Yatron
Flippo	Montgomery	Young, Fla.
Florio	Moore	Young, Mo.
Foley	Moorhead, Calif.	
Ford, Mich.		

NOES—111

Anderson, Calif.	Frost	Obey
	Garcia	Panetta
AuCoin	Gephardt	Pease
Barnes	Gibbons	Petri
Bellenson	Gilman	Pickle
Bingham	Gore	Rahall
Blanchard	Gray	Rangel
Bolling	Green	Ratchford
Bonior	Hamilton	Reuss
Bouquard	Hance	Rinaldo
Bowen	Harris	Rosenthal
Brodhead	Hawkins	Roybal
Broomfield	Heckler	Sabo
Brown, Calif.	Hollenbeck	Schroeder
Brown, Ohio	Holt	Seiberling
Buchanan	Jacobs	Sharp
Burton, John	Jeffords	Smith, Iowa
Burton, Phillip	Kazen	Smith, Nebr.
Byron	Kildee	Snowe
Carr	Kostmayer	Solarz
Cavanaugh	Leach, Iowa	Stack
Collins, Ill.	Lloyd	Stark
Conable	Long, La.	Stokes
Conte	Long, Md.	Studds
Corcoran	Lungren	Traxler
Courter	McCloskey	Van Deerlin
Deckard	Maguire	Vanik
Dellums	Markey	Vento
Downey	Marks	Waxman
Drinan	Martin	Weaver
Early	Matsui	Weiss
Edgar	Mikulski	Wirth
Edwards, Calif.	Miller, Calif.	Wolff
Evans, Ind.	Mineta	Wolpe
Fascell	Mitchell, Md.	Yates
Fazio	Moakley	Zablocki
Fisher	Murphy, Pa.	
Fowler	Oakar	

NOT VOTING—92

Addabbo	Hall, Ohio	Perkins
Ambro	Hillis	Peyser
Anderson, Ill.	Hinson	Porter
Ashbrook	Holtzman	Pursell
Baldus	Hubbard	Quayle
Beard, R.I.	Ireland	Railsback
Beard, Tenn.	Jenrette	Richmond
Biaggi	Kastenmeier	Ritter
Boggs	Kelly	Rodino
Bonker	Kemp	Rose
Burgener	Kogovsek	Rostenkowski
Campbell	Leach, La.	Rousselot
Chappell	Lederer	Royer
Chisholm	Lehman	Russo
Clay	Leland	Satterfield
Coelho	Levitas	Shannon
Conyers	Lowry	Spellman
Corman	Lundine	St Germain
Davis, S.C.	McClory	Steed
Dodd	McKinney	Tauzin
Donnelly	Marriott	Thompson
Dougherty	Mattox	Ullman
Edwards, Okla.	Mavroules	Walker
Emery	Minish	Whitten
Evans, Del.	Moffett	Williams, Ohio
Fary	Murphy, Ill.	Wilson, Bob
Ferraro	Murphy, N.Y.	Wilson, C. H.
Findley	Myers, Pa.	Wydler
Giaimo	Nelson	Young, Alaska
Goodling	Nolan	Zeferetti
Grassley	Patten	

□ 1810

The Clerk announced the following pairs:

On this vote:

Mr. Nelson for, with Mrs. Chisholm against.

Mr. Moffett for, with Mr. Leland against.

Mr. WOLPE, Mrs. BYRON, Mr. MARKEY, and Mr. BLANCHARD changed their votes from "aye" to "no."

Mr. BURLISON and Mr. TAUKE changed their votes from "no" to "aye."

So the Post Office and Civil Service Committee amendments were agreed to.

Mr. DERRICK. Mr. Chairman, I move to strike the requisite number of words.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, I thank the gentleman for yielding. I will just take a second here to say that we can conclude the remainder of the matters that are before the committee in very short order. I am sure that with a little bit more cooperation it will be helpful, and we can get through quicker.

Mr. DERRICK. Mr. Chairman, as you may know, I had planned to offer an amendment to chapter 11 of the bill now under consideration. And at the outset, I must congratulate both chairpersons responsible for this legislation, as it represents nothing less than a complete overhaul of the foreign service, a task last undertaken in 1946.

This is a comprehensive and complex piece of legislation, Mr. Chairman, and I fully appreciate the difficult negotiation process that was necessitated to produce a document that satisfied most of the parties involved. It is my concern, however, that because difficult battles were undertaken on certain other provisions of this legislation, that the issue of grievances, chapter 11, was not fully addressed.

As you know, my amendment would have been a substitute for the entire chapter on grievances. I have many concerns regarding the procedure as it works in this bill. The method of selection of board members is weighted in favor of management. There are specific items on which grievances may not be filed, and I believe the broadest possible construction should be required in statute. The exclusive representatives are afforded monopoly control in representing grievant's before the Board. And I do not believe the bill provides a strong indication that these hearings should be open to the public unless the grievant wishes otherwise.

As the above suggests, I do have several concerns about this legislation. However, in the interest of not delaying the process at this point, I will not offer my amendment if I may obtain assurances from the chairpersons involved and presently managing this bill, that hearings on this issue will be held at the earliest possible date to air and resolve the concerns I have today raised.

□ 1820

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, I thank the gentleman for yielding.

First, let me compliment the gentleman on the concern he has in this matter. The gentleman introduced the bill early on which I had cosponsored, along with several of my colleagues, and I want to assure him that the committee gave full consideration to that legislation. Notwithstanding that, I can appreciate the reservations and the concern which the gentleman in the well has, and let me assure him that in setting up this grievance procedure in the statute and codifying it the way we have, with all the past experiences we have, we are very anxious and very concerned that it works properly.

We will be following this very carefully from an oversight standpoint, and we will also take into account the further review and consideration of whatever concerns people have with respect to the legislation.

So I will tell the gentleman that notwithstanding the fact that his proposals were considered and were not agreed to either in this body or over in the other body, we will nevertheless assure the gentleman that hearings on the issues and the oversights will continue starting early next year.

Mr. DERRICK. Mr. Chairman, I thank the gentleman from Florida (Mr. FASCELL).

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from South Carolina (Mr. DERRICK) for not offering the amendment at this time. I think it is a very interesting proposal, and I assure the gentleman that we are very, very concerned in the civil service about all grievance procedures, and we will certainly be looking at it and having hearings and reconsider the gentleman's position at that time.

Mr. Chairman, I thank the gentleman in the interest of time for not offering his amendment.

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Chairman, I take it that the gentleman was expressing some reservation to a provision that occurs or that is set forth here in the Democratic whip advisory that says that this bill will establish collective bargaining in the Foreign Service, prohibit strikes and slowdowns, and provide for the negotiation of certain conditions of employment.

The CHAIRMAN. The time of the gentleman from South Carolina (Mr. DERRICK) has expired.

(On request of Mr. STRATTON, and by unanimous consent, Mr. DERRICK was allowed to proceed for 3 additional minutes.)

Mr. STRATTON. Mr. Chairman, will the gentleman yield further?

Mr. DERRICK. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Chairman, let me ask the gentleman, is that the section that the gentleman has said that he is concerned about but to which he will not offer an amendment?

Mr. DERRICK. Mr. Chairman, I do not have the document before me, but it is chapter 12 on grievances, and I assume it is the same.

Mr. STRATTON. Mr. Chairman, I believe that is the one that puts the Foreign Service into collective bargaining.

It seems to me that this is a strange thing for a service that has wanted to stand out as a kind of an elite group, with special pay and all these other things, that we suggest that they get together in collective bargaining and negotiate.

Do the ambassadors negotiate with the President or with the Secretary of State? It seems to me that this is highly improper.

Mr. DERRICK. Mr. Chairman, if I might suggest to the gentleman, the ambassadors are in a little different situation than the people I am representing here today, and I suggest to the gentleman that the situation as it concerns a Foreign Service officer, as the gentleman knows, has changed dramatically in the last several years. We are seeking to recognize that change with certain amendments that will be taken up next year, and we shall invite the gentleman, I am sure, to be the leadoff witness.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I appreciate the fact that the gentleman is going to give us an opportunity to study this matter in more detail.

Mr. Chairman, whatever grievance mechanism it means to impose, I cannot imagine any civil service or foreign service agency being able to live with its definition of "grievance." All the foreign service agencies oppose it.

Section 1101 of this act defines "grievance" properly by generally confining its subject matter to things which are in personnel files or under the control of the Secretary of State. This amendment would extend that definition to just about anything. I quote: "any actions * * * which could result in career impairment or damage" or "actions related to promotion or selection out."

This seems to mean that an employee can be aggrieved even by thinking that his own promotion is not equal to his merit. He can be aggrieved even by the mere application of the selection out process which he accepted when he entered the Service. He can file a grievance even with respect to the contents of security records maintained by an agency to protect the confidential and classified aspects of our foreign policy.

Mr. Chairman, I do not think this amendment is a wise attempt at balancing the rights of an employee with the right and duty of foreign service personnel managers to manage. It ignores the practical balance of interests represented in the bill's grievance procedures.

Mr. STRATTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have been interested in the Foreign Service, and I am interested in improving it. But I must say that I was appalled to read this document which is circulated, I understand, not to the Republican Members but to the Democratic Members and which would put the Foreign Service into collective bargaining and then prohibit strikes and slowdowns. I wonder how one could tell whether an ambassador is slowing down or not.

This would provide a separate board to adjudicate labor disputes, and then

there is a second provision following that that would establish a bill of rights for members of the Foreign Service, one provision of which is granting protection from reprisals for dissenting political views or good faith disclosures of information concerning violations of law, mismanagement, or abuses of authority.

I wonder if the gentleman from Florida (Mr. FASCELL), who I understand is the author of the bill, could tell me whether this means that if somebody in good faith discloses the existence of the stealth aircraft, this section is designed to protect him.

Are we going to encourage the Foreign Service people who want to release classified information in good faith and say that they have carte blanche to do that?

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. STRATTON. Mr. Chairman, I would like to have the gentleman from Florida (Mr. FASCELL), who is a member of the Committee on Foreign Affairs, a very distinguished member and one who is interested in the Foreign Service, answer the question, because I would like to be able to support this bill, although I do not see how I can support it with these two provisions which strike me as being totally outside the province of the great Committee on Foreign Affairs.

Mr. FASCELL. Mr. Chairman, if the gentleman will yield, let me see if I can answer the gentleman's questions. Which one does he want me to answer first?

Mr. STRATTON. Well, whichever one the gentleman would like to answer.

Does the gentleman feel that one of the important needs of the Foreign Service is to be able to bargain collectively, and that we have to make special provisions for strikes and slowdowns in the Embassies around the world?

Mr. FASCELL. Mr. Chairman, I will tell the gentleman that there has been a collective bargaining system for the Foreign Service under Executive order since 1972 and we have never permitted strikes overseas and do not do so here.

We have simply codified all of the law that exists both as to grievances and labor-management relations in an effort to put it on a par with the other law which the gentleman also voted for, I might add, in dealing with the civil service people—the Civil Service Reform Act.

Mr. STRATTON. Mr. Chairman, the purpose of this, as I understand it, is to put the Foreign Service on a par with officers in the U.S. Armed Forces and with the Central Intelligence Agency officers, and I do not believe that there are provisions in either of those acts to prevent strikes or slowdowns or to encourage collective bargaining and the setting up of boards to adjudicate labor disputes.

Mr. FASCELL. Mr. Chairman, I will tell the gentleman that the purpose of the act is not to put the Foreign Service on a par with the military, from the labor-management standpoint, because we do not permit unions in the military, while we do in the Foreign Service.

Chapter 10 reflects the Executive order under which the Department has operated since 1972 and also follows, when desirable, certain provisions of the Civil Service Reform Act.

Now, let me answer the other question.

Mr. STRATTON. All right. What is a good faith disclosure relationship that the gentleman encourages?

Mr. FASCELL. A good faith disclosure is the right for an individual to come, for example, to the Congress. And in answer to the gentleman's inquiry, it is something that the gentleman has energetically defended from the time I first knew him. And that is that any general or any individual coming before the gentleman's committee should have the right and the responsibility to answer the Congress questions and woe be unto him if he did not answer the gentleman directly, notwithstanding the position of the administration on the matter that was under discussion.

Mr. STRATTON. Does the gentleman mean General Singlaub, for example?

He was a whistleblower, but look at what happened to him.

Mr. FASCELL. The point is that we have done our best to provide in the legislation that separate channel of dissent both in the Congress and in the administration. We specifically prohibit disclosures which are prohibited under other laws or in the interest of national security. We do not permit disclosures of classified information.

Mr. STRATTON. Yes; but what I am afraid of is that this is going to encourage dissenting members of the Foreign Service to release classified information.

Mr. FASCELL. There is no way that they can do that. The law protects against that.

The CHAIRMAN. The time of the gentleman from New York (Mr. STRATTON) has expired.

The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

□ 1830

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to pages 185 and 186 (relating to labor-management picketing).

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 185, beginning on line 16, strike out "the operations of the Department," and all that follows down through line 19, and insert in lieu thereof "the Department in a labor-management dispute if such picketing interferes with the Department's operations, or".

Page 186, after line 10, insert the following:

Nothing in paragraph (7) of this subsection shall result in any informational picketing in the United States which does not interfere with the Department's operations being considered as an unfair labor practice.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, these were committee amendments that we were going to offer, but the gentleman from Florida was going to offer an amendment to our amendments, and, once again, we are going to accept those.

So if I may just yield to the gentleman from Florida (Mr. FASCELL) at this time to present his amendment to our committee amendments, we will be able to expedite this process.

AMENDMENTS OFFERED BY MR. FASCELL TO THE POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mr. FASCELL. Mr. Chairman, I offer amendments to the Committee on Post Office and Civil Service Committee amendments.

The Clerk read as follows:

Amendments offered by Mr. FASCELL to the Committee on Post Office and Civil Service amendments: Page 185, beginning in line 20, strike out "if such picketing interferes with the Department's operations" and insert in lieu thereof "(except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice)".

Page 186, strike out lines 11 through 14.

Mr. FASCELL (during the reading). I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, as the gentlewoman from Colorado (Mrs. SCHROEDER) said, this is an amendment that we agreed on between the two committees as part of the amendments considered en bloc, and I would ask that the amendment be agreed to.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Florida (Mr. FASCELL) to the Post Office and Civil Service Committee amendments.

The amendments to the Post Office and Civil Service Committee amendments were agreed to.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments, as amended.

The Post Office and Civil Service Committee amendments, as amended, were agreed to.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the remaining committee amendments to be considered en bloc.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Committee on Post Office and Civil Service amendments: Page 2, in the item relating to section 209 within the table of contents, strike out "of the Foreign Service".

Page 6, in the table of contents, redesignate the items relating to sections 2305

through 2313 as relating to sections 2306 through 2314, respectively, and insert after the item relating to section 2304 the following:

Sec. 2305. Severance pay.

Page 15, line 18, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 22, beginning on line 13, strike out all of section 209 through line 15 on page 27 and insert in lieu thereof the following:

SEC. 209. INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(3) The Inspector General shall, in accordance with applicable law governing the civil service—

(A) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities under this section; and

(B) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities under this section.

(b) Inspection, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c)(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Controller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as responsibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General shall prepare the performance evaluation reports for such individuals.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

Page 45, strike out subsection (c) (beginning on line 9 and ending on line 13).

Page 57, line 22, after "the member" insert "and notwithstanding sections 5535 and 5536 of title 5, United States Code".

Page 68, line 20, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 73, beginning on line 7, strike out "in light of the recommendations of selection boards established under section 602 and the needs of the service" and insert in lieu thereof "in accordance with the recommendations of selection boards established under section 602".

Page 113, line 2, strike out "60" and insert in lieu thereof "65".

Page 113, lines 6, 11, and 14, strike out "60" and insert in lieu thereof "65".

Page 163, line 10, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 170, line 25, strike out "Columbia," and all that follows down through line 2, page 171 and insert in lieu thereof "Columbia.".

Page 257, after line 2, insert the following new section:

SEC. 2305. SEVERANCE PAY.—Section 5595(a)(2)(vi) of title 5, United States Code, is amended by inserting after "to receive" the following: "benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any".

Page 257, line 6, strike out "Sec. 2305." and insert in lieu thereof "Sec. 2306.".

Page 257, line 22, strike out "Sec. 2306." and insert in lieu thereof "Sec. 2307.".

Page 258, line 8, strike out "Sec. 2307." and insert in lieu thereof "Sec. 2308.".

Page 258, line 12, strike out "Sec. 2308." and insert in lieu thereof "Sec. 2309.".

Page 258, line 10, strike out "Sec. 2309." and insert in lieu thereof "Sec. 2310.".

Page 259, line 20, strike out "Sec. 2310." and insert in lieu thereof "Sec. 2311.".

Page 260, line 12, strike out "Sec. 2311." and insert in lieu thereof "Sec. 2312.".

Page 261, line 10, strike out "Sec. 2312." and insert in lieu thereof "Sec. 2313.".

Page 261, line 24, strike out "Sec. 2313." and insert in lieu thereof "Sec. 2314.".

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, the amendments I am now offering in bloc are the rest of the amendments agreed to by the Committee on Post Office and Civil Service. Included in this group are:

A provision for a strong and independent Inspector General of the Department of State and the Foreign Service, who is equipped with the authority that other Inspectors General, created by the Inspector General Act of 1978, possess. This amendment was worked out with the Committee on Government Operations, which reported the major Inspector General legislation.

A provision giving selection boards, and not the Secretary of State, authority to determine which senior members of the Foreign Service, serving on limited career extensions, will not be renewed based on the needs of the Service.

Numerous technical and conforming amendments.

Language raising the mandatory retirement age from 60 to 65. This reflects a compromise worked out between the two distinguished gentlemen from Florida (Mr. FASCELL and Mr. PEPPER). Both the Post Office and Civil Service Committee and the Foreign Affairs Committee made this change.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were agreed to.

AMENDMENTS OFFERED BY MR. FASCELL

Mr. FASCELL. Mr. Chairman, I offer a series of amendments.

The Clerk read as follows:

Amendments offered by Mr. FASCELL: Page 35, line 11, immediately after "Commerce," insert "the Department of Labor,".

Page 47, line 2, immediately before "The" insert "(a)"; and immediately after line 10, insert the following new subsection:

(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary of his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.

Page 53, line 12, immediately after "compensation" insert "(including position classification)".

Page 83, line 2, strike out "abroad"; and in line 4, strike out "abroad".

Page 153, line 25, immediately after "United States" insert "(or any territory or possession of the United States or the Commonwealth of Puerto Rico)".

Page 204, line 13, strike out "of State"; and on page 206, beginning in line 12, strike out "of State".

Page 213, line 15, strike out "Act." and insert in lieu thereof the following:

Act, except that any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act), as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

Page 233, line 17, strike out "the".

Page 258, strike out lines 8 through 11 and insert in lieu thereof the following:

SEC. 2308. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(1)" and all that follows through "each type of education" and inserting in lieu thereof "one annual trip each way for each dependent".

Page 259, line 22, strike out "2309(a)" and insert in lieu thereof "2310(a)" and on page 260, line 9, strike out "2309(b)" and insert in lieu thereof "2310(b)".

Page 260, line 7, immediately before the first period insert ", except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed twenty-five percent of the basic pay of the employee".

Page 260, beginning in line 18, strike out "in the Department of State".

Page 261, immediately after line 9, insert the following new subsection:

(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after "States" in the first sentence "(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)".

Page 267, strike out lines 6 through 15 and insert in lieu thereof the following:

SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).

(d) Section 812 of this Act, and the repeal of sections 631 and 632 of the Foreign Service Act of 1946, shall be effective as of the date of enactment of this Act.

Page 268, line 1, strike out "(2) The provisions of such chapter" and insert in lieu thereof "(e) The provisions of chapter 8 of title I"; line 2, insert "section" immediately before "814(a)"; and beginning in line 3, strike out "such effective date" and insert in lieu thereof "the effective date of this Act".

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, these amendments correct oversights and make conforming changes in a number of provisions of the bill some of which are necessitated by the adoption of the spousal annuity provision just discussed. The most significant are the changes necessitated in the effective date section because October 1, is almost here and the Foreign Affairs agencies will not be able to complete the regulations in time for the bill to take effect October 1.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take this time to engage in a colloquy with the gentlewoman from Colorado.

I would like to compliment the gentlewoman from Colorado (Mrs. SCHROEDER) on her drafting of chapter 10, setting out the groundrules for labor-management relations in the Foreign Service. As I read these provisions, they are, with a few exceptions having to do with the size of the bargaining unit and the makeup of the labor board, precisely the same as the provisions in title VII of the Civil Service Reform Act of 1978. These provisions are quite different from the labor law provisions that the administration first recommended in the introduced version of H.R. 4674. Am I correct?

Mrs. SCHROEDER. The gentleman is perfectly correct. We did not see any reason that members of the Foreign Service should have fewer rights to organize and bargain collectively than other Government employees. In the key area of management rights, we copied the language from the Civil Service Reform Act, which the gentleman worked so hard on. Only slight adjustments were made to accommodate the different personnel system used by the Foreign Service.

Mr. FORD of Michigan. When the For-

eign Service Labor Relations Board and the courts interpret this legislation, do you think they should be bounded by the decisions of the Federal Labor Relations Authority?

Mrs. SCHROEDER. Absolutely. Section 1007(b) of the bill says that decisions under this law must be consistent with FLRA decisions, except where special circumstances require otherwise. I would expect the Foreign Service Labor Relations Board to construe this exception very narrowly and find special circumstances only in rare cases. Good labor-management relations throughout the Federal sector require consistent interpretation of the law.

Mr. FORD of Michigan. I thank the gentlewoman. The Foreign Affairs Committee report states that management does not have to negotiate over procedures so time-delaying as to negate the exercise of a management right. As you surely remember, when we went to conference on the Civil Service Reform Act, the Senate had a provision which read "except that such negotiation shall not unreasonably delay the exercise by management of its authority to decide or act,". We insisted that this language be dropped and the Senate receded. The conference report points out that "negotiations on such procedures should not be conducted in a way that prevents the agency from acting at all, or in a way that prevents the exclusive representative from negotiating fully on procedures."

The Federal Labor Relations Authority read this legislative history and held that the issue of providing hearings before removal or suspension was indeed negotiable. In holding for the union in the Fort Dix case (2 FLRA No. 16, November 29, 1979), the FLRA found the agency claim of unreasonable delay to be without support in the legislative history of the Reform Act. As the FLRA said in its decision:

> The committee on conference . . . specifically rejected a provision in the Senate Bill (S. 2640) which provided that negotiation on procedures should not "unreasonably delay" so as to "negate" the exercise of management's reserved rights. . . . Rather, as the Conference Report indicates, [Title VII] is intended to authorize an exclusive representative to negotiate fully on procedures, except to the extent that such negotiations would prevent agency management from acting at all.

The case is now on appeal in the U.S. Court of Appeals. I am concerned that, first, the language in the Foreign Affairs Committee report would limit negotiation in the Foreign Service to a smaller scope than exists for other Federal employees and second, that the language might be used as an indication of congressional intent in the pending appeal on the Fort Dix case. Could the author of the provisions of chapter 10 please respond?

Mrs. SCHROEDER. I entirely agree with the comments of the gentleman from Michigan (Mr. FORD). In the area of management rights, chapter 10 is intended to provide precisely the same scope of negotiation in the Foreign Service as title VII does for the rest of the Federal Government. What is said in the Foreign Affairs Committee report was not my intention, as drafter, and was never discussed in our joint subcommittee meetings. As the law stands right now, the decision of the FLRA in the Fort Dix case is the law and it should apply to the Foreign Service as well after the passage of chapter 10. If the Court of Appeals modifies or overrules the FLRA decision, the court decision will become the law and will be equally binding on the Foreign Service as on the rest of the Federal Government. Further, I think the FLRA properly stated the intent of this committee in the Fort Dix decision.

Mr. FORD of Michigan. In light of this discussion, is it your view that the report of the Committee on Post Office and Civil Service on H.R. 6790 accurately states the intent of the author of the labor-management relations provision of H.R. 6790?

□ 1840

Mrs. SCHROEDER. If the gentleman will yield again, I certainly do, and I thank the gentleman from Michigan for pointing this out.

Mr. FASCELL. The gentleman's concern is commendable, especially since both our committees have spent 1 year on this bill and the Foreign Affairs Committee began work 3 years ago. However, when the language in the Foreign Affairs Committee report is read in context, it is quite clear in following the bill's language.

Legislative history is composed of the hearings, reports and other documents of both committees. I do not feel that a complete reading of both reports will be found to be inconsistent.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Florida (Mr. FASCELL).

The amendments were agreed to.

FOREIGN AFFAIRS COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the Foreign Affairs Committee amendments.

The Clerk read as follows:

Foreign Affairs Committee amendments: Page 238, beginning on line 9, strike out "In order to employ such individuals as may be necessary to perform duties that reasonably require availability for worldwide assignment, the" and insert in lieu thereof "The"; page 239, line 9 strike out "and" and insert in lieu thereof a comma; and page 239 line 13, immediately after "prescribe" and before the period insert the following: ", and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1))".

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, this language simply conforms the bill to the current provisions of the Peace Corps Act.

I would ask for the adoption of the amendments.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have reviewed this amendment and have decided, with some reluctance, to accept it. The bill's provision limiting the ability of the Peace Corps to utilize the Foreign Service personnel authorities was added in subcommittee on my recommendation. Although the Committee on Foreign Affairs voted to strike the limitation, the Committee on Post Office and Civil Service voted to retain it. Rather than occupy the time of the House with a controversy which involves fewer than 100 employees, I have decided to accept the amendment and maintain the status quo.

In so doing, I am not endorsing the personnel system in effect in the Peace Corps. Existing law permits the President to utilize Foreign Service personnel authorities for the Peace Corps, without actually placing Peace Corps employees in the Foreign Service. Rather, these employees are subject to a 5-year time limit on their employment, from which they gain no career rights. This system has produced inequities, inefficiencies, and bad morale. I hope that the Subcommittee on Civil Service or another subcommittee with jurisdiction will hold detailed oversight hearings soon on the strange personnel system at the Peace Corps.

The CHAIRMAN. The question is on the Foreign Affairs Committee amendments.

The Foreign Affairs Committee amendments were agreed to.

AMENDMENT OFFERED BY MR. GONZALEZ

Mr. GONZALEZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ: Page 225, after line 13, insert the following:

SEC. 2107. RECALL OF CERTAIN CAREER MEMBERS WHO WERE INVOLUNTARILY RETIRED.—(a) Any individual who was retired from the Service under section 632 of the Foreign Service Act of 1946 after February 22, 1979, shall be recalled for service by the Secretary under section 308 of this Act if (1) a request to be recalled is submitted to the Secretary by the individual within 60 days after the effective date of this Act, and (2) the individual passes the pre-employment physical for worldwide assignment.

(b) For purposes of this chapter, any individual who is recalled for service pursuant to this section shall be considered to have been serving in the Foreign Service immediately before the effective date of this Act at the salary class and step held by that individual immediately prior to the involuntary retirement.

(c) Subject to chapter 6 of title I of this Act, any individual recalled for service pursuant to this section shall be retained on

active duty until the individual has reached age 65 and completed at least 6 months of recall service pursuant to this section.

(d) Individuals recalled for service pursuant to this section shall not be counted toward any personnel ceiling established for the Department by the Director of the Office of Management and Budget.

Page 225, line 14, strike out "2107" and insert in lieu thereof "2108"; in line 17, strike out "2108" and insert in lieu thereof "2109"; and in line 21 strike out "2107" and insert in lieu thereof "2108".

Conform the table of contents.

Mr. GONZALEZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. GONZALEZ. Mr. Chairman, at the very outset, let me say that I heartily and most sincerely congratulate the distinguished gentleman from Florida and his colleagues and the distinguished gentlewoman from the other committee and the gentlemen working on the other side of the aisle on this very difficult, rather complicated legislation. It is a 268-page bill. That indicates the complexity of it and the difficulty of it.

The discussions we have had on some of these amendments clearly indicate that into these little crevices that will come up when you have a general codification of a broad expanse of Federal law, that you might find that you are perpetrating some injustices. You will find that into these crevices there are some human beings that are being victimized.

My amendment simply would provide that those persons who have been compelled since the Supreme Court decision of February 22, 1979, Vance versus Bradley, because they were 60 years of age would have a chance to come back now that we are changing the mandatory retirement age to 65, if they so wish and if my amendment provides they satisfy the requirements of the service. That is, that they pass an entrance examination as they would as if they were starting out and they are not asking for reimbursement for retroactive pay or anything like that. It would affect no more than about 154 at the most and of those, I do not know how many would be interested in returning, but there are some who were caught in this fight here on pushing up the retirement from 60 to 65. It is an act of compassion, I think.

You know, our Government, if it is worthy of being a government, has to be compassionate. It has to be above all fair and equitable. This demands in turn that those of us in public service, particularly those of us that hold an elective office, must have a genuine passion for justice and compassion.

This is all that this would do. It would rectify a grievous error.

I was hoping that this amendment would be accepted by the two sides, because it is merely taking into account something that has been lost in this rather difficult transition embodied and reflected in the codification of all of this broad corpus of Federal jurisprudence.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I would be delighted to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I thank the gentleman for yielding.

I just have one question. The gentleman said this applied to those who had been forced to retire because of the 60-year limit after February of 1979?

Mr. GONZALEZ. Yes, since February 22, 1979.

I was hoping the amendment would be accepted. I see no reason why it would not.

I yield back the balance of my time.

Mr. FASCELL. Mr. Chairman, after that appeal. I reluctantly rise to oppose this amendment in the strongest possible terms. In terms of equity, what the gentleman from Texas has so eloquently decided to do here is just hire everybody who is already out or rehire them or give them the right to be rehired. That affects AID, ICA, the State Department, everybody who has known since 1946 that the mandatory age of retirement was 60.

Now, in the gentleman's compassion, what the gentleman from Texas wants to do is give them another shot, which we would like to do all right, except for the fact that in the meantime you have got a lot of other people who have come into the system as a result of that who are going to be impacted most chaotically as well. You may be trying to rehire people, but what you would accomplish is the loss of younger members who would be forced out as a result of the rehiring and the personnel ceiling in the foreign affairs agencies. I would think under the circumstances with all the time that has gone by, in all fairness, we had better leave well enough alone and not provide in the law some statutory base to allow 285 people in four different agencies to come back into the Government service after they have now been out.

The Congress set the mandatory retirement age at 60 for very good reasons. We are now recognizing the changes in our society, the tendency of people to live longer, improved access to medical care, and modern transportation, among other factors. We are therefore persuaded that raising the mandatory retirement age to 65 is a rational response to these factors which preserves the concept of a predictable flow of recruitment, career development and separation which is served by a mandatory retirement age for the Foreign Service.

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. Yes, of course.

Mr. GONZALEZ. Well, I interrupted because I think from what the gentleman has said here, he has not had a chance to properly evaluate my amendment. My amendment does in no way compel the hiring.

The persons accepted and the total number is nowhere over 154, contrary to the distinguished chairman's figure of over 200.

Mr. FASCELL. Well, if I can reclaim my time just for a moment, I would say that our information is that 285 people are affected, 115 in the State Department, 71 in ICA, 99 in AID, who reached the age of 60 and were retired since February of 1979.

Also, I must say in all fairness to the gentleman, we did consider this amendment in the committee and we rejected it for the very reasons we are rejecting it right now, because the language in the gentleman's amendment says:

Any individual who was retired from the service shall be recalled for service by the Secretary under this act, provided, however,

And then it sets certain conditions; but I admire what the gentleman is trying to do and in a humanitarian sense, I would like to take care of everybody, but I think in all fairness we have done what is best for the Foreign Service and the country.

□ 1850

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ).

The amendment was rejected.

AMENDMENT OFFERED BY MR. SIMON

Mr. SIMON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SIMON: Page 254, between lines 3 and 4, insert the following new section:

SEC. 2207. MODEL FOREIGN LANGUAGE COMPETENCE POSTS.—(a) In order to carry out the purposes of section 702 and to help ascertain the relationship between foreign language competence and the effectiveness of representation of the United States abroad, the Secretary of State shall designate as model foreign language competence posts at least two Foreign Service posts in countries where English is not the common language. Such designation shall be made no later than October 1, 1981, and shall be implemented so that no later than October 1, 1983, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the Foreign Service Institute.

(b) The posts designated under subsection (a) shall continue as model foreign language competence posts at least until September 30, 1985. The Secretary of State shall submit no later than January 31, 1986, a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the operation of such posts and the costs, advantages and disadvantages associated with meeting the foreign language competence requirements of this section.

(c) The Secretary of State may authorize exceptions to the requirements of this section if he determines that unanticipated exigencies so require. Such exceptions shall be annually reported to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

Mr. SIMON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. SIMON. Mr. Chairman, I will not take 5 minutes. We have demonstration projects of a great variety and I am asking for a demonstration project. I

have discussed this with the State Department and what we are saying is let us pick two embassies where we require everyone in those embassies to have some competence in the language of those embassies and say at least two, and we have worked out the language with the State Department.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding. I would like first to commend the gentleman in the well for his fine leadership in the area of foreign language and international studies. I had the pleasure of serving with the gentleman on the President's Commission on Foreign Language and International Studies and was deeply impressed with his knowledge of the issues and his dedication to raising this very important matter for our country.

I have been working with you in helping to focus attention on the importance of foreign language competence in our diplomacy, in our trade balance, in our intelligence capabilities, and in our ability as a nation to understand and to cope with a turbulent world. The amendment before the House is truly an important contribution to this process. The question of staffing our Embassies abroad with people who have at least a minimum competence in the language and some understanding of the culture of the host country is extremely important. Right now, many of our Embassy personnel abroad remain isolated from the people of the host country, unable to communicate in the native language. This reality pesents us with a number of problems chiefly related to morale, but also touching on the ability of our personnel to respond well to possible crises at the Embassy such as terrorist attacks. Without an ability to communicate with the native population, our personnel are at a tremendous disadvantage.

I would like to ask the gentleman a few questions about his amendment. Is it not true that personnel from a number of agencies are stationed at our embassies abroad?

Mr. SIMON. Yes, that is correct. The International Communication Agency, the Department of Defense, the Agency for International Development, to name a few, all have personnel stationed at certain American Embassies.

Mr. PANETTA. My question then is: If we are to achieve a minimum proficiency requirement for all personnel in at least two embassies, will not there be a need for constructive interagency cooperation on this experiment?

Mr. SIMON. I am glad the gentleman raised that question because it strikes at the heart of my amendment. There is a tremendous need for all agencies with personnel stationed abroad to cooperate with the State Department in meeting the requirements of this amendment. I would urge the heads of these departments and agencies to support the thrust of this experiment by planning and consulting effectively with the State Department.

Mr. PANETTA. I thank the gentleman for his answer. Your amendment states that at least two embassies shall be designated as foreign language competence posts. I wonder if the gentleman is prepared to strongly encourage the State Department to assess its capabilities in this regard and to establish even more model embassies? Would you object to the State Department's establishing three, four, or even five such embassies?

Mr. SIMON. On the contrary, I would hope that my designation of "at least two" such embassies would not be regarded as a ceiling, but rather as a floor or a foundation upon which to make progress in other embassies. So, I would strongly encourage the State Department to begin this experiment with the maximum number of model embassies its resources can accommodate.

Mr. PANETTA. My last question relates to which languages and regions the gentleman is targetting. Would you prefer to see these model embassies in the same languages or in different languages, in the same regions of the world or different regions?

Mr. SIMON. Again, I compliment the gentleman from California for his insightful question. In discussions with State Department representatives I have made it clear that my interest is in having this experiment conducted in diverse settings, in diverse languages, in diverse regions. I would hope that the State Department would ensure that it spreads this experiment into as many different regions and language groups as possible. Only through that approach will we be able to assess adequately the resource implications, the personnel constraints, and the effectiveness of establishing foreign language competence posts abroad.

Mr. PANETTA. I thank the gentleman for his answers and urge adoption of his amendment.

Mr. SIMON. I thank the gentleman and want to express my gratitude to him for his work in shaping and supporting this amendment.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from Minnesota.

Mr. OBERSTAR. I want to compliment the gentleman from Illinois for offering this amendment. As the gentleman knows, I am a very strong proponent of foreign language competency in the Foreign Service. I think the gentleman's amendment will help advance that cause.

Mr. SIMON. I thank the gentleman. He is not only a proponent, he is a living example of that.

Mr. DANIELSON. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from California.

Mr. DANIELSON. I thank the gentleman for offering his amendment. I hope he will urge that Swedish be one of the languages that is practiced in these embassies.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am happy to yield to my colleague from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. I thank the gentleman and compliment him on his amendment. I support it.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Chairman, we have examined the amendment on this side for the committee and we agree with the amendment and accept it.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Chairman, I wish to associate myself with the gentleman's remarks and thank my colleague for yielding.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am happy to yield to my colleague from Alabama (Mr. BUCHANAN).

Mr. BUCHANAN. Mr. Chairman, we, too, have examined the gentleman's amendment and are pleased to accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. SIMON).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OBERSTAR: Page 217, line 16, strike out "In" and insert in lieu thereof "Except as provided in subsection (b), in"; page 218, line 18, strike out "the 3-year" and all that follows through "Notwithstanding" in line 22 and insert in lieu thereof "no mandatory conversion from the Foreign Service shall be made, and subsection (a) shall not apply with respect to those individuals. Notwithstanding"; in line 24, strike out "such individuals" and insert in lieu thereof "each such individual"; on page 219, line 2, immediately after "Act)" insert "unless and until the individual converts under section 2102 or section 2103"; in line 3, strike out "and 405" and insert in lieu thereof "405, and 504"; in line 5, strike out 504,"; in line 8, strike out who are temporarily excepted from conversion under this subsection" and insert in lieu thereof "to whom this subsection applies"; and in line 11, immediately before the period insert ", except that such salary rates shall not be less than the salary rates which but for the enactment of this Act would take effect under those sections for the first pay period which begins on or after the effective date of this Act".

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, the purpose of this amendment is to preserve the rights of employees in the International Communication Agency, ICA, as established under their collective bargaining agreement with the agency in 1977. This agreement protects ICA employees from being involuntarily converted from the Foreign Service to the

civil service and it has worked well. During the committee hearing both the agency, ICA and the employee organization, the American Federation of Government Employees, opposed the State Department's attempt to legislate this change to a mandatory conversion.

The people covered by this amendment are domestic specialists. They are writers, editors, broadcasters—people whose job is best done here in this country and who do not want to be forced into the Civil Service.

It seems to me very inappropriate at a time when these people in ICA were reporting on the strike of the Polish workers in the Gdansk shipyards that this committee and this State Department would be violating a workers' agreement. I think it is entirely inappropriate. I feel the collective bargaining agreement should be respected. I urge adoption of the amendment and hope the committee will accept it.

Mr. FASCELL. Mr. Chairman, I rise in opposition to the amendment. I want my colleagues to know this is a matter that was considered carefully over many months by the committee on the question of what to do with this issue on mandatory conversion. We believe the bill's provisions already represent a compromise between mandatory conversion without qualification and a purely voluntary conversion.

The largest group affected in this provision are 900 domestic specialists in ICA. If we allow these 900 people to convert voluntarily a major purpose of this bill would be defeated.

So I say in all fairness to everybody covered under the bill I urge my colleagues to defeat this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The amendment was rejected.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment Offered by Mr. OBERSTAR: Page 261, strike out section 2313 (lines 10 through 23) and insert in lieu thereof the following new section 2313:

SEC. 2313. RETIREMENT CREDIT FOR IMPRISONED FOREIGN NATIONALS AND FOR SERVICE WITH CERTAIN OVERSEAS BROADCASTING ORGANIZATIONS.—(a) Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon, and by inserting immediately after paragraph (9) the following new paragraphs:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual; and

"(11) subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Inc.; Free Europe, Inc.; Radio Liberation Committee; Radio Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Inc., Radio Free Asia; the Asia Foundation; or the American Forces Network, Europe (AFN–E).".

(b) Such section 8332(b) is further amended by adding at the end thereof the following new sentence: "The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type described in paragraph (11) of this subsection.".

On page 6, in the table of contents, strike out the item relating to section 2313 and insert in lieu thereof the following new item:

Sec. 2313. Retirement credit for imprisoned foreign nationals and for service with certain overseas broadcasting organizations.

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, our colleagues on the Foreign Affairs Committee and the Post Office and Civil Service Committee have done an enormous service in this legislation offering men and women of the Foreign Service benefits which are long overdue. But as the gentleman from Texas, Mr. GONZALEZ, earlier said, in a measure of such magnitude there are often injustices that creep in or may be overlooked.

One of those which I think has been overlooked and which has come to my attention, is that certain current or former employees of the International Communication Agency are being denied entitlement to their retirement credits. I have in mind those people who organized the binational centers in various countries outside the United States during the 1940's and 1950's.

I have some personal experience with people who operated these American and foreign country ethnic heritage and information centers. During a period when the U.S. Government was pursuing a variety of foreign policy objectives, these binational centers kept contacts between the United States and foreign nationals. Center staffs were paid on United States Government grants renewable on an annual basis. They were people who worked in very unhealthy areas of the world under very adverse conditions. They took on a very unpopular, sometimes risky task of defending their country and making friends for the United States overseas. I saw many of those individuals during the years when I lived and taught language in Haiti. They were the English speaking teachers, the cultural program directors and the librarians. Working at the binational centers, they created ties between America and the host community. Much of their work now continues through the mission and programing of the International Agency. I feel that those people ought to be given proper recognition for their retirement benefits.

Until the 1960's, the staff of these centers served in very tenuous yearly appointments because people who were making our foreign policy at that time feared that direct U.S. operation of the centers might backfire and cause anti-American feelings. Often, those centers were the target of anti-American feelings. They were bombed, they were firebombed, and they were attacked. Those people really had their lives on the line.

By the seventies, however, many of the staff employees had become career members of the Foreign Service. Those employees over the age of 50 were not offered unlimited appointments because they were very close to the traditional Foreign Service mandatory retirement age of 60. In 1974, a Federal court ruled that binational center grantees were entitled to retirement credits, but that decision has not been fully implemented.

My amendment would correct that discrimination at a very minimal cost of not even $100,000, according to estimates I have seen, and I hope the committee will accept the amendment.

□ 1900

Mrs. SCHROEDER. Will the gentleman yield?

Mr. OBERSTAR. I will be happy to yield.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition to the amendment.

The gentleman's amendment proposes to grant civil service retirement credit for service performed with certain radio broadcasting organizations such as Radio Free Europe and binational centers.

The Committee on Post Office and Civil Service and the Office of Personnel Management have consistently opposed legislative proposals to grant civil service retirement credit for periods of non-Federal service.

Although, in this case, the employees would be required to make a deposit to the civil service retirement fund to cover the non-Federal service, the service credits, nevertheless, would result in increasing the unfunded liability of the civil service retirement fund.

Mr. Chairman, the unfunded liability of the retirement fund now exceeds $130 billion. We simply cannot afford to incur additional liabilities, particularly for service which is not performed as a Federal employee. To do so in this case would result in an unfair burden on the American taxpayers and, most certainly, would open the door to a host of proposals for retirement credit for similar types of non-Federal service.

Mr. OBERSTAR. I am sorry the committee opposes the amendment. I think it is one that in all fairness should be accepted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The amendment was rejected.

AMENDMENT OFFERED BY MR. FASCELL

Mr. FASCELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FASCELL: Page 73, line 20, immediately before the period insert ", subject to any career extension under subsection (d) of this section"; and immediately after line 20, insert the following new subsection:

(d) Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, this amendment seeks to correct a situation giving the Secretary some authority in certain cases to provide for limited extensions of service. It recognizes the desirability of preserving the current authority of the Secretary to extend temporarily the career appointment of a career member of the Service whose time in class or limited career extension expires. An example of this situation occurs when a Foreign Service officer who is part of a negotiating team reaches the end of his time in class and faces selection-out. In the interest of an effective and efficient foreign policy, the Secretary needs the discretion to grant a limited extension in such an instance. This provision permits such an extension for a maximum of 1 year.

This amendment also allows a career member of the Service to complete the term of a Presidential appointment even if his or her maximum time in class or limited career extension has expired. This is a recognition of the President's authority to make such appointment.

I urge support of the amendment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I compliment the gentleman and we certainly accept the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL).

The amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. KAZEN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 6790 to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, pursuant to House Resolution 695, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment of third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 239, nays 78, not voting 115, as follows:

[Roll No. 525]

YEAS—239

Akaka	Derwinski	Horton
Albosta	Dickinson	Howard
Anderson, Calif.	Dicks	Huckaby
Andrews, N.C.	Dingell	Hughes
Andrews, N.Dak.	Dixon	Hutchinson
Annunzio	Dornan	Hutto
Anthony	Downey	Hyde
Ashley	Drinan	Jeffords
Aspin	Duncan, Oreg.	Jeffries
Atkinson	Early	Jenkins
AuCoin	Eckhardt	Johnson, Calif.
Bailey	Edgar	Johnson, Colo.
Barnes	Edwards, Ala.	Jones, N.C.
Bedell	Edwards, Calif.	Kildee
Beilenson	Erdahl	Kostmayer
Benjamin	Erlenborn	Leach, Iowa
Bennett	Ertel	Lent
Bereuter	Evans, Ind.	Lewis
Bevill	Fascell	Lloyd
Blanchard	Fazio	Long, La.
Boland	Fenwick	Long, Md.
Bolling	Fish	Lujan
Boner	Fithian	Luken
Bonior	Flippo	McCloskey
Bowen	Florio	McCormack
Brademas	Foley	McDade
Breaux	Ford, Mich.	McEwen
Brinkley	Ford, Tenn.	McHugh
Brodhead	Forsythe	Maguire
Brooks	Fountain	Markey
Brown, Calif.	Fowler	Marks
Buchanan	Frenzel	Martin
Burlison	Fuqua	Mica
Burton, John	Gaydos	Mikulski
Burton, Phillip	Gibbons	Miller, Calif.
Butler	Gilman	Mineta
Carr	Gingrich	Mitchell, Md.
Carter	Glickman	Mitchell, N.Y.
Cavanaugh	Goldwater	Moakley
Clausen	Gore	Mollohan
Cleveland	Gradison	Moore
Clinger	Gray	Moorhead, Pa.
Coleman	Green	Murphy, Pa.
Collins, Ill.	Guarini	Murtha
Conte	Gudger	Musto
Corcoran	Guyer	Myers, Ind.
Cotter	Hagedorn	Natcher
Coughlin	Hamilton	Neal
Courter	Hance	Nowak
D'Amours	Hanley	O'Brien
Danielson	Harkin	Oakar
Daschle	Harris	Oberstar
de la Garza	Harsha	Obey
Deckard	Hawkins	Ottinger
Dellums	Heftel	Panetta
Derrick	Hightower	Patterson
	Hollenbeck	Fease
		Pepper
	Petri	Sharp
	Pickle	Simon
	Preyer	Smith, Iowa
	Pritchard	Smith, Nebr.
	Rahall	Snowe
	Rangel	Solarz
	Ratchford	Stack
	Regula	Staggers
	Reuss	Stanton
	Rinaldo	Stark
	Robinson	Stewart
	Roe	Stokes
	Rosenthal	Studds
	Roth	Swift
	Roybal	Synar
	Sabo	Tauke
	Santini	Thomas
	Sawyer	Traxler
	Scheuer	Udall
	Schroeder	Van Deerlin
	Sebelius	Vander Jagt
	Seiberling	Vanik
	Sensenbrenner	Vento
		Volkmer
		Walgren
		Wampler
		Watkins
		Waxman
		Weaver
		Weiss
		White
		Whitehurst
		Whitley
		Whittaker
		Winn
		Wirth
		Wolff
		Wolpe
		Wright
		Yates
		Yatron
		Young, Fla.
		Young, Mo.
		Zablocki

NAYS—78

Abdnor	Hansen	Nichols
Applegate	Holland	Pashayan
Archer	Holt	Paul
Badham	Hopkins	Quillen
Bafalis	Ichord	Rhodes
Barnard	Jacobs	Roberts
Bauman	Jones, Okla.	Rousselot
Bethune	Jones, Tenn.	Rudd
Bouquard	Kazen	Schulze
Brown, Ohio	Kindness	Shelby
Broyhill	Kramer	Shumway
Carney	LaFalce	Shuster
Collins, Tex.	Lagomarsino	Snyder
Conable	Latta	Solomon
Crane, Philip	Lee	Spence
Daniel, Dan	Loeffler	Stangeland
Daniel, R. W.	Lott	Stenholm
Dannemeyer	Lungren	Stockman
Devine	McDonald	Stratton
Duncan, Tenn.	McKay	Stump
English	Madigan	Symms
Ginn	Marlenee	Taylor
Gonzalez	Michel	Trible
Gramm	Miller, Ohio	Wyatt
Grisham	Montgomery	
Hall, Tex.	Moorhead, Calif.	
Hammer-schmidt	Motti	

NOT VOTING—115

Addabbo	Glaimo	Nelson
Alexander	Goodling	Nolan
Ambro	Grassley	Patten
Anderson, Ill.	Hall, Ohio	Perkins
Ashbrook	Heckler	Peyser
Baldus	Hefner	Porter
Beard, R.I.	Hillis	Price
Beard, Tenn.	Hinson	Pursell
Biaggi	Holtzman	Quayle
Bingham	Hubbard	Railsback
Boggs	Ireland	Richmond
Bonker	Jenrette	Ritter
Broomfield	Kastenmeier	Rodino
Burgener	Kelly	Rose
Byron	Kemp	Rostenkowski
Campbell	Kogovsek	Royer
Chappell	Leach, La.	Russo
Cheney	Leath, Tex.	Satterfield
Chisholm	Lederer	Shannon
Clay	Lehman	Skelton
Coelho	Leland	Spellman
Conyers	Levitas	St Germain
Corman	Livingston	Steed
Crane, Daniel	Lowry	Tauzin
Davis, Mich.	Lundine	Thompson
Davis, S.C.	McClory	Ullman
Dodd	McKinney	Walker
Donnelly	Marriott	Whitten
Dougherty	Mathis	Williams, Mont.
Edwards, Okla.	Matsui	Williams, Ohio
Emery	Mattox	Wilson, Bob
Evans, Del.	Mavroules	Wilson, C. H.
Evans, Ga.	Mazzoli	Wilson, Tex.
Fary	Minish	Wydler
Ferraro	Moffett	Wylie
Findley	Murphy, Ill.	Young, Alaska
Frost	Murphy, N.Y.	Zeferetti
Garcia	Myers, Pa.	
Gephardt	Nedzi	

□ 1910

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Young of Alaska.
Mr. Chappell with Mr. Dougherty.
Mr. Lederer with Mr. Goodling.
Mrs. Byron with Mr. Railsback.
Mr. Coelho with Mr. Porter.

Mr. Mattox with Mr. McClory.
Mr. Zeferetti with Mr. Livingston.
Mr. Lowry with Mr. Hillis.
Mr. Jenrette with Mr. Grassley.
Mr. Ireland with Mr. Kemp.
Mr. Kastenmeier with Mr. Quayle.
Mr. Rodino with Mr. Ritter.
Mr. Satterfield with Mr. Pursell.
Mr. Russo with Mr. Williams of Ohio.
Mr. Rostenkowski with Mr. Wylie.
Mr. St Germain with Mr. Royer.
Mr. Tauzin with Mr. Walker.
Mr. Ullman with Mr. Kelly.
Mr. Thompson with Mr. Wydler.
Mr. Rose with Mrs. Heckler.
Mr. Steed with Mr. Marriott.
Mr. Alexander with Mr. Bob Wilson.
Mrs. Chisholm with Mr. Hinson.
Mr. Beard of Rhode Island with Mr. McKinney.
Mr. Price with Mr. Findley.
Mrs. Boggs with Mr. Ashbrook.
Mr. Nelson with Mr. Beard of Tennessee.
Mr. Minish with Mr. Daniel B. Crane.
Mrs. Holtzman with Mr. Davis of Missouri.
Mr. Mavroules with Mr. Emery.
Mr. Skelton with Mr. Edwards of Oklahoma.
Mrs. Spellman with Mr. Cheney.
Ms. Ferraro with Mr. Burgener.
Mr. Garcia with Mr. Evans of Delaware.
Mr. Donnelly with Mr. Broomfield.
Mr. Corman with Mr. Campbell.
Mr. Kogovsek with Mr. Charles H. Wilson of California.
Mr. Leland with Mr. Matsui.
Mr. Williams of Montana with Mr. Leach of Louisiana.
Mr. Lundine with Mr. Lehman.
Mr. Charles Wilson of Texas with Mr. Leath of Texas.
Mr. Levitas with Mr. Bonker.
Mr. Mathis with Mr. Baldus.
Mr. Ambro with Mr. Clay.
Mr. Bingham with Mr. Mazzoli.
Mr. Biaggi with Mr. Peyser.
Mr. Richmond with Mr. Patten.
Mr. Giaimo with Mr. Frost.
Mr. Fary with Mr. Hubbard.
Mr. Evans of Georgia with Mr. Dodd.
Mr. Hefner with Mr. Hall of Ohio.
Mr. Moffett with Mr. Conyers.
Mr. Nedzi with Mr. Murphy of Illinois.
Mr. Murphy of New York with Mr. Nolan.
Mr. Perkins with Mr. Myers of Pennsylvania.
Mr. Shannon with Mr. Whittier.

Messrs. MADIGAN, BROWN of Ohio, and HAMMERSCHMIDT changed their votes from "yea" to "nay."

Mr. ROE changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

☐ 1920

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AUTHORIZING CLERK TO MAKE CORRECTIONS AND TECHNICAL AND CONFORMING CHANGES IN ENGROSSMENT OF H.R. 6790, FOREIGN SERVICE ACT OF 1980

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill H.R. 6790, the Clerk is authorized to correct section numbers, punctuation, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending that bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

PERSONAL EXPLANATION RELATING TO COMMITTEE AMENDMENT TO H.R. 6790

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Mrs. SCHROEDER. Mr. Speaker, when the vote occurred on the Ford (Post Office and Civil Service Committee) amendment to H.R. 6790 dealing with the rights of former spouses, the floor message from the Democratic cloakroom initially misidentified it as the Schroeder amendment. Well, the Ford amendment struck the language of the Schroeder amendment. Obviously, I opposed the amendment. Yet, Members relying on the floor message might have assumed I supported it. Many Members were confused. The attached statement came from the cloakroom.

Schroeder Post Office and Civil Service Committee amendment to Section 814, Permits State courts on a case-by-case basis to determine the division of retirement benefits and survivor annuities to former spouses of Foreign Service officers.

(Four minutes after the vote began the identity of Mrs. SCHROEDER was deleted from the explanation.)

PERMISSION FOR COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO SIT DURING 5-MINUTE RULE ON WEDNESDAY OF THIS WEEK

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the Committee on Interstate and Foreign Commerce be permitted to sit during the 5-minute rule on Wednesday of this week, September 10, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE OF COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO SIT ON TOMORROW, TUESDAY, SEPTEMBER 9, 1980, DURING 5-MINUTE RULE

Mr. SCHEUER. Mr. Speaker, I ask unanimous consent that the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce be permitted to sit tomorrow afternoon, Tuesday, September 9, 1980, during the 5-minute rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, let me ask the gentleman, why is it so important to do this? We have a lot of legislation here to consider.

Mr. SCHEUER. Mr. Speaker, if the gentleman will yield, that is right, but we have been scheduled to hear testimony on H.R. 7791, the Reciprocity and Investment Act. We have many witnesses who are coming to the hearing.

Mr. ROUSSELOT. Is the request for witnesses only?

Mr. SCHEUER. For witnesses only.

Mr. ROUSSELOT. The gentleman can assure us, therefore, that there will be no markup of any bill?

Mr. SCHEUER. Absolutely not. I can assure the gentleman of that.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman's response, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

RADIOACTIVE WASTE DISPOSAL: THE EMERGING ISSUE OF STATES' RIGHTS

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SEIBERLING. Mr. Speaker, there is pending before the Committee on Interior and Insular Affairs of the House an extremely important piece of legislation dealing with the question of radioactive waste disposal.

Last year I wrote a Law Review article in the Akron University College of Law "Law Review" on the subject of radioactive waste disposal and the emerging issue of States' rights. While it may seem the reflection of a bit of pride of authorship to place my own writings in the RECORD, since the matter is current and since this does lay out the law on the subject, I am including the Law Review article for the benefit of my colleagues following these remarks:

RADIOACTIVE WASTE DISPOSAL: THE EMERGING ISSUE OF STATES' RIGHTS

(By Hon. JOHN F. SEIBERLING) *

March 28, 1979, marked the beginning of a new public awareness and attitude toward nuclear power. On that day, what some scientists, industry officials and government spokesmen said would never happen did happen—a serious accident of critical magnitude crippled a nuclear power facility, releasing undetermined amounts of radiation into the atmosphere. Communities within a fifty mile radius were threatened with unimaginable chaos and disruption in the event a core meltdown forced mass evacuation.

The events of Three Mile Island forced industry, government and the public to reassess the vision of nuclear power as a key

Footnotes at end of article.

solution to the energy crisis. As an outgrowth of this reassessment, the public began to demand a greater role in determining the development of nuclear power within their communities, and the public began to demand greater protection from the radiation hazards of nuclear waste transported through their communities. When the city of Cuyahoga Falls, Ohio for example, heard that radioactive waste from Three Mile Island was being trucked through the state, the city council passed an ordinance to place safety and security conditions on any such transports through city boundaries,[1] thus showing the concern which had already been expressed by officials in larger communities where accidents resulting in radiation leakage could result in a disaster of tragic proportions.[2]

States also have become increasingly responsive to public demands to prevent nuclear waste from being stored near their communities. State activity to prevent, limit, or prohibit outright the creation of nuclear waste facilities within the states' jurisdiction is not solely an outgrowth of Three Mile Island. Prior to March 28, 1979, sixteen states had approved legislation giving themselves either an equal role or a final say in federal decisions to store or dispose of radioactive waste within their boundaries.[3] Subsequent to March 28, 1979, the New Mexico legislature enacted a law prohibiting storage or disposal of radioactive waste in the state until and unless the state shall have concurred through a process to be established by a joint interim legislative committee. On May 30, 1979, the Ohio Senate approved legislation [3a] to prohibit the federal government from storing radioactive waste within the state at least through 1983.

If Ohio's bill is enacted into law, eighteen states will have claimed for themselves the authority to block federal decisions which may not adequately safeguard against accidents, leakage, spills or operational failures involving the transportation, storage and use of nuclear materials. Since radiation hazards which result from nuclear waste are not only potentially fatal but can endure literally for thousands of years, and with no national program of radioactive waste disposal on the horizon, this concern is well founded.

However, the laws passed by these states may run afoul of the Supremacy Clause of the Constitution. Regardless of the dimensions of the problem of disposing and safeguarding radioactive waste, the states' rights to impose conditions, or require prior consultation on potential waste disposal sites within their jurisdiction can be challenged in court, even in the absence of a federal solution, and have been challenged successfully. The purpose of this article is to examine the issue of the state role in federal nuclear programs and the need for Congressional action to insure that states will have an active role in federal decisions to dispose of radioactive waste within their jurisdictions.

I. THE ATOMIC ENERGY ACT

The Manhattan project brought a terrifying end to World War II and a hopeful beginning to the age of nuclear energy. However, since nuclear power was inexorably linked to weapons systems and national security, the federal government retained exclusive control over the development of atomic energy. In 1946, the Atomic Energy Act created the Atomic Energy Commission as the controlling federal agency, and restricted all private activity to fulfilling contractual obligations for the federal government.[4] Gradually, as nuclear power was developed to produce energy, and a domestic, peacetime application of the science became possible, the federal government invited industry to participate in making this application a reality. In 1954, Congress amended the Atomic Energy Act to allow increased participation by private industry through the establishment of a regulatory and licensing system.[5] It was later still that Congress approved legislation which gave states limited authority over certain kinds of nuclear materials, based on the recognition of state interest in "peaceful uses of atomic energy." [6] However, the policy Congress had established is based on the conclusion that the processing and use of nuclear materials is "vital to the common defense and security." [7] Thus, a federal agency (the Atomic Energy Commission, which in 1974, was designated the Nuclear Regulatory Commission) has been assigned full regulatory authority over the use of nuclear materials for commercial, peacetime purposes.

While the federal pre-emption over nuclear weapons development is a logical and defensible policy, it may be argued that continued federal pre-emption in uses of nuclear power for domestic purposes is an outdated application of the policy, especially in light of the expanded role of private industry. The nuclear industry asserts that excessive regulation by the federal government serves to impede the development of nuclear power as a major energy source in this country while states and citizen groups are more concerned about the dangers of nuclear power than ever before. From one side the federal government is being encouraged to smooth the way for the increased use of nuclear power for domestic energy needs, while from the other side the states are trying to cut from the federal regulatory fabric, on a state-by-state basis, a role for them to play, in partnership with the federal government, to represent the concerns of their citizens about the dangers of nuclear power and nuclear materials—including spent fuel—to public health and safety.

II. FAILURES OF FEDERAL REGULATORY SYSTEM

The problems of nuclear waste disposal are enormous. Currently, we have about seventy-four million gallons of radioactive waste in this country, all in temporary storage at plant-sited "pools"; and there are an additional eighty million gallons of defense nuclear waste which has accumulated since the military began producing nuclear weapons in the 1940's. The military high-level wastes have been stored at the Hanford Reservation in Washington State, the Savannah River reserve in South Carolina, and the Idaho National Engineering Laboratory in Idaho.[8]

The fission products contained in this waste are highly toxic elements, including the so-called transuranic elements; radioactive atoms heavier than uranium, which remain radioactive for extremely long periods of time. Plutonium-239, for example, has a half-life of almost twenty-five thousand years.[9] In human terms, the continued radioactive hazard is infinite. Even if radioactive waste storage could guarantee that no human exposure would occur for the life of the toxicity of the material, reactor waste must be isolated from the rest of the environment to prevent penetration and contamination of the biosphere, including food chains leading to man. This is a monumental problem, and even experts admit that no proven solutions to this problem exist at the present time.

The federal government, through the Department of Energy, has the prime responsibility for nuclear waste management.[10] However, the history of federal management of radioactive waste does not inspire public confidence in the existence of any long-term solutions to the problems of disposing nuclear waste, and the doubts expressed by the federal government itself through various agencies about current technological solutions to the radioactive waste problem point to the need for a thorough and public examination of all issues related to nuclear waste disposal.

The experience at the Hanford Reservation in Washington provides the best example of faulty assessments and planning by federal agencies for nuclear waste disposal. Millions of gallons of high-level waste were stored in liquid form in single-shell stainless steel and carbon tanks, which were originally expected to have a life expectancy of about fifty years. However, unexpected stresses resulted in failures before twenty years had passed, leaking over 423,500 gallons of high level wastes from sixteen tanks. The largest leak was discovered on June 8, 1973 when one tank was found to have leaked a total of 115,000 gallons amounting to 54,000 curies of radioactivity. The leak occurred over a period of months. (The extent of the leak was attributable in part to the absence of a key employee, whose substitute ignored signals from the monitoring system that something had gone wrong.) [11] The deficiencies in the storage technology at Hanford were previously known. In 1969, the General Accounting Office had warned that corrosion problems would exist with single-shell tanks,[12] but these warnings were ignored. Moreover, intermediate level radioactive wastes (up to 1 curie per gallon) were at first merely dumped in open trenches and absorbed into the sandy ground at Hanford.

The Department of Energy, which has authority to manage military as well as commercial radioactive waste, has embarked on a program to solidify the Hanford waste to prevent future leaks. Originally, as a part of the program, the Department of Energy proposed to store the military waste at a Waste Isolation Pilot Plant (WIPP) now being developed in New Mexico. The proposal has been modified since its initiation to use WIPP as a storage facility for transuranic wastes, such as contaminated clothing. While WIPP may be based on more advanced technology than was originally used at Hanford, past experience indicates that even technical experts have no confidence that their favored method of storing radioactive waste can be safely and surely implemented. Moreover, any disposal efforts would be subject to the hazards of accidents in transport, leaks of liquids pending solidification, or breakup or leaching into groundwater. (If the Administration lifts its current moratorium on reprocessing, additional hazards would be added to the problems of temporary and long term storage.)

Faulty selection criteria have further obstructed the government search for an "ideal" waste disposal site. In 1955, the National Academy of Science Research Council (NAS RC) was directed by the Atomic Energy Commission to examine the possibility of developing waste disposal facilities for radioactive materials. NASRC tentatively concluded in a 1957 research proposal that the best possibility was deep disposal in a geologic repository.[13] As a result of this initial conclusion, more engineering knowledge is available on salt mines than for any other method of radioactive waste disposal.[14] Some of the knowledge points to the potential instability of salt because of its plasticity and variable solubility.[15] Nonetheless, by 1970, the Atomic Energy Commission had spent one hundred million dollars and fifteen years to identify what they determined would be the final solution to the problem of disposing radioactive waste: an abandoned salt mine in Lyons, Kansas which would isolate radioactive waste permanently. The Kansas Geological Society, in an independent assessment of the selected site, raised questions about the site's safety, which was pockmarked with old oil and gas wells that penetrated the salt, providing an entrance for water from nearby operating mines. The Atomic Energy Commission later abandoned the site, admitting that the potential of water intrusion could leach out radioactive waste stored at the site.

Footnotes at end of article.

These experiences point to the faulty technology and criteria which have been employed by the federal government to develop a radioactive waste disposal program. In fact, the government no longer claims to possess solutions to the safety and security problems of long-term radioactive waste disposal. The most recent report on this issue, the Interagency Review Group report on Nuclear Waste Management [16] (a Presidential Commission which completed a report in March, 1979), had these conclusions concerning existing technology for preventing the potential exposure of humans to radioactive waste disposed of on a "permanent" basis:

"The risk assessments performed to date . . . have, with few exceptions, been based on idealized repository characteristics and are subject to significant uncertainties . . . Uncertainties associated with risk assessment derive from lack of data, lack of experience, inability to identify all release mechanisms for radionuclides, the natural variability in physical properties of geologic media, and the inability to predict long-term geologic and climatic process and social evolution. All of these uncertainties are neither additive nor of equal significance. An important aspect of the research remaining to be done is to understand how each enters into the overall uncertainty of the calculation of risk." [17]

The absence of federal solutions, following past failures, gives rise to another problem, which the Government Accounting Office described in a 1977 report:

"When it publicly announced its waste repository program objectives and goals the Department (of Energy) may have promised more than it can deliver. There are, we believe, formidable social, geological and regulatory problems which must be solved. Foremost among them is opposition of public and some political leaders. The Department may not be successful in gaining their acceptance unless it can convince the public that is has a sound waste management program and that geological disposal risks to man's environment are acceptably low." [18]

It is in this context—the absence of a federal program which promotes confidence—that seventeen states have already institutionalized their opposition to unilateral efforts by the federal government to bury radioactive wastes.

III. FEDERAL PRE-EMPTION

The state's laws giving them a role in federal radioactive waste management programs vary in the method, but essentially all achieve the purpose of reviewing and overriding a proposed federal action within their jurisdiction. However, in the absence of clear Congressional directive authorizing the states to have a role in such decisions, these state laws may be pre-empted by federal authority established under the Atomic Act as amended.[19]

In any inquiry into federal pre-emption it must first be established that the area is subject to federal regulation pursuant to authority designated by the Constitution. The findings of the Atomic Energy Act, as amended, clearly base the regulation of nuclear materials on constitutional powers over the common defense and security, interstate and foreign commerce and promotion of the general welfare.[20] As observed by the Eighth Circuit Court of Appeals in *Northern States Power Company* v. *Minnesota*, "... there can be no doubt but that Congress was acting within its constitutionally delegated authority in establishing a system of regulation over the entire spectrum of atomic energy, including the imposition of federal controls over health and safety standards." [21]

Once it has been established that the Constitution empowers the federal government to regulate the subject under question, it must be determined whether Congress intended or designed federal authority to pre-empt states from asserting their authority over the same subject.

"The doctrine of Federal pre-emption is based on Article VI, Clause 2 of the United States Constitution, the Supremacy Clause, which elevates federal law above that of the States." [22] The Clause states:

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

The Atomic Energy Act does provide for a state role in regulating health hazards of certain radioactive materials. In 1959, Congress approved provisions which recognized state interest in peaceful uses of nuclear energy, and to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.[23] The provision still requires the Commission to retain control over certain activities, including the management and disposal of such nuclear waste which, in the Commission's determination, cannot be disposed of without a license. Another provision states that no restrictions on state activity will prevent state or local authorities from regulating activities for purposes other than "protection against radiation hazards." [24] (As will be shown, these provisions have been interpreted by the courts not to be relinquishing federal authority to the states, but to narrowly define a subject over which the state can regulate.)

Federal pre-emption can be assumed if it is physically impossible to comply with both federal and state regulations. In such a situation "a holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design." [25] However, in the absence of a direct collision between the two regulatory systems, it must be determined whether Congress intended the federal regulatory scheme to be exclusive. This must be assessed on a case by case basis since, "there is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress." [26] Where this intent is express, states cannot exert authority over the same area.[27] Otherwise, Congressional intent may be gleaned by examining the statute, or its legislative history.[28]

For example, "the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it," [29] or if "the state policy produces a result inconsistent with the objectives of the federal statute," [30] or "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," [31] then the state law and regulation is pre-empted by federal law. For where the federal government has, pursuant to its constitutional authority, enacted a system of regulation "States cannot, inconsistently with the purposes of Congress, conflict or interfere with, curtail, or complement, the federal law, or enforce law, or enforce additional or auxiliary regulations." [32]

The pre-emption of the Atomic Energy Act was challenged by the state of Minnesota in *Northern States Power Company*. In this case Northern was licensed by the Atomic Energy Commission to build a nuclear power plant in Minnesota. Northern applied to the state for a waste disposal permit. The state granted the permit upon the condition that Northern institute a program at the nuclear plant to detect and measure radiation releases, both liquid and gaseous. Since Northern was in compliance with federal law and with the radiation safety regulations required by the Atomic Energy Commission as a condition to licensing, Northern argued that Congress (in passing the Atomic Energy Act) intended for the Commission to have exclusive authority and control of nuclear plants, and therefore pre-empted enforcement of the state regulation. Minnesota argued, on the other hand, that it could regulate radioactive releases pursuant to the authority under section 2021(b) of the Atomic Energy Act, which defines the conditions under which states could enter into cooperative agreements with the Commission for the regulation of radiation hazards associated with by-products, source and special nuclear material.

The court examined this provision, and noted that the category of radioactive material under question—liquid and gaseous releases from operating nuclear plants—was not among the categories of material over which the state could assume control under section 2021(b). The court further examined the provision which specifically prohibited the Atomic Energy Commission, in transferring certain authority to the states, from relinquishing its authority over the construction and operation of any production or utilization facility.[33] Finding that the discharge of radioactive effluents fell under the regulation of production and utilization facilities, the court determined that the Minnesota law provided for dual control by state and federal authority in an area where the sole authority rested with the federal government.

The court found further indication that the federal act pre-empted Minnesota's law in the legislative history of section 2021, to provide for cooperative agreements between the Commission and states with respect to state assumption of regulation over certain materials. The court noted that, prior to the 1959 amendments, the regulation of all radioactive materials, including those for which regulation by agreement could be assumed by the state (pursuant to section 2021), was solely under the regulatory authority of the federal government:

"While the 1959 amendment does not use the term 'exclusive' or 'sole' in describing existing regulatory responsibilities of the Commission we think it abundantly clear that the whole tone of the 1959 amendment, upon examination of the statutory language alone, demonstrates Congressional recognition that the AEC at that time possessed the sole authority to regulate radiation hazards associated with by-product, source and special nuclear materials and with production and utilization facilities . . . If the States at that time possessed concurrent jurisdiction to regulate radiation hazards associated with these materials, it would have been unnecessary for Congress affirmatively to recognize their regulatory authority by virtue of a state-federal compact and to limit their authority for the duration of and subject to the provisions of such agreement." [34]

Thus the court concluded that the states' right to regulate radiation hazards is specifically limited to those materials defined in section 2021(b) and does not extend to any other areas.

The court also examined the legislative intent of section 2021(k) which states that "nothing in this section shall be construed to affect the authority of any state or local agency to regulate activities for purposes other than protection against radiation hazard." Since the radiation hazards which can be regulated by the states are clearly defined, the court interpreted this as restating the restriction against any other state regulation of radiation hazards of radioactive material.[35]

Footnotes at end of article.

Finally, the court found that the Minnesota law was preempted by the Atomic Energy Act[36] because Minnesota's law obstructed the achievement of the Act's goals "to encourage the development, use and control of atomic energy so as to make the maximum contribution to the general welfare and to increase the standard of living."[37] However, the Atomic Energy Act provided that these objectives were to be effectuated "to the maximum extent consistent with the common defense and security and with the health and safety of the public."[38] Congress determined that the achievement of these goals required a comprehensive Federal regulatory program which, the court concluded, prevented states from imposing stricter standards which may impede the development and use of nuclear power. The court held that "the federal government has exclusive authority under the doctrine of preemption to regulate the construction and operation of nuclear power plants which necessarily includes regulation of the levels of radioactive effluents discharged from the plants."[39]

In a more recent case, *Pacific Legal Foundation* v. *California Energy Commission*,[40] the United States District Court for Southern California held that the Atomic Energy Act pre-empted a state law which set conditions on the future licensing of nuclear power plants in the state.

California Public Resources Code section 25524.2 prohibited the State Energy Commission from licensing a nuclear power plant pending the designation by the Nuclear Regulatory Commission of an approved technology for disposing of nuclear by-products of plant operation. Under this section, the NRC was required to submit a report approving the designated radioactive waste disposal technology to the state legislature, which was empowered to "disaffirm" any recommendations or finding in the report.

In *Pacific Legal Foundation*, San Diego Gas and Electric Company terminated the proposed construction of the Sundesert nuclear power project in Southern California. Plaintiffs argued that the project had been terminated because the California Energy Commission had determined that the required findings on a radioactive waste disposal technology were not available, resulting, at least for the time being, in a moratorium on nuclear power plant licensing in the state.

The court, in examining the effect of California Public Resources Code section 25524.2, observed that the result of the requirements made on the NRC was to obstruct Congressional purpose in passage of the Atomic Energy Act.

"Congress' policy to encourage the development and utilization of nuclear energy would decidedly be frustrated if all fifty states had statutes similar to California Public Resources Code section 25524.2. Although the Atomic Energy Act certainly leaves room for the states to regulate on the subject of nuclear energy within the confines of section 2021(k) and 2021(b), the power to regulate is not necessarily the power to prohibit. There seems little point in enacting an Atomic Energy Act and establishing a federal agency to promulgate extensive and pervasive regulations on the subject of construction and operation of nuclear reactors and the disposal of nuclear waste if it is within the prerogative of the states to outlaw the use of atomic energy within their borders."[41]

In *Pacific Legal Foundation*, the court further elaborated on the arguments forwarded in *Northern States Power Company* concerning the limited application of section 2021 (k), the provision which reserves to the states the right to regulate "activities for purposes other than protection against radiation hazards." The defendants relied upon this section as delegating authority to the states to regulate for purposes other than radiation control. They argued that the provision allowed the state of California to enact a law which would insure that state citizens would not be forced to bear the financial risk of financing nuclear power plant construction if these plants were later closed because inadequate waste disposal facilities existed.[42] This broad interpretation of section 2021 (k) was rejected by the court based on an examination of legislative intent, since a wide scope for state authority would effectively undermine the regulatory scheme established by Congress in the Atomic Energy Act.

Rather, the court found that an examination of legislative history led to the conclusion that Congress commanded the courts to interpret section 2021 (k) in a manner consistent with section 2021 (c). To buttress this interpretation, the court referred to a letter sent in 1959 by the General Manager of the AEC by the Chairman of the Congressional Joint Committee on Atomic Energy. Regarding AEC's recommended language for section 2021 (k) the letter said: "[w]e did not intend to leave any room for the exercise of concurrent jurisdiction by the States to control radiation from those materials. Our sole purpose was to leave room for the courts to determine the applicability of particular State laws and regulations dealing with matters on the fringe of the preempted area in the light of all the provisions and purposes of the Atomic Energy Act, rather than in the light of a single sentence."[43] Since this interpretation was accepted by the Joint Committee, the court in *Pacific Legal Foundation* concluded that this indicated "Congressional approval of the position that the precise extent of preemption under the section is to be determined by the courts in the light of all the provisions and purposes of the Atomic Energy Act."[44]

In light of the fact that the opportunity for states to regulate nuclear materials under section 2021 (b) was clearly defined and concerned subject matter previously under the sole authority of a federal agent,[45] the court held that section 2021 (k) did not extend authority to the state to protect its citizens against nuclear plants which may lack adequate disposal facilities, since the effect of such protection would be to obstruct the use of nuclear power in the state contrary to the express purpose of the Atomic Energy Act. Further, because authority to regulate use of radioactive materials which present sufficient hazards to require licensing was retained by the Atomic Energy Commission by virtue of section 2021 (c) of the Act, the court held that "the state regulation on this subject is displaced. Accordingly, the court holds California Public Resources Code section 25524.2 impliedly pre-empted."[46]

These decisions certainly can be used as precedent to challenge state laws which would require state concurrence in decisions on radioactive waste disposal on the grounds that the Atomic Energy Act and regulation made pursuant thereto preempt state laws and regulations on the subject of the use and disposal of radioactive waste material.

In addition to the Atomic Energy Act, the Department of Energy Organization Act of August 4, 1977[47] gives specific authority to the Department of Energy over nuclear waste management, with the exception of those functions under the authority of the Nuclear Regulatory Commission. This means that DOE's authority does not cover the licensing of radioactive waste for permanent disposal or any functions covered by NRC-state agreements.

The Department of Energy Organization Act authorizes the federal agency to provide for:

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes.[48]

While a provision in the Act does require the Department to give "due consideration" to the needs of states where conflicts exist in the development of national energy plans,[49] there is no authority in this Act which gives the states a statutory basis for participating in the process of establishing nuclear waste facilities within their boundaries. In fact, the comprehensive and specific DOE authority defined in section 7311(8) over nuclear waste management would probably give considerable weight to arguments that the federal regulatory scheme is "so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it."[50] Any state law which regulated the disposal of radioactive waste could be challenged on the basis that such state action was preempted by federal authority under the Atomic Energy Act and the Department of Energy Organization Act.

III. STATES' RIGHTS AND NATIONAL GOALS

These ponderous legal obstacles do not seem to have dampened the efforts of the states to participate in radioactive waste disposal decisions to the extent of exercising authority to "veto" the selection of sites within their jurisdictions. Considering the risk assessments associated with disposal of radioactive waste, the duration of the hazard to public health and environment inherent in radioactive waste, the past failures in the federal government's efforts to manage radioactive waste and the growing public concern about the dangers associated with nuclear power in general, the states' interest is understandable. It also presents serious problems for the implementation of a national radioactive waste disposal management program, since without the cooperation of state and local officials, it could be politically impossible for the federal government to develop a radioactive waste disposal facility within a given state.

There is general agreement among federal officials that states must have some role in decisions to store radioactive waste if such facilities are to become a reality. In 1977, hearings before the House Interior Subcommittee on Energy and the Environment, then-Chairman of the Nuclear Regulatory Commission Marcus A. Rowden said: "The matter of where a repository is located is not simply a legal question. It is not simply a technological question. It is a political question, and a political decision is going to have to be made . . . My own view remains that the basic problems with regard to waste management are national scope. They will have to be addressed at the national level. Ultimately, it is going to be the Congress through legislation which makes the final determination."[51]

In 1979 hearings before the same Subcommittee, John M. Deutch, Director of Energy Research for the Department of Energy and Chairman of the President's Interagency Review Group on Nuclear Waste, in an exchange with the Chairman of the Subcommittee, Congressman Morris Udall, talked about the problems of providing a state role without authorizing a state veto:

DEUTCH. The position of the administration has been against a legislative veto right for States. On the other hand, we understand as a practical matter and as a matter of public interest, that when you are actually considering a specific facility in a specific State and locality, you must have the State and local officials supporting your program

Footnotes at end of article.

in terms of technical merit and consequences for their areas.

UDALL. It has been my own view, and maybe you will comment on this, that as a practical matter, whether you give it to them or not—if the Governor or the legislature or a large body of citizens in any State do not want an installation in their State, it is going to be extremely difficult for the federal government to force it upon them.

Would you agree that that is a practical statement?

DEUTCH. Absolutely, yes, sir.[52]

The final report of the Interagency Review Group on Nuclear Waste Management, issued in March 1979, reiterated the point that the federal government was bound in its development of a federal radioactive waste disposal program to work with the states. The final recommendations read: "The IRG believes that the technical and socio-political success of any federal waste management program is largely dependent on the States; and in particular the extent to which the states are involved early-on in program planning research and development, site identification, site characterization, (and) development of regional programs."[53] However, the report stopped short of recommending a state veto authority, finding that a state veto had the potential of allowing the state "at one specific moment—by one of several possible mechanisms—to approve or disapprove of federal site investigation activities or a proposal to site a repository or other facility."[54] Rather, the IRG recommended the establishment of a "consultation and concurrence" process whereby the state could participate on a continuing basis in all activities and "if it deems appropriate to prevent the continuance of federal activities."[55]

The Department of Energy currently follows an internal policy which subjects the approval of proposed locations for radioactive waste disposal facilities to state concurrence—in effect allowing the states to "veto" potential sites within their jurisdiction. In a letter dated June 19, 1978 from the Comptroller General of the United States to Congressman John D. Dingell, the Comptroller made reference to an agreement signed by the Governor of Louisiana and the Deputy Secretary of DOE which stated that, with respect to nuclear storage: "the Department of Energy will not construct any nuclear waste depository for long-term disposal in Louisiana if the State objects."[56] Since the legislative history of the Department of Energy Organization Act contained nothing to support a conclusion that the states could be given such a "veto" power by DOE, the Comptroller consulted an internal memorandum from the Department of Energy's Office of General Counsel which concluded that "the Secretary of Energy under existing law does not have the legal authority to enter into a binding agreement with a state pursuant to which the state would have the power to veto or forbid the establishment of a proposed nuclear waste repository in the state." The Comptroller further held that without statutory authority permitting such action, any agreements between officials of the Department of Energy and states giving the state the power to reject a potential disposal site selected by the Department would be legally unenforceable.

In further correspondence from the Department of Energy to Congressman Dingell, the Secretary of Energy James Schlesinger indicated that the Department was trying to develop a process for affected states to participate in the selection of potential sites for the disposal of radioactive waste. However, given the traditional Federal preemption of the states on all issues related to nuclear materials, as interpreted by the courts, DOE may require additional authority to implement a process for involving states in nuclear waste management decisions. It is unlikely that the courts would uphold the authority of DOE to create a role for the states if such a role could be construed to obstruct the implementation of a federal radioactive waste disposal program.

Several bills have been introduced in the 96th Congress to authorize a role for the states to participate in or veto decisions by the Federal government to create radioactive waste disposal facilities within their jurisdiction.[57]

Although the House Interior Subcommittee on Energy and the Environment held a day of hearings on H.R. 2762 in June, 1979, it is uncertain whether Congress will take any action to provide states an opportunity to participate meaningfully in federal decisions on nuclear waste facility siting. Opponents to state participation argue that enactment of such legislation would result in all fifty states objecting to radioactive disposal facilities proposed for their jurisdictions. However, the states are rejecting radioactive waste even in the absence of statutory authority, and this trend will, at the very least, delay the development and implementation of a national radioactive waste management plan. The courts may, and in the absence of a legislative solution, will dispose of the issue on the basis of legal considerations. But the problem is essentially technical and political. A final decision by Congress on nuclear waste disposal policy must accommodate both the national interest in solving the problem of radioactive waste disposal and the responsibilities of the states for health and safety of their citizens.

FOOTNOTES

* Member of Congress, 1971-present; LL.B., Columbia University, 1949. I am deeply indebted to Suzanne Goulet of my staff for her work in researching and preparing the initial draft of this article.

[1] Cuyahoga Falls, Ohio, Code § 17 (1979).

[2] New York, N.Y., Health Code, § 175.111 (1976).

[3] Alaska, California, Colorado, Delaware, Hawaii, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, North Dakota, Oregon, South Dakota, Texas and Vermont.

[3a] S.B. 11, 113th Ohio Gen. Assemb., (1979). At the time of this writing (Feb. 1980) the bill is pending before the Ohio House Committee on Agriculture and Natural Resources.

[4] Atomic Energy Act of 1946, ch. 724, 60 Stat. 755.

[5] Atomic Energy Act of 1954, ch. 1073, 68 Stat. 919, as amended by 42 U.S.C. § 2011 *et seq.* (1976).

[6] Atomic Energy Act of 1959, U.S.C. § 2021 (a) (1976).

[7] Id. at § 2021(a)(1) (1976).

[8] United States Department of Energy, Report to the President by the Interagency Review Group on Nuclear Waste Management (App. D) (1979) [Hereinafter cited as Report to the President].

[9] A. Kudo & D. Rose, *Disposal of Nuclear Wastes*, 182 Science 1205–1211 (1973).

[10] Department of Energy Organization Act of 1977, 42 U.S.C. § 7133(a)(8) (1976).

[11] National Academy of Sciences, United States Energy Research and Development Administration, Radioactive Wastes at the Hanford Reservation (1978).

[12] United States Government Accounting Office, Report to the Joint Committee on Atomic Energy, Progress and Problems in Programs for Managing High-Level Radioactive Waste (1971).

[13] The National Academy of Science National Research Council, The Disposal of Radioactive Waste on Land (1957).

[14] D. Johnson & S. Gonzales, United States Department of Energy, Salt Deposits in the United States and Regional Geologic Characteristics Important for Storage of Radioactive Waste (1978); Report to the President, *supra* note 8, at 60.

[15] A. Kubo & D. Rose, *supra* note 9, at 1207; Department of Energy, Subgroup Report on Alternative Technology Strategies for the Isolation of Nuclear Waste (1978).

[16] H.R. Rep. No. 95–1090, 95th Cong., 2d Sess. 8 (1978).

[17] Report to the President, *supra* note 8, at 45–46.

[18] United States Government Accounting Office, Report to the Senate Committee on Environment and Public Works, Nuclear Energy's Dilemma: *Disposing of Hazardous Radioactive Waste Safely* (1977).

[19] U.S.C. § 2011 *et seq.* (1976).

[20] *Id.* at § 2012 (1976).

[21] 447 F.2d 1143, 1147 (8th Cir. 1971).

[22] *Id.* at 1145.

[23] 42 U.S.C. § 2021 (b) (1976).

[24] *Id.* at § 2021 (k) (1976).

[25] Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142–143 (1963).

[26] Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

[27] 447 F.2d at 1146.

[28] 373 U.S. at 146–152.

[29] Rice v. Sante Fe Elevator Corp., 331 U.S. 218, 230 (1947).

[30] *Id.*

[31] 312 U.S. at 67.

[32] *Id.*

[33] 42 U.S.C. § 2021 (c) (1976).

[34] 447 F.2d at 1149.

[35] *Id.* at 1150.

[36] 42 U.S.C. §§ 2011 & 2012 (1976).

[37] 447 F.2d at 1154.

[38] 42 U.S.C. § 2013 (1976).

[39] 447 F.2d at 1154.

[40] Civil No. 78–711–E (S.D. Cal. filed March 6, 1979).

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] 447 F.2d at 1149.

[46] Civil No. 78–711–E.

[47] The Department of Energy Organization Act of 1977, 42 U.S.C. § 7101 *et seq.* (Supp. I 1977).

[48] U.S.C. § 7311 (A) (8) (1977).

[49] 42 U.S.C. § 7113 (1977).

[50] 331 U.S. at 230.

[51] Hearings before the Subcomm. on Energy and the Environment of the Comm. on Interior and Insular Affairs of the House on HR 18 et al., 95th Cong., 1st Sess. 55 (1977).

[52] Oversight hearings before the Subcomm. on Energy and the Environment of the Comm. of Interior and Insular Affairs on the House on Nuclear Waste Management, 96th Cong., 1st Sess. 11 (1979).

[53] Report to the President, *supra* note 8, at 95.

[54] *Id.*

[55] *Id.*

[56] Letter from R. F. Keller to John D. Dingell (June 19, 1978).

[57] At this writing, the bills are H.R. 1071, 96th Cong., 1st Sess., 125 CONG. REC. 463 (1979), introduced by Rep. Joseph Moakley, which would authorize state legislative actions or state referenda on storage proposal; H.R. 1791, 96th Cong., 1st Sess., 125 CONG. REC. 1666 (1979), introduced by Rep. James M. Hanley, which would subject federal proposals to store radioactive waste to state legislature's review; S.1443, 96th Cong., 1st Sess., 125 CONG. REC. 16893 (1979), introduced by Senator John Durkin, to authorize approval by state legislatures or Indian tribes of proposal radioactive waste disposal facilities; and H.R. 2762, 96th Cong., 1st Sess., 125 CONG. REC. 4417 (1979), to create a process for states to participate in proposed radioactive disposal facilities decisions, and to approve or disapprove of final disposal decisions.

COMMUNICATION FROM THE SERGEANT AT ARMS—SUBPENAS DUCES TECUM IN CASE OF UNITED STATES, DISTRICT OF COLUMBIA AGAINST STACY ABNEY

The SPEAKER pro tempore laid before the House the following communication from the Sergeant at Arms of the House of Representatives:

WASHINGTON, D.C.,
July 2, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On July 1, 1980 I was served with a subpoena duces tecum; said subpoena was issued by the Superior Court of the District of Columbia.

The subpoena commands me to appear before the Criminal Division, Misdemeanor Branch on July 3, 1980 and requests the production of certain House records. The subpoena is available in my office for inspection by any Member.

Sincerely,

BENJAMIN J. GUTHRIE,
Sergeant at Arms.

The SPEAKER pro tempore. The Clerk will read the subpenas.

The Clerk read as follows:

[Superior Court of the District of Columbia; Docket No. M-3934-80, T-3190-80]

U.S. DISTRICT OF COLUMBIA *vs.* STACY ABNEY

To: Benjamin J. Guthrie, Sergeant at Arms, U.S. House of Representatives, U.S. Capitol.

You are hereby commanded to appear before the Criminal Division, Misdemeanor Branch, Courtroom 19, of the Superior Court of the District of Columbia at 9:00 a.m., on the 3d day of July, 1980, as a witness for defendant and bring with you all records pertaining to demonstration permits issued by the Capitol Police used for demonstrations on the U.S. Capitol grounds from January, 1980 to the present.

[Superior Court of the District of Columbia, Docket No. M3934]

U.S. DISTRICT OF COLUMBIA *vs.* STACY ABNEY

To: James Powell, Chief, Capitol Hill Police.

You are hereby commanded to appear before the Criminal Division, Courtroom 19, of the Superior Court of the District of Columbia at 8:00 o'clock a.m. on the 3d day of July, 1980, as a witness for the defendant and bring with you all permits issued to individuals or groups for demonstrations on the Capitol Grounds from January, 1980 to the present.

COMMUNICATION FROM THE SERGEANT AT ARMS—SUBPENA DUCES TECUM IN CASE OF UNITED STATES, DISTRICT OF COLUMBIA AGAINST STACY ABNEY

The SPEAKER pro tempore laid before the House the following communication from the Sergeant at Arms of the House of Representatives:

WASHINGTON, D.C.,
September 8, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: On September 8, 1980 I was served with a subpoena duces tecum; said subpoena was issued by the Superior Court of the District of Columbia.

The subpoena commands me to appear before the Criminal Division, Misdemeanor Branch on September 15, 1980 and requests the production of certain House records. The subpoena is available in my office for inspection by any Member.

Sincerely,

BENJAMIN J. GUTHRIE,
Sergeant at Arms.

The SPEAKER pro tempore. The Clerk will read the subpena.

The Clerk read as follows:

[Superior Court of the District of Columbia; Docket No. M-3934-8; T-3190-80]

U.S. DISTRICT OF COLUMBIA *vs.* STACEY ABNEY

To: Benjamin J. Guthrie, sergeant at arms, U.S. House of Representatives, U.S. Capitol.

You are hereby commanded to appear before the Criminal Division, Misdemeanor Branch, Courtroom 19, of the Superior Court of the District of Columbia, at 9:00 o'clock a.m. on the 15th day of September, 1980, as a witness for _____ and bring with you copies of applications for demonstration permits issued by Capitol Police Board from January 1980 to present.

SPECIAL PERMISSION RELATING TO SPECIAL ORDER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGRICH) will be recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I ask unanimous consent that my special order follow that of the gentleman from Florida (Mr. FASCELL).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

A TRIBUTE TO THE HONORABLE CLAUDE PEPPER ON HIS 80TH BIRTHDAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. FASCELL) is recognized for 60 minutes.

Mr. FASCELL. Mr. Speaker, I thank the gentleman from Georgia (Mr. GINGRICH) for the gracious deferral of his own special order so that I might, with my colleagues, take the floor at this time on a very rare and historical occasion, one which will give all of us, I am sure, great pleasure.

Mr. Speaker, we in the House of Representatives are privileged to count CLAUDE PEPPER as one of our most esteemed Members and it is with respect and affection that we honor him today on his 80th birthday. Our congratulations are offered on this milestone for his more than 50 years of public service and for his countless contributions to the United States and to the people he has represented so ably and so tirelessly. I invite our colleagues in the House to join with me in extending warmest birthday wishes to this distinguished gentleman from Florida.

It is certainly fitting that CLAUDE PEPPER was born at the dawn of the 20th century, the period of our country's most rapid growth. This era of intense progress has required the utmost adaptability and resourcefulness of the Nation and of the men and women who have led her. CLAUDE never declined the challenges of this time, but accepted them, welcomed them and answered them. CLAUDE witnessed the changes that advanced technology brought to industry, transportation and trade. He saw the changing human needs of our people and never ceased his efforts in support of programs to meet and anticipate these needs. He has been a man ahead of his time, a man willing to accept the advances of this age and eager to address the concomitant issues. His record is a remarkable one.

From the time that CLAUDE became a Floridian in 1925, he has served our State in many capacities and it was in the Florida House of Representatives that his legislative career began. In 1936, CLAUDE was elected to the U.S. Senate, where he served with distinction until 1951. And since 1963, CLAUDE has been a highly effective, valued and admired Member of the House. He is a skilled, experienced lawmaker, evidenced by his responsibilities as ranking member of one of our most important and technical committees, House Rules. He sees and understands the social problems of this century and, because of his ability as a legislator, is able to do something about them.

The list of reforms that CLAUDE PEPPER has shaped and guided through the Congress is lengthy and impressive. From the days of the New Deal to the present, CLAUDE has championed the needy of every age and station. But, his most recent efforts have been directed toward the welfare of older Americans and it is in this work that he has accomplished some of the most needed corrective action. Since he assumed the chair of the House Select Committee on Aging, many improvements in health and social progams have been brought about, the mandatory retirement law has been liberalized and a program designed to end abuses in the sale of health insurance to the elderly has been established. He has worked to demonstrate that persons over 65 have much to contribute to our society and his own life bears this out. CLAUDE proves to younger and older Americans alike that life can be full and productive at 80.

It has been an honor for me to know CLAUDE PEPPER and his dearly remembered wife Mildred. I am proud of the years we have worked together in the Congress and of what has been accomplished here. I wish CLAUDE every happiness today on his birthday and in the coming year. May we celebrate many such happy days.

Mr. BOLLING. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the distinguished Chairman of the Committee on Rules.

Mr. BOLLING. Mr. Speaker, I am delighted that the gentleman from Florida (Mr. FASCELL) has taken this special order, and I am delighted to have the opportunity to join with him.

I have said this many times to our dear friend, CLAUDE, that back when I graduated from a southern college in 1937, he was not only my hero but he was the hero of all the people of like mind in that college in Tennessee. I graduated from Sewanee.

I grew up in north Alabama, in Huntsville, and I had a special feeling for CLAUDE even in those days because he came from Alabama, too.

☐ 1930

But I have not told him why I felt that way about him then, and I have not told him another fact, that in 1946, when most Democrats were very discouraged and were not venturing out from their safe places to campaign for others or for the party, CLAUDE PEPPER was out working as hard as a man could work, and I had the pleasure, as one of my first political acts in Kansas City, Mo., to introduce him at a dinner, a small dinner, at which he was the principal speaker. I had my first opportunity to see and hear this man I had admired so long. Now, of course, I have the privilege of serving on a committee with him, and I find that the qualities that endeared him to me in 1937 and in 1946 are still with him.

The gentleman from Florida (Mr. FASCELL) has said it very well. I would say it only a little bit differently: I know of no man in American politics at any time in my experience or now who has greater compassion, a stronger feeling for the people who needed help, the people who need help and are discriminated against in any way. He led the way in the South, in my opinion, in feeling that people should be treated fairly, all people. He did it in the most important possible way, by putting his record on the line time and time again.

I say without any hesitation that this country could only have been improved by CLAUDE PEPPER had his service not been interrupted. He is a person who, from the people that he served, always deserved the best, and the best is more than election victory. I am delighted that he is back in the Congress and has been for longer than most Members serve, having served a long time in the U.S. Senate and now a long time in the House of Representatives, and I hope I am as young as he is when I reach the age of 65.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding.

Mr. Speaker, there is so little that one can add to what has been said by these two eloquent speakers. I am only 5½ years in the House, and in that short time I have learned to respect and admire CLAUDE PEPPER. And more than that, I have the greatest affection for him. I tried like mad to get on his committee. I was not successful. If I am elected, I will try again. I can think of no greater honor and pleasure.

I have learned that the thing that really counts in political life is wholeheartedness, integrity and a true desire to do what you say you are doing. Of all of the people I have known here in the Congress, I think that this Member, this friend, this dear friend of ours, on his 80th birthday, has so clearly brought that home to each one of us.

I think that is the source of the affection which surrounds him every day and the respect and admiration that we have.

Mr. DRINAN. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from Massachusetts.

Mr. DRINAN. I thank the gentleman for yielding.

Mr. Speaker, it is with great pleasure that I join my colleagues in honoring our esteemed friend, CLAUDE PEPPER, on this his 80th birthday. It is difficult for me to think of CLAUDE as 80 since that is traditionally a time in life when many choose to slow down. I was amused by a recent press account which described CLAUDE as "galloping" toward his 80th birthday. Those of us who have worked closely with him know all too well that CLAUDE never slows down.

He is untiring and unyielding in his efforts to achieve a better, more dignified way of life for the elderly, the poor, the disenfranchised. At the national level he is best known for his advocacy of the rights of older Americans. Throughout the South he is remembered for his unrelenting efforts to achieve racial justice long before the civil rights struggles of the 1960's. And, within his own 14th District in Florida, he is associated at this time with efforts to provide decent and humane resettlement for thousands of Cuban refugees.

He has enjoyed an astonishing record of success in his role as chairman of the House Select Committee on Aging. There is no issue of importance to older Americans which that committee has not addressed. Under CLAUDE'S command the committee serves as a vigilant watchdog for the concerns of older citizens in each and every piece of legislation that comes before the House.

Early in the 95th Congress, CLAUDE decided that a change in public policy on mandatory retirement was vital if we were truly going to end discrimination based on age. Many felt it would not be possible to bring about such a significant change in national policy within the short space of 2 years. On October 18, 1978, the Age Discrimination Act amendments were signed into law eradicating the age-based retirement of Federal employees and increasing the retirement age in private employment from 65 to 70. Without the forceful and able leadership of CLAUDE PEPPER that victory would not have been possible.

His triumphs are too numerous to mention, but they include extending the popular Meals-on-Wheels program to the housebound elderly; establishing a program to combat crime in public housing and obtaining Amtrak discounts for older citizens. He continues to wage a diligent campaign to provide alternatives to nursing homes. Next to age discrimination, I think nothing troubles CLAUDE more than the overinstitutionalization of our older citizens. I know he will not rest until federal policy emphasizes home health care and other support services aimed at allowing older citizens to remain in their homes and in their neighborhoods.

I know CLAUDE has much planned for the Committee on Aging and in his many other endeavors. I am glad that he has paused to enjoy this birthday. Like Robert Frost in his lovely poem "Stopping by Woods on a Snowy Evening," CLAUDE'S life proclaims that he has promises to keep and miles to go before he sleeps.

Mr. FASCELL. I thank the gentleman for his remarks.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, it is with great pleasure that I rise to join my colleagues in extending to the gentleman from Florida (Mr. PEPPER) our very best wishes on this day, his 80th birthday and I commend the gentleman from Florida, (Mr. FASCELL) for taking this time on the House floor to honor our colleague in this manner.

Congressman CLAUDE PEPPER'S record of service to this Nation, as we all know, is not only lengthy but is quite impressive. He first came to the Capitol in 1936 as a U.S. Senator and has served the people of Florida in many ways and in many capacities in the 44 years since that time. He has represented the 14th District of Florida since 1968 with a vigor and energy envied by his younger colleagues.

CLAUDE PEPPER'S name is a household word in the homes of our senior citizens throughout our Nation, for it was he that successfully introduced and guided through the Congress a bill raising the mandatory retirement age from 65 to 70 for most jobs in the United States. As chairman of the Select Committee on Aging, he has followed that effort with the introduction of legislation to protect the health, safety, incomes, and rights of senior citizens.

Among the bills which he has authored are the Drug Benefits for the Aged Act, the Older Americans Civil Rights Act, the Long-Term Care Services Act, the Medicare Long-Term Care Act, the Space Technology for the Elderly Act, the Nursing Home Reform Act, and many others. It has been my privilege to join the distinguished gentleman from Florida in several of his efforts as a cosponsor of the Senior Citizens Health Insurance Reform Act and the Foreign Service Retirement Amendments.

It is obvious that Mr. PEPPER'S own district and the House of Representatives have not been the only beneficiaries of his leadership and initiative. His dedication and tireless effort have had and continue to have a significant—and fa-

vorable—impact on the elderly citizens of our Nation.

As he celebrates his birthday today, I take pleasure joining my colleagues in extending to CLAUDE PEPPER our congratulations, gratitude and respect, and our very best wishes for many more productive years.

Mr. ANDERSON of California. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from California.

Mr. ANDERSON of California. I thank the gentleman for yielding, and I want to congratulate the gentleman for giving us this opportunity to tell CLAUDE what we think of him today on his 80th birthday.

Mr. Speaker, I was listening to the remarks of the gentleman from Missouri a moment ago, and I want to also associate myself with his remarks. But I want to remind him that while he was introducing CLAUDE at some meeting in 1946, out in California we were sponsoring and advocating him for the Presidency.

Mr. Speaker, it is with some feeling of awe, and perhaps inadequacy, that we call attention to the 80th birthday of CLAUDE PEPPER. I expect that his 100th birthday will also be celebrated in this Chamber, and that in the intervening 20 years, he will have accomplished more than most of us in our whole lifetimes.

I will leave it to others to catalogue CLAUDE PEPPER'S record, but it could be the standard for public service for all of us in the 20th century. While it may be appropriate that the congressional champion of senior citizens has the earliest date on his birth certificate, his actions certainly belie the statistic. He attacks problems with the zeal of a freshman. Combined with his experience, this means he usually gets results. There is hardly a committee of this House which has not felt his hand prodding legislation to benefit the elderly.

Because my own district has one of the highest proportions of elderly in the country, I am especially grateful that his attention in recent years has focused on the concerns of senior citizens. I have been pleased to join him in a variety of successful legislative efforts in medicare, social security, insurance, transportation, retirement and many other issues important to the growing number of senior citizens in my area.

Even my own Subcommittee on Aviation, as remote as it may sound, has not been immune to CLAUDE'S influence. As the result of one of his bills, we are expecting in December to receive a report from the National Institute on Aging which may lead to later retirement ages for airline pilots.

In addition to my appreciation for his leadership, working with CLAUDE PEPPER has been one of the great personal pleasures of my career in the House.

Mrs. Anderson and I offer Congressman PEPPER our best wishes on his 80th birthday. I also wish the rest of us could do as well at any age as does this octogenarian.

□ 1940

Mr. FASCELL. I yield to my distinguished colleague, the gentleman from Florida (Mr. HUTTO).

Mr. HUTTO. Mr. Speaker, I appreciate my colleague taking this special order. I want to join in this tribute to the distinguished gentleman from Florida, Congressman CLAUDE PEPPER, my good friend and Member of the Florida delegation on the occasion of his 80th birthday.

This man without a doubt is one of the most beloved politicians who ever served the great Sunshine State of Florida. As a fellow Alabamian, I think it is noteworthy that CLAUDE even before coming to Florida had a rather distinguished career in his native state of Alabama. I was particularly pleased to learn to know that he taught in Dothan, Ala., back in 1917 and 1918. This was quite a while before I was born, but it is right near, just a few miles from my birthplace in Midland City, Ala., and later I worked in Dothan, as he did. I was in broadcasting.

I had heard of CLAUDE PEPPER for a long time, but I never personally had the opportunity to meet him until I began my service in the Florida legislature in 1972.

CLAUDE once served there in the Florida House. Each year he comes back to Florida to visit the chamber and to address the Members of the Florida Legislature during its session. He is the only Florida delegate member that does this on an annual basis.

Since he represented Taylor County in the Florida House, he always makes it a point, and this was back in 1930, but every year when he comes back he makes it a point to go and sit with the member who serves that county, Taylor County. It so happens that Representative James Harold Thompson now represents that county and I sat next to Representative Thompson so that CLAUDE would come down and sit between us. That is where I first met CLAUDE and I had the pleasure of visiting with him on a number of occasions. It was then that I learned why CLAUDE PEPPER is the distinguished and beloved statesman of which all the State of Florida is justifiably proud.

Needless to say, when I came to the Congress after my election in 1978, one of the first persons in the Florida delegation that I visited with was CLAUDE PEPPER. As a freshman, it has been a source of encouragement and strength to have his wise advice, counsel and wisdom. He has been very helpful to me, as I am sure he has been to all the Members in our delegation, particularly the freshmen.

CLAUDE PEPPER is a very compassionate man and it is apparent by looking at his record that he has been understanding and helpful to many, many people during his long tenure of public service. His latest thing, of course, is that of being chairman of the Select Committee on Aging, which has been mentioned here several times, and for his work in seeking to help our senior citizens, I applaud his sincere efforts.

I believe that the lives of our aging population will be made better and be enriched in the future because of the work of this man.

It was during his visits to the Florida legislature that I also had the privilege of meeting his beloved wife, Mildred. We all mourn with him the loss of her a year or so ago of this charming lady. CLAUDE is a fine family man. Just recently I enjoyed visiting with some other members of his family, his brother Frank, who is a television personality in Tallahassee, whom I have the pleasure of knowing, and other relatives as they visited here in the Capitol; so I consider it a distinct honor and privilege to know CLAUDE PEPPER and to serve in the same delegation with him.

I look forward to the pleasure of serving with you, CLAUDE, for the next 20 years. I am counting on you to have another special order on his 100th birthday.

Mr. FASCELL. Mr. Speaker, I yield to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, I thank the gentleman from Florida very much.

Mr. Speaker, I am pleased to join in this tribute to our colleague, CLAUDE PEPPER.

We all go back in our recollections. I can remember as a boy admiring CLAUDE PEPPER.

One other little footnote here, I believe I am correct in saying that no person in U.S. history after having served in the Senate has served as long as CLAUDE PEPPER has in the House, so that he deserves a little footnote in history for those numbers; but it is not those numbers or even the numbers of 80 years for which we really honor him. It is for what those years have represented.

Our colleague, the gentlewoman from New Jersey (Mrs. FENWICK) talked about genuineness, and there is not a phony bone in CLAUDE PEPPER'S body. As I walked over here from the Cannon Building, I thought, how do you really honor someone like CLAUDE PEPPER? I think we really pay tribute to CLAUDE PEPPER by doing two things. One is looking in our own communities and saying, where are the CLAUDE PEPPERS in our communities that we have denied an opportunity to sit on a city council or a county board or whatever the organization might be, who could enrich those bodies as CLAUDE has enriched us here? That is one thing we can do.

The second is to make sure that we move ahead and show concern for people. Medicare, for example, just one minor change would mean an awful lot for a great many senior citizens, and that is to cover dentures, hearing aids, and eyeglasses under medicare; not a huge thing in the Federal budget, a small thing, but an important thing. Those are the kinds of things we need.

I want to thank my colleague, the gentleman from Florida, for setting up this Special Order. We determine whether we are a civilized society, not by how we help the rich and the powerful. It is easy to do that. Any government can do that. We determine whether we are really a civilized society by whether we help people who desperately need

help, who may not even know that we are in session here.

CLAUDE PEPPER has spent his life helping people, helping make us a civilized society. I am personally enriched by having the privilege of knowing and being able to call him a friend. Our House is enriched, our Nation is enriched. We are proud of you, CLAUDE PEPPER.

Mr. FASCELL. Mr. Speaker, I thank the gentleman.

I yield to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, I thank the gentleman from Florida for making this special order possible.

What I have to say is very informal and is based totally on a couple of reminiscences of mine. I recall, the first had to do with CLAUDE PEPPER'S Senate service. The second was with his House service.

A good number of years ago, around 1948, I began to specialize in labor law way down at that time I was in Ft. Worth and later in Dallas and then back to Houston; but I did not know much about labor law, neither did hardly anybody else in the country, because the Taft-Hartley Act had just been passed in 1947. There were not any cases on it but there was a book put out by BNA, sort of a paperback volume that gave the history of the Taft-Hartley Act and it was from that that we interpreted this immensely complicated act.

Well, I did not know CLAUDE PEPPER at that time, but I had to study that book, because it was about all we had. I will tell you what I discovered from studying that book, and that is that there were only two people in the Senate that knew anything about the Taft-Hartley Act. One of them was Senator Bob Taft and the other was CLAUDE PEPPER. Of course, since CLAUDE liked to interpret the act more to my side than Bob Taft did, I was very, very interested in what he had to say about it.

□ 1950

But there was no one who had a fuller understanding of a piece of legislation than the gentleman that we honor today.

The other instance that I recall was in his House service. I was rather young here. I had just gotten on the Committee on Interstate and Foreign Commerce and we were dealing with a very thorny railroad question. The problem to try to accomplish was to prevent a lot of people in the country from being hurt by a strike and a lot of people who were working for the railroad from being hurt by a strike, too. We did not want to get them out on the pavement.

There were a lot of attempts that came out of the committee, there were a lot of viewpoints that came from across the aisle. All of a sudden CLAUDE PEPPER got up at the very opportune moment and offered an amendment which I think, as I recall, extended the waiting period, the cooling period for the strike. It suddenly was taken up by this entire body and passed.

My colleagues know how unusual it is for a person to be able to stand up and just at the opportune moment, and without ever having worked on the bill or lined up all of these special interest groups, to catch that moment and make it meaningful and swing this body.

I have seen that, and that is something that is so unusual that it bespeaks of a man of enormous legislative quality.

So what I am adding to what has been discussed here I think is an ingredient above his great kindness, his great standing as a person whom we all revere, his representation of his folks at home, and yet all of these things I think are also embodied in what I am trying to say here; that is, his enormous ability as a legislator, both in his service in the other body and in his service here.

I know I have seen some lawyers, particularly in criminal court actions, that seem to know exactly when to say a certain word and then the judge dismisses the whole case. CLAUDE PEPPER has that same sense of timing for this floor. He has taught me a great deal and I greatly revere and honor him and hold him in highest esteem for my period of having been able to watch his action here. He has taught me a lot and I thank him for it.

Mr. FASCELL. I thank the gentleman.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. I thank the gentleman for yielding because this is an occasion that we must all participate in.

First of all I associate myself with all the remarks of my colleagues which have heretofore been made because, in the first place, that enables me to hold the length of my little discourse down somewhat. Second, it simply is not possible for any one of us to remember even a portion of the good things about CLAUDE PEPPER.

I have a somewhat unique recollection of CLAUDE PEPPER. I just may have known him longer than anybody in this Chamber.

In 1940 during the 76th Congress, and that is a piece back, I was a special agent of the FBI. At that time the Capitol Building had no real police force. The war had broken out in Europe. We were not yet actively engaged in it. But the Architect of the Capitol and the Speaker, I have forgotten his name now, Speaker Bankhead, then Vice President, the one from Texas with the eyebrows, "Cactus Jack" Gardner, formed a police board and they sent down to the FBI and asked Hoover to send up a few agents to guard the Capitol because they had word that there were some marked people, marked men in the Senate and in the House who were going to get shot. One of them was CLAUDE PEPPER. He did not know it, but he knows it now.

So believe it or not, J. Edgar Hoover sent up two of us. I took the Capitol from that white stone in the middle of the Rotunda all the way through the Senate, and Herbie Brund, a friend of mine, took the Capitol from the white stone in the middle of the Rotunda all the way through the House. We were supposed to protect these 17 Members of Congress from assassination.

So he did not know it at the time, but I followed CLAUDE PEPPER around day in and day out and seldom let him out of my sight.

But I was enriched by that because I got to watch CLAUDE PEPPER in action over in the other body. That was before he had completed his training and come to the House. CLAUDE PEPPER was a magnificent Member of the other body.

I was particularly attracted because he was a good friend of my boyhood hero, Senator George W. Norris from Nebraska. In fact, they were very much alike. They were always in a fight for one reason or another. They never gave up for any reason whatsoever, and they accomplished a great deal.

Mr. Speaker, you will recall that in 1940 the Spanish Civil War had just been over a few months. Those Americans who had joined the Abraham Lincoln Brigade, and who had gone over to fight with the Loyalists, were somehow or other determined to be "Communistly inclined" or some such thing, and here when they returned to America they were the subject of contumely, opprobrium, hatred, and contempt of various sorts. But not by CLAUDE PEPPER.

CLAUDE PEPPER realized that as Americans they had a right to stand up for what they thought was good and decent in the world. I was so proud of CLAUDE PEPPER, along with Senator Norris, who would get down there on the floor and defend these Americans who did so much in the court of the Spanish Civil War to uphold the cause of people and liberty and freedom. I am happy to remember that less than 2 years later the United States of America was at war with the very people whom CLAUDE PEPPER and George Norris were protecting for having taken part in the war against Fascism from 1935 to 1939. I thank you today for that, CLAUDE. It was great.

But the important lesson is this: CLAUDE PEPPER saw that long ago and it was 2 years later when the Fascists forced us into war against them that the rest of the world recognized it.

Having worked there for a long time and watching this great man, my colleagues can imagine my pleasure on coming to the Congress 10 years ago and having an opportunity to work with, as a colleague, CLAUDE PEPPER. It was one of the great experiences when I arrived in Congress and has been ever since.

We have a little inside joke. I see CLAUDE once in a while and I say, "CLAUDE, I swear I met your father 40 years ago in the 76th Congress." Well, CLAUDE is laughing now. We kind of enjoy that little byplay.

But he has not gotten older. Forty years have gone by. He is wiser, but he is no older. He is still full of it. His whole personality is one of warmth and love and yet he fights like a tiger. For that reason I call him in my mind the tender tiger. That is just what he has been, what he will be.

CLAUDE, you are an old friend, you are a great friend. Everybody in the Congress loves you. We want you to stick around and give us a lot more guidance. There is no one in America, no one man, woman, or child who has not been en-

riched by the fact that you have been here. I thank you.

● Mr. BAFALIS. Mr. Speaker, few States can boast a man with a record of public service to equal that of our colleague from Florida, the Honorable CLAUDE PEPPER, and I am delighted to have this opportunity to join the House in commemorating his 80th birthday.

CLAUDE PEPPER has a record of public service which dates back almost to Florida's beginnings. He began his career as a public servant in 1929 when he was elected to the Florida State House of Representatives. In 1936, he came to Washington as a U.S. Senator and won reelection in 1938 and 1944. He returned to Washington in 1962 as a Member of this body and has been an active, productive leader here ever since.

During that time he has compiled a list of citations and awards for public service virtually unparalleled. But more important, he has served his State and Nation so well, he has set a mark for all of us to aim for.

Few Americans are given an opportunity to be of real service to their country and then usually only for relatively short periods of time. But CLAUDE PEPPER has been of real service to this Nation for more years than many of us have been even aware of the need for public service.

His list of legislative accomplishments is long. His list of service to the people is even longer.

On this, has 80th birthday, I can only join my fellow Floridians in thanking him and wishing him many more years of active service.●

● Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to take this opportunity to pay tribute to my colleague in the House and on the Select Committee on Aging, CLAUDE PEPPER, on his 80th birthday. It is difficult to convey in words the admiration and great respect I have for CLAUDE PEPPER.

CLAUDE PEPPER was a Member of the House when I came to serve my first term, and I have worked with him in various capacities over 14 years now. We have a great Arkansas connection which goes back even farther than that. CLAUDE taught law at the University of Arkansas from 1924 to 1925, and we often discuss that one of his illustrious students was the great William Fulbright, former Senator and chairman of the Foreign Relations Committee. Even now his contemporaries in the Fayetteville area still inquire about CLAUDE.

I believe CLAUDE PEPPER is a statesman in the truest sense of the word. After suffering a defeat at the end of 14 distinguished years in the Senate, a man of lesser mettle might have been satisfied to return to Miami and to a comfortable law practice. Instead, CLAUDE worked hard for another chance to represent the people of Florida—this time in the House of Representatives. He has served a total of 32 years in the Congress and has touched more people's lives than any of us could hope to.

I have come to know CLAUDE best in working with him on the Select Committee on Aging. It has been my good fortune to serve with him since the committee's inception. The committee could ask for no finer chairman, and the elderly could ask for no more dedicated champion of their cause.

I am very proud of the accomplishments of the committee under the leadership of Chairman PEPPER. He successfully lead the fight to abolish mandatory retirement in the public sector and to extend the working lives of employees of the private sector. Under his guidance, the committee held the first national conference on mental health and the elderly and has taken a premier role in organizing the upcoming symposium on cancer research. And, just this year, his tireless efforts culminated in the establishment of a system which would protect unsuspecting elderly people from buying ineffective health insurance policies to supplement their medicare benefits. CLAUDE PEPPER continues to be concerned with the health, nutrition, housing needs, income, and overall welfare of all the people of this country.

It is my sincere wish that you have the happiest of birthdays, Senator, and a future which is as brilliant as your past.●

● Mr. RANGEL. Mr. Speaker, I rise today to join with my colleagues in paying tribute to our great colleague, CLAUDE PEPPER. As he celebrates his 80th birthday, I just would like to take a couple of moments to share with you some of the things that make him a great statesman.

Congressman PEPPER has been in the vanguard of the movement to provide the elderly within our Nation with the tools they need in order to live out their remaining years in dignity and happiness. It was as a result of his leadership that the House of Representatives established the Select Committee on Aging. As chairman of this committee, our dear friend has shepherded through the Congress the bill that raised the mandatory retirement age for most jobs in this land from 65 to 70 years of age. The implications of this major legislation will be seen for many years to come, especially when born during the baby boom move into their "golden years."

I have had the privilege of working with the "Senator" in several areas. I sat on the Select Committee on Crime, where I was able to learn of his compassion for people who are oftentimes neglected by those who attempt to legislate. That committee served as a catalyst for many of the anticrime programs that followed, in that his committee provided the legislative history that was necessary to document the need for the legislation.

At the beginning of the 96th Congress, I assumed the chairmanship of the Health Subcommittee of Ways and Means. In this new role I have again been brought closer to our colleague, as we both attempt to deal with the health problems which confront our seniors. Here again I have seen that the gentleman from Florida does have a full grasp of the issue and is totally committed to working with all groups to see that the Congress does its full share in providing for our senior citizens.

I have enjoyed the privilege of serving with my good friend, CLAUDE. On this your 80th birthday, I wish you well and many happy returns. The country and we here in the House need the benefit of your wisdom.●

● Mr. ANNUNZIO. Mr. Speaker, I am delighted to join my distinguished colleague, the Honorable DANTE FASCELL, in saluting our good friend and esteemed colleague, the Honorable CLAUDE PEPPER, on his 80th birthday.

Congressman PEPPER is the oldest Member of the House of Representatives, and I am honored to have served in the House with him since 1965 and to have benefited from his counsel and advice. He continues to give his best in service to his Florida constituents and to the people of our Nation. His oustanding dedication to high standards is an inspiration to his friends and fellow citizens and his record of excellence and creative accomplishment is most commendable.

CLAUDE began his career in Congress as a U.S. Senator from Florida during the years 1936–50, and was elected to his first term in the House in the year 1962. During his long career he has witnessed some of the greatest moments in the history of mankind and he has experienced, in a very real sense, the triumphs and the tragedies of our Nation.

CLAUDE PEPPER, as chairman of the Select Committee on Aging, has also given years of outstanding service to our senior citizens. He is dedicated to the well-being of every senior citizen in America. He is our watchdog, in the Rules Committee and on the floor of the House, on legislation that involves the concerns of senior citizens. CLAUDE PEPPER seeks the best for those people who were responsible for the building of America. I often have heard him say, "This is the least we can do for those who have done so much for America."

I have known CLAUDE PEPPER since 1948. I met him at the Morrison Hotel in Chicago in that campaign where he electrified the audience with his brilliant speech on the programs of the New Deal and how they involve each and every American. He has never lost that zeal and that fire as a champion of all the people by espousing that it is good and it is right for people to share in the wealth of America, because he believes that a productive citizen is what makes a Democratic country like ours strong. He firmly believes that each citizen who has produced for America and who has contributed to the wealth of America must be remembered by America in the twilight of their lives.

Again, CLAUDE, congratulations on this honor, and I extend to you my warmest best wishes for abundant good health and ever-increasing success as you continue to serve your State and your Nation in devotion to high principle.●

● Mrs. HOLT. Mr. Speaker, CLAUDE PEPPER has served in the Congress of the United States with honor and conviction. We have marvelled at his old fashioned oratory and delighted in his Southern wit. For unflinching commitment to civil liberties and passionate support for the

aged, this octogenarian has earned our unwavering respect. For service to his country we pay him tribute.●

● Mr. FORD of Tennessee. Mr. Speaker, it is indeed an honor to join my colleagues in a tribute to an esteemed Member of this House, Chairman CLAUDE PEPPER.

Mr. PEPPER is an extraordinarily dedicated, capable, and hard-working colleague, who has gained the respect and admiration of each House Member with whom he has served.

Over the past years, he has carved out a unique role in Congress, and has distinguished himself nationwide as a fighter for human rights and justice for all elderly Americans. Long before assuming the chairmanship of the Aging Committee, he has been in the forefront of legislative battles to provide programs and services needed by the elderly, especially the poor elderly.

He has helped to make history as well as legislate it. Chairman PEPPER was instrumental in the passage of the mandatory retirement bill which added dignity to the working life of the elderly. He is a constant leader in the struggle to secure full physical and mental health coverage under medicare for the elderly. Under his leadership the Aging Committee has accomplished much toward bringing to the surface and alleviating many hidden problems of the elderly, and it is a real honor for me to serve on the Select Committee on Aging with him.

I am honored to add my birthday salute to Chairman PEPPER. I wish him much joy and happiness on this his 80th birthday.●

● Mr. OTTINGER. Mr. Speaker, today, CLAUDE PEPPER, my distinguished friend, Rayburn neighbor, and colleague, celebrates his 80th birthday. In his more than 30 years of congressional service, Mr. PEPPER has served in the finest traditions of our political system and the Democratic Party. The city of Miami, the State of Florida, and the United States should be proud that they have been represented by such a distinguished public servant.

During his tenure in the Senate, Mr. PEPPER helped maintain the ideals and programs of the New Deal. Later, he worked to prepare our country to confront the growing Nazi menace in Europe.

As a nine-term representative of the 14th Congressional District in Miami, he has fought to protect the elderly, fight crime, and develop a more productive economy. He has been an important voice on the Rules Committee and a true ally of humanitarian causes. His leadership on the Select Committee on Aging has made a significant difference in the quality of life for older Americans.

Not only has his record of service been exemplary, but his sense of humor and vigor have earned the admiration of both political friends and adversaries. Anyone who has heard CLAUDE tell a fascinating tale or joke must surely share my great respect for his warmth of character.

On his 80th birthday, CLAUDE PEPPER stands as a model to all of the senior citizens of this country. He is living proof that "age is a state of mind." One need only observe CLAUDE to realize why he has fought so hard to raise the mandatory retirement age.

Today, I join my colleagues in sending good wishes to CLAUDE for a most enjoyable birthday and many more successful years in Congress.●

● Mr. HUGHES. Mr. Speaker, it is a privilege and pleasure to join with so many of my colleagues in the House of Representatives to wish our good and beloved friend, CLAUDE PEPPER, a most happy birthday.

CLAUDE PEPPER has enjoyed a rich and rewarding career in both the Senate and House. In this respect, the Senate's loss is most assuredly, the House's gain.

When CLAUDE PEPPER left the Senate after a long and distinguished career, he could have rested on his laurels, practiced law and enjoyed the good life but that is not CLAUDE'S style. Public service is just too important to him.

Always a champion of the less fortunate, CLAUDE PEPPER has done more than anyone in either body of Congress to advance the cause of the Nation's elderly.

His awesome talents and energies have been directed toward advocating the rights of the elderly and he has proved to be a most able advocate indeed. I think that one reason he has been so successful in improving the quality of life for older Americans is the fact that he is not a 35-year-old social scientist but a shining example of maturity and wisdom. The list of legislative achievements including ending mandatory retirement on the Federal level is a long and impressive one. Yet he has only begun to fight.

CLAUDE has often said that some day he will retire. He likes the sound of the year 2000. I, for one, am skeptical that this will ever happen.

CLAUDE, let me wish you all the best on this special occasion and may you have many, many more.●

● Mr. LEHMAN. Mr. Speaker, I am pleased to join with my colleagues in honoring CLAUDE PEPPER on the occasion of his 80th birthday. We are all grateful for the many years of public service which CLAUDE has given to his country.

Most of my colleagues are well aware of the important role CLAUDE PEPPER has played in championing the cause of the elderly and standing up for other disadvantaged groups in this country. I would like to honor him also for his courage and foresight during his years as a U.S. Senator.

He was President Roosevelt's point man in the Senate on major foreign policy initiatives. He recognized the threat to world democracy posed by the Axis powers at a time when America was steeped in isolationism.

Without CLAUDE PEPPER'S courageous efforts, there would not have been a lend-lease program. Without his leadership, congressional approval of Roosevelt's decision to exchange destroyers for bases would not have been forthcoming.

This exchange was extremely controversial in 1940 and 1941. It supplied the British with 50 U.S. destroyers while the United States gained bases in places like Bermuda and the Bahamas. Today most scholars agree that the destroyers were instrumental in saving Great Britain from the might of Nazi Germany. This action also put the United States on record as supporting the cause of Great Britain and the many countries which Hitler had ruthlessly conquered.

These were critical decisions and CLAUDE PEPPER was not afraid to press for what he thought was right. World War II became the proving ground for U.S. world leadership, and I believe that we would not have as great a country today if it were not for CLAUDE PEPPER'S magnificent contributions as a U.S. Senator.●

● Mr. SEBELIUS. Mr. Speaker, I would like to join my colleagues in paying tribute to our distinguished Member from Florida, the Honorable CLAUDE PEPPER on the occasion of his 80th birthday.

CLAUDE PEPPER has not only been an inspiration to his fellows in the Congress, but has been the champion of senior citizens throughout our great country. Because of his efforts, many Americans have been able to remain on their jobs and not be forced into retirement at the arbitrary age of 65. CLAUDE PEPPER knows what an up hill battle older Americans have to face. He has served almost half his congressional career after his 65th birthday.

Congressman PEPPER is truly an example of a man with courage and stamina. After having served in the U.S. Senate from 1936 through 1950 and being defeated in that year, he went home to Miami. Ten years later, CLAUDE PEPPER was back on Capitol Hill, representing his district in the House at the age of 60. And now, 20 years later, he is still among us and celebrating his 80th anniversary.

I know I speak for the entire House when I offer my best wishes and many happy returns of the day.●

● Mr. PREYER. Mr. Speaker, I am happy to join my colleagues in hailing CLAUDE PEPPER'S 80th birthday.

After all the praise heaped on him, CLAUDE must know how a pancake feels after the syrup has been poured over it.

I will not add much more to all the great things said about CLAUDE'S remarkable career, but I did want to mention one side of his career that might otherwise be overlooked. That is the significant role he has played through the years in the Inter-Parliamentary Union.

He has played this role with his usual flair, exuberance, and warmth. He makes great speeches not only on the stump in the United States but also before representatives of Parliaments and Congresses of the world. He has been a superb ambassador of good will for our country. When he speaks, it makes you proud to be an American.

I want my colleagues to know that not only our country, but the world, loves CLAUDE PEPPER.●

● Mr. RATCHFORD. Mr. Speaker, it is with a sense of deep pride and great respect that I join my colleagues in the House today in honoring our distinguished colleague, CLAUDE PEPPER, as he celebrates his 80th birthday.

In the midst of these hectic final weeks of the session, it is most fitting that we

pause today to pay tribute to the senior statesman from Florida. As chairman of the House Select Committee on Aging and as the foremost advocate for older Americans in the House, we all marvel at the strength and the vitality which CLAUDE PEPPER brings to the Congress as he reaches this landmark 80th birthday. He serves as a continuing source of inspiration to all of us, and offers a living testament to the importance of his work on behalf of our older Americans.

As a member of Chairman PEPPER's Select Committee on Aging, I am struck by the sense in which my distinguished colleague has shaped and strengthened the role of the select committee in the House, defining a mandate for the committee which has placed it at the heart of the legislative process. Under his most able leadership, the select committee provides an essential focus on the needs of older Americans, a focus sorely lacking prior to the start of Chairman PEPPER's tenure as ranking member of the committee in the 95th Congress. Chairman PEPPER has already forged a record of commitment and accomplishment in the field of aging which will be long remembered in the halls of Congress and throughout the Nation.

The achievements of Chairman PEPPER in this Congress alone demonstrate the profound impact which he has had on legislation to improve the quality of life for older Americans. Chairman PEPPER has fought to insure adequate funding levels in this difficult year for elderly nutrition projects and emergency fuel assistance, both of which offer the most basic necessities to older Americans in need. He has championed changes in the medicare program which render home health care a meaningful alternative to institutionalization and he has led us through the first steps of a Federal response to the serious problem of fraud and misrepresentation in the sale of medical insurance supplementing medicare. Following the major policy theme of his successful effort to raise the mandatory retirement age from 65 to 70, Chairman PEPPER brought our attention to the problems associated with mandatory retirement for airline pilots and directed the National Institutes of Health to investigate relevant medical evidence in this important area. Finally, Chairman PEPPER won approval for fare discounts for older Americans on the AMTRAK system as a means of increasing ridership while meeting the real transportation needs of older Americans.

This list of achievements is only a glimpse of our colleague's outstanding record of service in the Congress. Chairman PEPPER's leadership in the field of aging is beyond dispute, and his fingerprints are to be found on virtually every major piece of legislation affecting the lives of older Americans. He continues to force us to look at the difficult questions of growing old—of how to provide an adequate income in retirement years, of how to meet the burdensome health care needs of an aging population, of how to provide opportunities for a life of dignity and security for our older Americans. Chairman PEPPER has come to serve as both our heart and our conscience, and in so doing he has earned our deepest respect.

Mr. Chairman, I am most honored to have the opportunity to join in this tribute to CLAUDE PEPPER as he celebrates his 80th birthday. I know I am joined by all of my colleagues in the House in wishing him many more years of health and service in the 1980's.●

● Mr. HOLLENBECK. Mr. Speaker, I join with many of my colleagues today to honor a man who has dedicated most of his life to public service—our distinguished colleague from Florida, CLAUDE PEPPER. On the occasion of his 80th birthday, it is indeed my honor to commend the gentleman for his long and outstanding service as a Member of Congress.

Along with holding a crucial position on the House Rules Committee, CLAUDE was the "driving force" behind the establishment of the House Select Committee on Aging. As a member of this committee I have had the privilege of serving with Chairman PEPPER for the last 2 years and have seen firsthand his sensitivity to issues affecting the aged. His strong leadership as chairman of the Aging Committee has led to the raising of the mandatory retirement age from 65 to 70 for most employees. Today, he still is a leader in the fight to abolish mandatory retirement altogether. His experience in Congress and his dedication to the service of this Nation serves notice that older Americans can and do contribute to the wealth of this country. It is therefore fitting that on his 80th birthday, we as Members of this body extend our best wishes and congratulations to CLAUDE and wish him continued success in the years to come.●

● Mr. OBEY. Mr. Speaker, I would like to share in this special order on behalf of our colleague, CLAUDE PEPPER.

CLAUDE PEPPER's service to the American people is probably unparalleled by anyone serving with him in this body today. He has been a voice for progress, humanity, and decency in Washington for over 40 years.

I will never forget appearing with CLAUDE on a platform in Chicago in 1976 when he and I received awards from the National Council of Senior Citizens. Without notes he gave a speech that was a model of clarity, humor, and emotional power. He is probably today the best stump speaker of anyone in the House of Representatives.

The Nation is fortunate that CLAUDE has used that gift for good purposes.

I wish him well for many years to come.●

● Mr. REUSS. Mr. Speaker, I am delighted to join my colleagues in extending the happiest of birthday wishes to our friend and colleague, CLAUDE PEPPER, who today celebrates his 80th birthday. His career, first in the Senate and since 1962 in the House of Representatives, has been one of the most distinguished in the history of Congress. I think, in particular, of his vigorous leadership as chairman of the House Select Committee on Aging, and his successful efforts to restrict mandatory retirement, so that people will have the choice of whether they want to work or to retire.

Chairman PEPPER is further proof that energy and ability are not limited by age. His experience is invaluable to us, and I hope that we will have the benefit of his service for many years to come. Happy birthday.●

● Mr. DOWNEY. Mr. Speaker, it is with great pleasure that I add my wishes to those of all my colleagues on the occasion of Chairman PEPPER's 80th birthday.

When I first came to Washington and joined the Aging Committee I was 25 years old—the youngest Member of the House of Representatives, and CLAUDE PEPPER was 74. Many things have changed since then. I have gained knowledge and insight from my association with the "Senator," and I have watched him inveigle and cajole Members into supporting legislation he believed in.

Eighty years used to seem very old to me. After working with my energetic colleague I know that these years can be fruitful and exciting. Looking back on these last 6 years, the list of major legislation that CLAUDE PEPPER is responsible for is very impressive. No longer is retirement at age 65 mandatory and, as I know from our long association, retiring at that age can be a significant loss to the employer and employee alike. Senior citizens no longer have to fear scare tactics when buying extra medical insurance to supplement medicare coverage. Chairman PEPPER's medigap bill will go a long way in saving older Americans needless fear and disappointment.

Again, my congratulations to the "Senator" and my best for the healthy and happy career I know still lies ahead.●

● Mr. WAXMAN. Mr. Speaker, I am honored to join with my colleagues in paying tribute to CLAUDE PEPPER on his 80th birthday. His career in Congress spans two generations; his legacy will last for generations to come. This great milestone in his life is not merely a personal one. It holds significance for all Americans. CLAUDE PEPPER's record of public service extends to so many areas—such as criminal justice, foreign policy, and environmental protection—but he is rightfully known as the champion of the rights and needs of our millions of senior citizens.

As chairman of the Select Committee on Aging, CLAUDE PEPPER has continually brought national attention to bear on the critical issues facing our elderly. His sole motivation has always been a firm belief that our Nation must live up to its commitment to the elderly to meet their needs in housing, health care, employment, and social services. There is no stronger or more determined voice in Congress on behalf of our senior citizens than CLAUDE PEPPER'S.

At age 80, CLAUDE is a living testament to his greatest legislative achievement: The increase in the mandatory retirement age from 65 to 70. No other issue has greater relevance to the question of recognizing the ability of senior citizens to remain active in their later years—to continue to have lives that are rewarding, challenging, and productive.

More than half of CLAUDE's congressional career has occurred since his 65th birthday. Both the country and Congress would have been far poorer had an arbitrary barrier of age stood between CLAUDE's desire to serve the public and his eligibility to do so.

CLAUDE PEPPER was one of my heroes long before I ever was elected to Congress. It has been especially gratifying to have him as my chairman on the Select Committee on Aging. He is a courageous leader, an extremely sensitive and compassionate man, a committed individual, and a truly inspiring figure.

I extend my very best wishes on his birthday, and look forward to continuing to serve with him in the future.●

● Mr. JOHNSON of California. Mr. Speaker, it is a pleasure and an honor for me to join in paying tribute to my good friend, CLAUDE PEPPER, on the occasion of his 80th birthday.

Birthdays are times to reflect on the past and to anticipate the future. With CLAUDE PEPPER, both of these pursuits are pleasant undertakings. CLAUDE can look back on some 63 years of public service and tens of thousands of people whose lives have been made better by his work.

CLAUDE can look forward to even greater service in the years to come. He can look forward to providing inspiration to old and young alike.

Our older citizens will see in CLAUDE PEPPER an example to follow for continued productivity. They will see a living argument against manadatory retirement as this great American continues to lead an active life of leadership in the U.S. House of Representatives.

For the young, CLAUDE PEPPER will inspire early and lengthy involvement in public service, since he began teaching school at the age of 17 and was elected to the U.S. Senate at the age of 36. His life provides a fine model for any young person to follow.

Like old wine on the table, old wood in the fireplace, and old friends for companionship, CLAUDE PEPPER has gotten better and more effective as the years have passed. We can look forward to many more years of solid contribution from this great American. I look forward personally to his continued friendship and his leadership, and I wish him the happiest of birthday celebrations.●

● Mr. CONYERS. It is a privilege to join my colleagues in the special orders honoring a dear friend and esteemed colleague, Representative CLAUDE PEPPER.

CLAUDE PEPPER has brought distinction to both the Senate and the House since the beginning of his legislative career in 1936. His dedication to public service and his particular legislative accomplishments in the fields of health care and matters concerning older Americans is unrivalled. He has brought to his work a rare intelligence, judgment, and experience which is and always will be an example for us all. As he celebrates his 80th birthday, he should know that we expect and look forward to many more years of his service and guidance.●

● Mr. GUDGER. Mr. Speaker, I have had the privilege of serving with the distinguished gentleman from Florida in this 96th Congress on his Select Committee on Aging. I feel fortunate to have had the opportunity to work with this remarkable patriot, who was elected to the U.S. Senate the same year I graduated from high school. CLAUDE PEPPER has so much political experience that this two term Congressman can but marvel.

I am sure of this. All Americans can be more comfortable in their awareness of the inevitability of advancing age, because of this man's efforts to improve the status and living conditions of our senior citizens. His dedication to their cause is tireless, his vision for their future unfading, and his progress toward that goal relentless. Who could help but be inspired by the Senator, who while approaching this the 80th anniversary of his birth likes to tell us that his concern for senior citizens stems from the fact that someday, he too might become elderly.●

● Mr. BENNETT. Mr. Speaker, today we celebrate Congressman CLAUDE PEPPER'S 80th birthday. In the "Almanac of American Politics" it is said of him that he is "the grand old man of Florida politics." The "grand" part of that statement rings true in my estimation. Chronologically, CLAUDE is an "old" man because he was born 80 years ago but in every other way he is young. Certainly he is young in spirit, mind, and soul.

He is a pleasure to be with, always. His oratory is the best in Congress and his many well achieved honors for accomplishments as a statesman, should, I guess put one in awe of him. But his warm friendship, easily extended and there for the asking, make every minute with him a pleasure.

I am honored today, as the chairman of the Florida delegation in Congress, to pay not only my own tribute to him but to do this for all of the Florida delegation in Congress.

Every Member of Congress loves this great man for his leadership for human rights, his fight against crime, and for the aged, and for better health conditions in our country. He is a magnificent leader and we are all so glad that he stays among us to continue his battles for what is best for America and for mankind. Congratulations CLAUDE.●

● Mr. RINALDO. Mr. Speaker, I would like to take this opportunity to pay tribute to our esteemed and distinguished colleague CLAUDE PEPPER, who today celebrates the 80th anniversary of his birthday.

I want to express my own personal admiration for the fine example he has set during his more than 30 years of service in Congress, first in the Senate, and since 1962 in the House. Congressman PEPPER has won the plaudits of his colleagues for his unselfish and unswerving devotion in serving his fellow Americans.

While Representative PEPPER has sponsored a plethora of legislation over the years that somehow touches all of us, I believe that some of his most important legislation is aimed at benefiting and protecting our senior citizens. As chairman of the House Select Committee on Aging, he is keenly aware of the needs of our elderly, and has consistently sought to meet the needs.

He was responsible for a law providing for the voluntary certification of insurance policies supplementing medicare to protect the elderly against insurance frauds. He introduced legislation authorizing the congregate housing program, which allows senior citizens to receive the necessary support services to remain independent, and he was the author of the Older Americans Act to provide social services to the elderly in an organized and effective manner.

This is just the beginning of an endless list of outstanding services Representative PEPPER has provided America. He is a man of rare talent whose representation will be cherished long after he has left the service of his country.●

● Mrs. HECKLER. Mr. Speaker, this is a very special day for our colleague from Florida and a very special day for us. It is CLAUDE PEPPER'S 80th birthday today—a time for him to celebrate his many years of achievements and outstanding service in both the House and the Senate. It is a special day for us because we have this opportunity to express our gratitude and appreciation for one of the kindest and most able persons to ever grace these Chambers.

I feel very fortunate because I have had the chance to work with CLAUDE on legislation geared to the needs of senior citizens. This special area requires insight and sensitivity. CLAUDE has both qualities. Add to this CLAUDE'S own special brand of enthusiasm, charm, and wit and you have an unbeatable combination—which describes our colleague who today celebrates being 80 years young.

Ralph Waldo Emerson described an institution as the lengthened shadow of one man. I am sure we would all agree today that if we had to name one man who has cast his shadow on the institution of Congress in the most salutory and productive way, we would come up with the same name—CLAUDE PEPPER. May all good wishes and gifts come to him on this birthday. His enduring presence is a gift to a nation and to us.●

● Mr. VAN DEERLIN. Mr. Speaker, perhaps we do CLAUDE a disservice by calling attention to his birthday. His constituents never would have guessed that this man is 80.

I find it difficult to accept myself. Twice I have had the pleasure of traveling overseas with our Florida colleague—first in the Scandinavian countries, later in mainland China. On both trips our party remained no longer than 2 days at any stop; combined with jet lag, the brisk schedule left many younger Members weary. But CLAUDE PEPPER seemed to defy nature. When the rest of us were ready to collapse, he would often be leaving us for his own private inspection of a housing complex for the elderly, a children's hospital, or a farm commune.

On hearing criticism of congressional "junkets," I often wish voters could get a look at Congressman PEPPER in action.

The man's legislative achievements, of course, are legendary, spanning both

Houses of Congress and a career interrupted by a dozen years' absence from our legislative halls. Doubtless his greatest legacy will prove to be the new liberation he has won for elderly Americans through his Select Committee on Aging.

At this point, Mr. Speaker, I feel a conflict of interest. I expect to be leaving this body long before CLAUDE does—and I very much want him to stay on the job, protecting the interests of us retired folk.●

● Mr. PICKLE. Mr. Speaker, over its two centuries of existence, this great body has been blessed from time to time with exceptional Members who mark the pages of history—and our daily lives—by their wisdom and their compassion. In that league stands the House's own Senator, CLAUDE PEPPER. His life has spanned over one-third of the history of this Republic. But his reputation and his impact stand for all time. He is a Conscience to this House, reminding us always of our ultimate duty—concern for the people. He is an able legislator who never deviates from the highest code of fair play. He is a gentleman. And, today, on his 80th birthday, I am proud to have this opportunity to honor the distinguished member from Florida, Senator PEPPER, the Grand "Old" Man of the House, who remains young in his outlook, young in his energy, young in his enthusiasm, and young in our hearts and minds. His courage is well known. From the stormy days of the New Deal, through the controversies of the 1950's and back again into the fray in the 1960's and 1970's, he has never shied from battle or betrayed his own beliefs. It is fitting that this Congress commemorates its first year of a new decade with a new decade of service from one of its greatest and most beloved Members.

Senator PEPPER—and his late and beloved Mildred—were as loved and respected as any couple who ever served in this body. As a member of the 88th Club I can vouchsafe that Mildred and CLAUDE PEPPER brought happiness and love to every Member. CLAUDE PEPPER is doing that today.

On a personal basis, the Senator from Florida and I have joined in many a Pickle-Pepper bill, or amendments. We feel we have been progressive and helpful. I treasure my relationship with this outstanding gentleman.

I join many others in wishing Senator PEPPER a most happy birthday.●

● Mr. DERWINSKI. Mr. Speaker, it is a special pleasure for me to join this afternoon in wishing our colleague, CLAUDE PEPPER, much happiness on the occasion of his 80th birthday. CLAUDE has earned a great deal of respect from both sides of the aisle for his warmheartedness and for his outstanding legislative abilities. We all appreciate the great inspiration and guidance that he gives us.

On a number of occasions, I have traveled abroad with CLAUDE in connection with our assignment with the Interparliamentary Union, and I can attest to his excellent diplomatic representation of the United States and as being an effective voice of our foreign policy.

It is a pleasure to join in this special greeting to a very fine human being and a very loyal public servant to the people of Florida and the country. Thirty-one years in any career is a landmark, but CLAUDE has done more than put in his time. He has helped to make history by serving his country well. His great spirit and zest have impressed all of us who have had the opportunity to serve with him.

I extend my warmest wishes and sincere congratulations to CLAUDE on this memorable occasion. Best wishes for many more years of good health and service to your country.●

● Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in the House of Representatives in honoring CLAUDE PEPPER, my neighbor in the Rayburn Building, who is celebrating his 80th birthday today.

At 80, CLAUDE has given a total of 32 years of his life in service to the people of Florida and of the Nation in both Senate and House.

Presently the oldest Member of the House, CLAUDE PEPPER has served fully 15 of his 18 years in the House after reaching age 65, supposedly the "going out to pasture" age.

His leadership in raising the mandatory retirement age for most jobs in the United States has affected profoundly America's life and working patterns. It would be a fitting legislative memorial for most Members of Congress, but for CLAUDE, it is just the first of many more to come in his brilliant career.

I send best wishes for health and happiness to "Senator" CLAUDE on his 80th birthday.●

● Mr. WAMPLER. Mr. Speaker, I wish to extend my warmest birthday greetings to my friend and colleague, CLAUDE PEPPER. I have enjoyed serving with him since the 90th Congress. During those years, I have watched CLAUDE become a legend in his own time. We have worked together, hand in hand, on the Select Committee on Aging since it was created in 1974.

Under CLAUDE's leadership, we have seen age discrimination virtually eliminated, home health become a reality, and the Older Americans Act touch millions of lives daily through the expansion of nutrition programs and senior centers. He is truely an advocate for the well-being of our Nation's growing older population.

CLAUDE's commitment to making life better for all Americans and his success as a legislator and an orator have made him a true statesman of the people. I am honored to have him as my friend and wish him many more happy birthdays.●

● Mr. ROYBAL. Mr. Speaker, it is with great personal pleasure that I extend congratulations to the Honorable CLAUDE PEPPER on the occasion of his 80th birthday.

Clearly, Mr. PEPPER's record of achievement during his many years of service in the U.S. Congress has been extraordinary. As a member of the Select Committee on Aging, I have had the opportunity to work closely with Mr. PEPPER and can bear witness to his deep concern for the people of this country and his tireless efforts on their behalf. This concern has been evident ever since Mr. PEPPER's election to the U.S. Senate in 1936.

Even when many of his colleagues became disillusioned with F. D. R. and the New Deal, CLAUDE PEPPER had the courage to defend both the President and his domestic policies. This unpopular stand, as well as his ahead-of-the-times devotion to civil liberties earned him the nickname "Red Pepper" and cost him his Senate seat in 1950. Many people would have settled down to lucrative positions as consultants or lobbyists, but this was not the course that CLAUDE PEPPER chose. His great devotion to and concern for the people of this country led him to the House of Representatives in 1962. And this body has definitely benefited from his return.

I will not try to recount here CLAUDE PEPPER's long and impressive list of accomplishments. We all know of his successful efforts against crime and for the benefit of the elderly. Among his greatest accomplishments was passage of the bill raising the mandatory retirement age for most jobs from 65 to 70. This legislation will influence and improve the lives of the people of this country for generations to come.

Once again, I salute CLAUDE PEPPER on yet another great accomplishment. Happy 80th birthday, CLAUDE, and many more to come.●

● Mr. BROOKS. Mr. Speaker, I would like to join with other Members in honoring our esteemed colleague, the Honorable CLAUDE PEPPER on his 80th birthday. He has always been a great friend and a champion for the elderly and I look forward to continuing to work with him on his many, many efforts to improve the living conditions and economic situations of our senior citizens in the future.

Happy birthday, CLAUDE.●

● Mr. BRINKLEY. Mr. Speaker, I wish to join in this birthday salute to our friend and colleague. CLAUDE PEPPER, an uncommon man and outstanding American.

From humble origins in Alabama to the pinnacle of public service in Florida and the Nation, this man never forgot his beginnings, nurtured in principle and sustained by commonsense.

We learned to appreciate him even more deeply by the insight gained when he spoke on several occasions at the weekly prayer breakfast.

His concern for the aged, his urgent interest in cancer research, and his commitment to fairplay put CLAUDE's report card at the top of the class.

Hats off to him and happiest of birthdays.●

● Mr. FUQUA. Mr. Speaker, September 8, 1900, was an auspicious date. On that day, on a farm near Dudleyville, Ala., our distinguished friend and colleague, CLAUDE DENSON PEPPER, was born. In the 80 years since that date, CLAUDE PEPPER has accomplished enough to last three lifetimes and he is still going strong. It would take far too long to try and list

all of his accomplishments. His record of public service began in the Florida State House of Representatives in 1929 and includes 14 years of service in the U.S. Senate (1936–50) and service in the U.S. House of Representatives which began in 1963 and continues.

CLAUDE has always been in the public eye. He has sacrificed a private life in order to serve with selfless distinction. Throughout his career he has been the recipient of many awards and citations and he recently, very graciously, has announced that he will donate his public papers to Florida State University.

I think more than anything, as we say "Happy Birthday" to our dear friend, we should recognize the important work he is doing today. After giving so much of himself to his country. CLAUDE PEPPER continues to do outstanding work as chairman of the Select Committee on Aging. His committee is directly responsible for much of the good legislation approved by Congress in recent years to insure the rights of older Americans and, by serving as an example himself, he has demonstrated that age is no barrier. Nobody can look CLAUDE PEPPER in the eye and say to him someone is "too old" to get a job done or to make a valuable contribution. CLAUDE would simply stare back at you with his sharp, keen eyes and tell you that it's what is in the mind and in the heart that counts. I urge my colleagues to join me in pausing today to say "Happy Birthday, CLAUDE," and may you enjoy many more years of fruitful service.●

● Mr. ADDABBO. Mr. Speaker, I would like to take this opportunity to offer birthday congratulations and pay tribute to one of the finest public servants this Nation has ever known, my distinguished colleague CLAUDE PEPPER of Florida who today is celebrating his 80th birthday.

I have known and worked with CLAUDE PEPPER for many years and have come to the conclusion that there are few men in Washington who are as respected and admired than he. He is respected, admired, and loved because of the work he has accomplished and for the fine gentleman he has always been. I consider him one of the most valuable Members of Congress today and certainly the most likeable. He has proven that to reach the age of 80 is not the time to sit back and watch others take care of business, with his seemingly endless supply of energy and vigor all too often putting colleagues 20 years his junior to shame.

He has been involved in the enactment of countless pieces of legislation but I consider his tireless work on behalf of the senior citizens in this country to be his greatest accomplishment. His bill which raised the mandatory retirement age for most jobs in the United States to age 70, as well as his outstanding work as chairman of the Select Committee on Aging are two examples why many believe he has done more for the senior citizens of this country than any other member in recent memory and I am confident he will continue to represent their views.

On this, his 80th birthday, I wish him the very best for many more happy and healthy years to come and I will continue to look forward to serving with him.●

● Mr. LENT. Mr. Speaker, it is a great pleasure and distinct honor to joint in this well-deserved tribute to our most distinguished colleague from Florida, the Honorable CLAUDE PEPPER, on his 80th birthday.

What a record of public service our colleague has established during those 80 years. He has held a public office in seven of the eight decades of this century. He has served 14 years in the U.S. Senate and 18 years in the U.S. House of Representatives. His nine terms as a Member of this body alone establish him as one of the most experienced Representatives, outranking the vast majority of his colleagues.

This truly unique record of outstanding public service would, by itself, be sufficient to deserve the outpouring of admiration, affection and respect in which we are joining today. But, Mr. Speaker, the greatest tribute we can pay to CLAUDE PEPPER is to acknowledge the fact that in his eighth decade, he is among the most active Members in our legislative deliberations, both in committees and on the floor. Especially is this true in his work as chairman of the Select Committee on Aging, where his legislative studies and proposals have done much to benefit older Americans.

Furthermore, Mr. Speaker, CLAUDE PEPPER has never allowed the work of his Select Committee on Aging to become a partisan matter. Although I sit on the opposite side of the aisle from the gentleman from Florida, I can testify that he and his committee welcome legislative sugestions and give them careful consideration with not the slightest partisan constraint.

Mr. Speaker, if anyone ever deserved the title of Mr. Senior Citizen, U.S.A., it is our distinguished colleague, the Honorable CLAUDE PEPPER, who in his 80th year continues undiminished his productive and beneficial legislative career.

I know that my colleagues join me in the wish that our good friend will continue to offer us the benefits of his outstanding intelligence, his persuasive, articulate speaking abilities, his experience in public service, and, above all, his tremendous youthful enthusiasm, for many years to come.

A happy birthday to Mr. Senior Citizen, U.S.A.●

● Mr. CARTER. Mr. Speaker, I am pleased to join in wishing a happy birthday to one of my good friends and one of this body's most distinguished members, our colleague from Florida, CLAUDE PEPPER.

Few men have served as ably and honorably as has CLAUDE PEPPER in the U.S. Congress, nor won the admiration of so many. He is a gentleman and a fervent advocate of what he sees as right, especially as it relates to health matters and to that group of Americans for whom he has become a special supporter and role model, our senior citizens.

Fourscore years is a long time for the Lord to allow anyone to serve on this Earth. Like the good and faithful servant, CLAUDE PEPPER has used his years and his God-given talents to the fullest. May he have many, many more years in which to serve the people of Florida.

I wish the very best to a gentleman and a friend; it has been an honor and a privilege to have served with him. Happy birthday, CLAUDE.●

● Mr. GREEN. Mr. Speaker, today is the 80th birthday of one of our most distinguished colleagues, Representative CLAUDE PEPPER. As a longtime Member of Congress and one who once served in the Senate, Mr. PEPPER has demonstrated a tremendous commitment to the public he serves, and I would like to take this opportunity to express my great respect for Mr. PEPPER personally, and admiration for his career of service to our Nation.

As a member of the Select Committee on Aging, which Mr. PEPPER initiated, and of which he is chairman, I have had the opportunity to work with Mr. PEPPER on several issues which affect the seniors of our Nation. He has worked tirelessly toward the passage of legislation which seeks to eliminate the mandatory retirement age entirely, and has made an effort to promote programs which seek to make seniors full-time, participatory members of our society. Senior citizens as a group have been and are now productive contributors to our well-being as a nation. Mr. PEPPER has made an effort to restore dignity to the elderly and to allow them to participate in all aspects of our activities as a nation.

Mr. PEPPER himself is a senior who has demonstrated a capacity for productivity which should be an example to us all as we consider legislation which affects our Nation's elderly population. Throughout his long career, he has shown a commitment to the Nation and to the elderly which is admirable. His service should be an example to us all of the valuable contributions which seniors can make, and of the extent to which older Americans who care, and who have committed themselves, can perform.

I would emphasize my deep respect for Mr. PEPPER, and to extend to him my wishes for a joyful 80th birthday, and many more to come.●

● Mr. O'BRIEN. Mr. Speaker, I wish to extend my deepest personal congratulations to my distinguished colleague, CLAUDE PEPPER, as he celebrates his 80th birthday today.

Senator PEPPER should feel great achievement on this day because he has reached a very special point in his life. The fact that he is the oldest Member of the House of Representatives and has served almost half of his congressional career past the age of 65 is also cause for much pride.

At age 36, Senator PEPPER began his career as a young Senator whose Southern style and devotion to civil liberties earned him the name "Red Pepper." This name still holds true today as Senator PEPPER has fought continuously for legislation to benefit the aging.

His fight to raise the mandatory retirement age and to possibly get rid of mandatory retirement altogether will give many the choice of whether they wish to retire or to continue working.

Senator PEPPER has been called "the grand old man of Florida politics," and

on his special day I would like to say with great respect that this man has touched the hearts of many who have come to know him.

Again, I wish him only the very best in the years to come.●

Mr. FASCELL. I thank the gentleman from California. I think his last remarks there as well as everything else he said about the man we honor here today, CLAUDE PEPPER, very thoroughly summarizes what needs to be said or should be said about CLAUDE PEPPER.

I want to say to the gentleman from California (Mr. DANIELSON) that I might just add to his remarks by saying that CLAUDE has also created a problem all of the time that he has been here and it has made it tough for the rest of us because he has either thought of it or already done it. I do not care what the problem is, we will find that CLAUDE PEPPER has been out there somewhere on that problem, and I do not care how far we go back. But it exemplifies the kind of service that he has not only given but continues to give. Age does not mean a thing. It is certainly not any barrier, not in his case, that is for sure.

CLAUDE, I just want to say here as we conclude this special order this evening that you can tell from the remarks of your colleagues who are here, and I can tell you from the many, many remarks which have been put into the RECORD, which I know you will cherish, the esteem that all of us have for you which is very sincere, very earnest and it most certainly has been earned by any criteria or measurement or standard.

□ 2000

To have that kind of acknowledgement from your peers at any point in life has to be one of the most satisfying things that any individual could have. Goodness knows you have made enough sacrifices and you have given enough time to everybody and everything.

I must say I would imagine right now that you must feel kind of warm about all the good things that have been said and I think rightly so. They were well-deserved, CLAUDE. We all join in congratulating you on a remarkable life of achievement in these past 80 years. We wish you all the best for many, many more years and we just want to be around to celebrate them with you.

GENERAL LEAVE

Mr. FASCELL. Mr. Chairman, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on behalf of our honored and distinguished guest here this evening.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Again, Mr. Speaker, I want to thank the distinguished gentleman from Georgia for deferring his special order tonight so that we could pay proper homage and tribute to a great American.

THE CONCEPT OF GOVERNING AND THE CONCEPT OF ACCOUNTABILITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGRICH) is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I want to take this opportunity to talk about the concept of governing and the concept of accountability in American Government and the notion that the Congress is, in fact, run by teams. Individual Members may have an impact on American history, but the real effect and the real ability to change the laws by which we are governed and the Government which provides goods and services to the American people is inherent in a team system.

Mr. Speaker, I certainly want to talk about an event which will take place next Monday, September 15, which I think will be a unique event in American political history and which I hope will set a precedent for future efforts to communicate to the American people the nature of team government and the concept of working together in a way that is accountable.

Next Monday, September 15, all of the Federal candidates for election and reelection in the Republican Party will be gathered on the Capitol steps to talk with the American people as a group, to offer a unified hope for real change, to create a covenant, a solemn pledge to achieve certain goals, to say in effect, "Give us a chance to govern and we will give you a chance to improve the quality of your life."

We will specifically indicate in a legislative platform what an executive branch and legislative branch working together under Republican control can attempt to do.

When this event occurs on September 15, the news media will undoubtedly focus on the substance of the pledges: What precisely did we Republicans choose; what precisely do we promise?

I would suggest that the pledges are not the real story. The real story is the gathering of all Republican Federal candidates in the Nation's Capital. It is a first in American history. The first time that the candidates for Federal office in both the legislative and executive branches have gathered from around the country in an act of unity and commitment.

The real story is that this is a major invention in the political process comparable to the invention of the National Convention system in the 1840's or the rise in the British political partv's central office by Disraeli in the 1860's.

The real story is that this is the first step toward a de facto constitutional amendment that will give us accountable party government by giving us accountable party campaigns and accountable party records.

To appreciate how breathtaking this gathering on the steps is, we have to look at the American political tradition with which it breaks.

Our Founding Fathers' greatest fear was the tyranny of centralized power. They focused on the Whig tradition dating from the English civil war. Their grievances were with the strong Hanoverian kingship of George III.

Our Founding Fathers believed that power inevitably tended to concentrate and lose accountability. They feard the aloofness and uncontrollability of a monarch. They equally feared the raw passion and the violent swings in public opinion of democracies. As a consequence, the Founding Fathers invented an amazingly intricate and balanced system for the division of powers. They designed a system which is, frankly, engineering rather than philosophy, which sets out, in a series of very precise steps, ways for achieving goals they believed in, in this case, the goal of dividing power.

The other body is elected for 6 years, the Presidency for 4 years. They decided one branch should remain permanently scared and thus the House is elected every 2 years and is permanently accountable and permanently required to return home.

Not only were the three institutions elected for different periods, they represent radically different constituencies. The President speaks for the Nation, the other body speaks for States but the House speaks for individual constituencies, for people, and that is why early in its career the House was referred to as the people's body, the People's House. Having set up different schedules and different constituencies to guarantee that every interest was heard and every argument considered, the Founding Fathers then distributed power and legal responsibility in such a way that they had to cooperate to get anything done.

Not only could each branch check the other, but without all three agencies, the other body of the House and the Presidency cooperating, nothing was possible. This centrifugal system balanced against centripetal responsibilities diffused power and responsibility among all three agencies. While requiring teamwork to accomplish anything, it makes teamwork very difficult to achieve. As Americans we have wrestled with this problem of diffused power and tried to solve it in several ways over the last 200 years.

We have had strong Presidents such as Washington, Jackson, Theodore Roosevelt, and Franklin Roosevelt. We have had periods of congressional domination such as the 1850's and the 1880's. In fact, Woodrow Wilson, in his book "Congressional Government" in the 1880's, argued that since Congress was obviously going to dominate, the Cabinet officers should be Congressmen. He despaired of the Presidency gaining strength and gave up hope that power would ever leave the Congress.

Later, while Franklin Roosevelt led the country and the Congress from 1933 to 1937, his ability to get legislation passed declined dramatically after 1937, and the period of real domestic domination for Roosevelt was a very brief 4 years. In fact, in Richard Strout's collective essays entitled "T.R.B.," he laments the

difficulties of congressional Presidential relations in virtually every Presidency beginning with Franklin Roosevelt during World War II. Strout clearly despairs of our divided system and prefers a parliamentary style of government with clear lines of authority and responsibility.

Many people agree that our system lacks clear mechanisms for governing and for accountability. However, most proposed reforms are milder than Strout's. David Broder in his book, "The Party's Over," argues for a rebuilding of political parties, for a centripetal force that brings us together for responsibility in an institutional sense, for accountability that extends beyond individual careers and individual elections.

A wide range of political scientists including James McGregor Burns, Frederick Sonntag, Manning Dauer, Jack Saloma and others, have urged steps to strengthen the party system. There is a growing consensus that a weak party system leads to irresponsibility, to single issue politics and to domination by special interests. Furthermore, there is a growing belief that personality politics focused on individual candidates heightens irresponsibility and the lack of accountability.

Committee chairman of the governing party disclaim any burden of accountability, even in their own zones of responsibility. They say, "It is my effort to help you and it is other people's efforts that hinder you."

Individual Congressmen hide behind the mountain of incumbency advantages, and shirk the responsibility to bear the burden of governing and to remain accountable for their behavior in Washington. They blame someone else and blaming others becomes the height of incumbency reelection efforts. In effect, "We work for you, but someone bad stopped us."

Even Presidents disclaim responsibility for governing. Three Presidents in a row have blamed Congress for the country's woes. Presidents Nixon and Ford at least have some partisan plausibility in assailing Congress. From 1969 to 1977 we had genuinely divided Government. One party controlled the Congress, the executive branch and the other party controlled the legislative branch.

However, it boggles the mind to have President Carter in effect running against the Congress his party controls. The Democrats currently run the country but cannot admit it. The public is in no mood to reward a governing party for inflation, unemployment, high taxes and a weak defense structure. In fact, things are so bad that for the first time in 28 years the public favors a Republican Congress, according to some major polls.

□ 2010

Yet the reality is that individual Congressmen will be able to hide behind the advantages of incumbency and avoid responsibility. If we had a parliamentary system such as Great Britain's, Germany's, or Japan's, we would see a shift in 1980 of 60 to 90 seats based on the polls, but because of the fragmented nature of our system we are likely to see a shift of, at most, 15 to 30 seats.

The Presidential race reveals an even higher level of irresponsibility and lack of accountability than the congressional branch. President Carter is campaigning for reelection on new programs and new proposals, as though he were the challenger. He is attacking Governor Reagan as though the last 4 years were Reagan's fault. If we have economic decay, it is Reagan's irresponsible policies. If we have a weak national defense, it is Reagan who is dangerous.

The economic program recently announced by President Carter continues the tradition of fantasy and irresponsibility. According to one account, it is the eighth new economic policy in 4 years. Like its predecessors, this eighth edition economic policy has no hope of passing.

Despite 4 years of Democratic control of the White House and the Congress, there are no achievements they can run on. The recent Democratic National Convention illustrated the collapse of responsible self-government. The Speaker of the House was permanent chairman; the chairman of the Judiciary Committee in the other body was the challenger; the incumbent President became the nominee. The Democratic National Convention was in fact the gathering place of America's governing establishment.

However, no observer of that week's convention activities could detect any sense of responsibility or accountability. Everyone had drawn their paychecks, accepted their perquisites, and occupied their positions of power and visibility. Yet, no one wanted to say, "Taxes are high; we did it. Unemployment is rising; we did it. Bureaucracy has grown; we did it. Our defense establishment is falling apart; we did it."

Instead, the focus and the burden of the convention was on a man who had not been in power, had not been in Washington, and was not accountable for the last 4 years. The focus of the convention was as though the dominant governing party of this country were the challenging party. Since irresponsibility is the key to incumbent reelection campaigns, everyone runs away from their own record. Next Monday's gathering on the Capitol's steps is the first step toward rebuilding accountability. It is the first step toward reknitting the threads of party ties and rebuilding the structure of party behavior.

What we will do is simple. Federal candidates for election or reelection from across the country will gather. We will sign a covenant to take five steps to improve the quality of American life. We will, in effect, pledge to pass a set of measures in a joint effort between the legislative and the executive branch that will represent a change of direction for America. We will prove by the very act of standing together that we are a team, ready to govern.

The contrast between the current Democratic Party's inability to govern and our ability to do so will be made evident by contrasting our commitment with their confusion, our unity with their division. We will also focus attention on the reality that America needs more than the White House to govern here. For too many years Americans have focused on the Presidential speeches when it is congressional votes that change laws. If all the Presidential speeches on tax laws in the last 30 years were stacked one on top of the other and analyzed, and if all the votes of the Ways and Means Committee were stacked one upon the other and analyzed, it would be clear to every American where the real power in Government lies. For it is in the votes of the Ways and Means Committee in the House and in the other body that real law is made, not in the Thursday evening press conference or a Saturday afternoon speech by Presidents. Presidents propose—Congress diposes, and only together can they govern the country.

It is time to refocus the public's attention on the Constitution, on the need for joint executive-legislative cooperation. If you want change, you have to change the House and the other body, as well as the White House. However, just electing a party in both branches is not enough. The last 4 years proved that. The same group can in fact claim nominally to be in charge, and yet there is no teamwork. They can all wear the same uniform, and run in opposite directions. You have to also have a commitment to be a team to govern.

The concept of Government is something we have ignored for too long. For to long we focused on the good answer at the press conference, the good explanation of failure, and the glib ability to communicate through television that we mean to do better, that it is not our fault, that no one is in charge. It is time to go back to a basic civics lesson, to pose the great pragmatic American question: Does it work?

If it does not work, as a matter of habit, we should change the people in charge—not just in the White House, but in Congress—and demand of the new people, not just, "What will you do," but also, "Tell us so clearly that we can measure in 2 years whether or not to retain you, whether you have in fact kept your contract."

We intend to pose a simple question for the voter in November. One side has had all the reins of power, and if you like what they have done, you should relect them, but if you do not like the condition of your pocketbook, of your job, of your neighborhood, the condition of the national defense, then you should change the whole team, not just part of the team.

We are also setting up a yardstick for measuring us in 1982. "Should you elect us, look at our covenant and measure our achievements against what we say we will do as a team."

Taken all in all, a national event, attracting all the Federal candidates for the House, the other body, and the Presidency, offering accountability and team effort, a solemn covenant, focusing on the concept of governing, is in many

ways the biggest change in models of government since Franklin Roosevelt, at his peak, developed the strong Presidency. That is what September 15 is all about. The Republican Federal candidates standing on the steps represents a commitment to finding new and more effective ways of making the Constitution work in difficult times.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I think the gentleman has pointed out to us the significance that we hope to establish with respect to our activities on September 15. Whatever the failings that the parliamentary systems of European democracies may have, they are superior to our more loosely knit representative system in one respect: That respect the gentleman has referred to as accountability.

When a British worker goes to cast his vote for his representatives in the House of Commons, there is little doubt in his mind as to which party to hold accountable for the current state of affairs in his country.

But here in our country, where legislators are responsible for myriad constituent services; where regional, State, and ethnic identities are strong; where members of the legislative branch are not structurally tied to the Chief Executive of their own party, the accountability for the current state of affairs tends to be blurred in the minds of the citizenry. At present, with our economy reeling on the brink of chaos, with our national defense posture sagging, and with our continued vulnerability to the whims of foreign oil oligarchs, the members of the majority party are doing their best to further blur the sense of accountability in the minds of the electorate. Parenthetically, I guess I can say that I do not blame them, but really, is that the function of our system?

We members of the minority ought to be heard on the accountability question. Perhaps we have not done a good enough job in the past in pointing out that we have a job to do, to suggest an alternative, to suggest there is a different way to go and suggest that we have the courage and the guts to present that alternative. Members of the minority cannot allow that to go unchallenged because the undeniable truth is that members of the majority party have been marching in lock-step to the orders of their party who currently occupies the White House.

Just today, we found when we discussed one bill that is in the area of regulatory reform, we even had members of the majority party suggest that the major piece of regulatory reform, the regulatory reform bill before the committee I happen to serve on, the Judiciary Committee, has been taken off our consideration and has been held from us for about 6 weeks. Why? Because the White House objected to the fact that we would have really the assertiveness to suggest that there ought to be a legislative veto provision considered. It was not even a one-House legislation veto; it was a two-House legislative veto, and as soon as we adopted that on a very close vote in committee, the words came down from the White House and that was pulled from our committee and has not been seen since.

We were scheduled tomorrow to consider that very important legislation, and mysteriously that particular decision with respect to that committee was changed, and tomorrow we are not going to have that committee meeting and we are not going to go forward with regulatory reform, which the Carter administration has suggested to the American people is one of the things that is important and a priority on their schedule of things.

Even if we do have a lameduck session, which many of us hope we will not have because we do not think it will truly be representative, there is great question whether it would even get on the schedule at that time. So, we have an obligation here, I think, as members of the minority, to point out that we do have a leadership here in the majority party that is in lock-step with the White House and doing its bidding.

According to the 1980 Congressional Quarterly study of congressional support for President Carter, this legislative body chalked up a 76-percent level of support for Carter, in spite of the fact that members of the minority party voted in accord with the President's wishes only 34 percent of the time.

□ 2020

When President Carter wanted legislation to pave the way for the Panama Canal giveaway, his party colleagues in the House were behind him all the way. When Carter pushed the $14 billion Department of Education, his party colleagues were behind him all the way. When Carter opposed one substantive balanced budget proposal after another, his party colleagues in the House were behind him all the way. When Carter opposed attempts to clean up the wasteful and fraud ridden food stamp program, his party colleagues were behind him all the way.

If in fact they were not behind him all the way, he would not have been successful in doing those things, but unfortunately we, the members of the minority, have not done a good enough job of making that clear to the American people. But I truly wonder how many of these positions the members of the majority will boast about when they return home to hit the campaign trail. My guess is very few, perhaps none of them, because the positions are, in and of themselves, indefensible.

There are members of the majority party, I know, who chalked up levels of support for Carter approaching 80 percent, yet they are already going back to the people in their districts and trying to paint a picture of themselves as ardent foes of Jimmy Carter's excesses.

We of the minority have an obligation not to allow this to be done. We cannot allow them to get away with it.

We did not vote for these spending measures. We did not put obstacles in the way of meaningful tax relief. We did not support the gradual dismantling of our national defenses.

On so many occasions some of the leaders of the majority say that there is only one purpose for the minority party here, and that is to form a quorum, which is a backhanded way of saying that they want to take responsibility for the decisions that are made in this House. If that is the case, then they ought to accept the responsibility for the failures.

We do not say this for the sake of partisanship; we say this for the sake of our Nation, because the Nation will be benefited when we have both parties joined in debate about issues that are important to the American people.

To succeed, however, this message must clearly be brought home to the American people. They must know that, like the British worker voting for his representative in the House of Commons, they have a clear choice. They have a clear choice between the team that is responsible for the present state of affairs and the team that has ardently and very, very strongly worked to reverse the situation.

The majority team is to blame, and once the American people hear and understand the truth of that message, they will say to them, as Cromwell said to Parliament some three centuries ago:

> You have sat here too long. No good has been done by it. Depart, I say, and let us have done with you. In the name of God, go!

Mr. Speaker, I thank the gentleman for yielding.

Mr. GINGRICH. Mr. Speaker, I thank the gentleman from California (Mr. LUNGREN) for his comments, and I yield back the balance of my time.

AMENDMENTS TO THE RAIL ACT OF 1980

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ECKHARDT) is recognized for 15 minutes.

● Mr. ECKHARDT. Mr. Speaker, this is in pursuance of my promise on the floor last Friday to notify you exactly what my substitute will be when offered at about 1 p.m. on Tuesday, September 9.

First: The major substance of the substitute remains unchanged. It will include exactly the language that was first printed in the Record on July 1, 1980, p. 18046, regarding striking of surcharges and inserting a requirement that new divisions of joint rates be decided

speedily by the ICC. Furthermore, the substitute on surcharges will contain no new material that has not hitherto been published. The only addition will be the acceptance of the Staggers-Rahall-Lee-Loeffler amendment provisions concerning the Rock Island and Milwaukee Railroads. I have all along indicated that I favor the labor protection provisions but I had not thought they were germane to title III until the chairman ruled on Friday that these provisions are germane to title III. Since it is so pressing that these emergent problems be taken care of, I think it desirable to remove them from controversy by placing them in my substitute.

To summarize, the major difference between the Eckhardt substitute and the Staggers, et al. amendment in the nature of a substitute is as follows: The Staggers amendment in the nature of a substitute would wipe out the action of the House taken on July 1 affecting the Eckhardt amendment which provided a 160 percent of variable cost threshold for ICC jurisdiction. Acceptance of the Eckhardt substitute would retain previous action on title II.

The Staggers amendment in the nature of a substitute would retain the surcharge provisions of section 301. It would not give reasonable or substantial relief to the shortline railroads from these provisions. It leaves in effect a surcharge provision by which shortline railroads may be forced to reduce their own rates in order to make a joint rate viable when a larger railroad has imposed a surcharge unilaterally. That is the effect of section 301 which the Eckhardt substitute would strike. Some 60 shortline railroads support my amendment because they feel they may be forced out of business by their larger railroad associates in joint rate situations.

Section 301 must also be considered with section 502 of the bill because a line which is subject to a surcharge then becomes vulnerable to de facto abandonment by ICC under these provisions of title V.

My amendment would substitute for section 301 of title III—which permits surcharges—the provisions of the Senate bill that expedite ICC action in reviewing joint rate agreements. This provision, which is the gravamen of my amendment, was printed in the RECORD on July 1, 1980, and was reinserted by Mr. FLORIO in the RECORD of September 5, 1980.

Thus, to summarize, the amendment:

First, leaves the previous action on title II alone;

Second, strikes out surcharges and substitutes expedited ICC procedure; and

Third, provides for saving the Rock Island and Milwaukee Railroads.

Mr. Speaker, I wish to insert here letters in support of my substitute from consumers, farm and labor groups and the joint letter of Senators MCGOVERN and DOLE encouraging my removal of the surcharge provisions of the bill.

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., September 4, 1980.

DEAR REPRESENTATIVE: H.R. 7235, the "Rail Act of 1980," is once again scheduled for consideration by the House on September 5. Support for the Eckhardt-Rahall amendment is strong and has been growing to include many consumer groups since its July 24th passage.

Consumers need your support of this amendment, which will serve as protection against imminent railroad monopolies that will drive smaller lines out of business, allow for discrimination against certain ports, force captive shippers to pay exorbitant rates and cost consumers millions of dollars. If Title 3 remains intact, railroads will acquire the power to surcharge at their discretion. Conrail alone has stated its intention to increase in excess of 285,000 rates.

The Rahall-Staggers-Lee compromise recently offered fails to protect consumers, captive shippers, and small railroads. A report submitted by the Public Interest Economics Center to the Federal Railroad Administration clearly substantiates these concerns as well as numerous other undesirable consequences that will materialize without inclusion of the Eckhardt-Rahall amendment as accepted on July 24.

The amendment has been incorporated into the Rail Bill, illustrating Congress' concern for consumer protection. The Consumer Federation of America urges you to continue supporting the Eckhardt amendment, and oppose the Rahall-Staggers-Lee "compromise" which will negate all virtues of the original Eckhardt-Rahall amendment.

STEPHEN BROBECK,
Executive Director,
Consumer Federation of America.

CONSUMER ENERGY COUNCIL OF AMERICA,
Washington, D.C., September 4, 1980.

Re: H.R. 7235 The Rail Act of 1980

DEAR REPRESENTATIVE: The House is once again considering H.R. 7235, The Rail Act of 1980. The Consumer Energy Council of America, a broad based coalition of major national consumer, labor, farm, public power, rural electric cooperative, urban, senior citizen and low income organizations urges you to support all aspects of the Eckhardt amendment—including those already adopted, and to reject the Staggers-Rahall amendment, which is a major step backward.

The bill, as amended on July 24, 1980, provided the minimum protection that consumers of heavy bulk commodities such as coal and grain deserve. Coupled with the other provisions of the Eckhardt amendment, which would protect small railroads and ports, the bill would strike a balance between shippers, consumers, and railroads. The Staggers-Rahall amendment is not a compromise in any sense of the word and it would remove the protection for the consumer, which the House has already voted.

We urge you to reject the Staggers-Rahall amendment and vote for the Eckhardt amendment which would prevent dramatic, inflationary increases in coal and grain prices. Should the Eckhardt amendment fail, we urge you to vote against the bill.

Sincerely,

ELLEN BERMAN,
Executive Director.

NATIONAL FARMERS UNION,
Washington, D.C., September 8, 1980.

Hon. BOB ECKHARDT,
U.S. House of Representatives,
Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: I am directing this letter to you because of the information I have received in regard to your concern over rail deregulation legislation—H.R. 7235.

As the Senate acted on this legislation, we were closely associated with Senator George McGovern, and he provided us with the leadership that established Farmers Union's position on the Senate-passed bill. We are still in consultation with members of his staff and are being guided as to our attitude on H.R. 7235.

We are very pleased to find that you apparently have been exercising leadership into some of the problems that this legislation would create for rural and farm America. We have serious problems with Section 301, and we understand that you also are attempting to amend the legislation to prevent defacto abandonments of rural branch lines through excessive surcharges that this section authorizes.

It appears that other members may have problems with the legislation, particularly with regard to how it would affect rural agricultural shippers. Irrespective of the problems with other provisions of the bill, H.R. 7235 is unacceptable to the Farmers Union unless Section 301 can be amended to prevent the problem that we have indicated above.

I would deeply appreciate it if you share our concern, as I understand you do, that you would make opposition known to other members of the House when the bill comes up for debate and vote. I would also appreciate having your response as to other action we could instigate to make known our views if you have any suggestions.

Best regards.

Sincerely,

REUBEN L. JOHNSON,
Director of Legislative Services.

THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA,
Washington, D.C., September 4, 1980.

DEAR CONGRESSMAN: The Seafarers International Union of North America, AFL–CIO, urges your support for an amendment to the Rail Act of 1980 that will be introduced during upcoming deliberation on the House floor. The amendment to be offered by Congressman Eckhardt is required to correct deficiencies in the legislation that would adversely affect the livelihood of SIU members throughout the country.

Congressman Eckhardt will offer language to amend Section 301 which deals with joint rate surcharges. This section, as presently drafted, would allow major rail carriers to arbitrarily cancel both joint rates and through rates. It also would lift the restraints of Interstate Commerce Commission regulations on unreasonable and discriminatory rail rates. These actions would result in the loss of jobs for SIU members who are employed by small line railroads in various port cities.

Congressman Eckhardt's amendment to strike Section 301 will correct this problem by substituting the language contained in Section 107 of the Senate version of the bill. This proposed amendment would provide protection to shippers and short haul railroads alike by maintaining existing recourse through ICC review of all joint rate surcharges and divisions.

We strongly urge your support for this amendment because it will insure that marine workers engaged in rail-related cargo movements will not be unfairly treated

through the imposition of arbitrary joint rate surcharges.

Sincerely,

FRANK DROZAK,
President.

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, D.C., September 5, 1980.

Hon. BOB ECKHARDT,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: As you well know, the House is expected to vote on the Rail Act of 1980, next Tuesday.

The new compromise proposal is a subject of great concern to many of us representing agricultural states. During the development of the Senate rail deregulation legislation earlier this year we worked hard with the Senate Commerce Committee to include provisions in the bill to protect captive shippers from excessive rates and accelerated abandonments.

The Senate bill as passed contains many of these provisions while allowing railroads increased regulatory freedom. We are deeply concerned, however, that the House version of this bill will create serious hardships for shippers and agricultural producers through dramatically increased rates.

We recognize that House compromise proposal contains acceptable general rate provisions which are in some ways similar to those contained in the Senate passed version. However, the House section pertaining to joint rates and surcharges could be devastating to thousands of shippers across the country, particularly those located on branchlines, as well as adversely impacting a number of bridge carriers that transport agricultural commodities.

Surcharges imposed by one carrier and affecting the traffic of another, can have serious financial consequences for the second carrier. Given the marginal nature of several "bridge" carriers, the surchage and joint rate provisions could result in additional rail bankruptcies or financial crises requiring increased federal assistance. Yet this deregulation proposal was initially predicated upon the need to allow railroads to regain their financial health in the marketplace, thereby reducing their dependence on the Federal treasury.

Moreover, the doubling of a rail rate through surcharges on a given commodity and line can result in de facto branchline abandonments.

Such surcharges, as authorized in the House bill, would result in substantial diversion of traffic to less energy efficient transportation modes, thus creating an atmosphere that would facilitate abandonment proceedings.

We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agricultural products through increased food prices.

Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provisions of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Sincerely,

ROBERT DOLE.
GEORGE MCGOVERN.●

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 10 minutes.

● Mr. NEAL. Mr. Speaker, I am submitting to the House today a notification on the U.S. Export-Import Bank's proposal to provide $150 million in loans and guarantees to help finance the purchase of five American-made Lockheed L1011–500 jet aircraft by Transportes Aereos Portuguese (TAP), Portugal's national airline.

The total value of the five jetliners, plus related spare parts and services, will be $250 million, so the Eximbank will be financing or guaranteeing 60 per cent of the purchase price. The Portuguese Government, which owns TAP, will guarantee payment of the airline's indebtedness under the Exibank financing.

This notification was referred to me as chairman of the Banking Committee's Subcommittee on International Trade, Investment and Monetary Policy. Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, requires that the Eximbank notify Congress of proposed loans or financial guarantees, or combinations thereof, of $100 million or more. Unless the Congress determines otherwise, the Exibank may give final approval to the transaction after 25 days of continuous session of the Congress following notification.

I am submitting for the RECORD at this time a copy of the Eximbank notification giving the terms and details of the proposed financing. I would welcome any comments or questions my colleagues might have on this proposal.

The Eximbank material follows:

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. STEPHEN L. NEAL,
Chairman, Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Finance and Urban Affairs, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

THE SPEAKER OF THE HOUSE,
The Speaker's Room,
H–209, U.S. Capitol,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Portugal.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $150,000,000 to Transportes Aereos Portuguese (TAP), Lisbon, Portugal. The purpose of the Eximbank Financing is to facilitate the purchase in the United States by TAP of five new Lockheed L–1011–500 jet aircraft and related spare parts and services. The total U.S. export value for this transaction is estimated to be $250,000,000.

2. Identity of the parties

(a) TAP

TAP, established in 1944, is Portugal's national air carrier and provides scheduled and charter service on both domestic and international routes. It is 100% owned by the Government of Portugal.

(b) Guarantor

The Government of Portugal, acting by and through its Ministry of Finance, will unconditionally guarantee payment of TAP's indebtedness under the Eximbank Financing.

3. Nature and use of goods and services

The principal goods to be exported from the United States are five commercial jet aircraft to be used by TAP on its international routes. The airframes for the L–1011–500's will be manufactured in California by the Lockheed California Company. In addition, other U.S. suppliers will furnish components and spare parts. The engines for the aircraft will be supplied by Rolls-Royce supported by official export credit financing provided by the United Kingdom.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reason

The Eximbank Financing of $150,000,000 will facilitate the export of $250,000,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their sub-contractors are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial aircraft.

The export of the five commercial jet aircraft which are the subject of this letter depends to a significant degree upon the availability of Eximbank support for the medium and long term maturities. Commercial lenders are unable to commit themselves in Portugal at fixed interest rates or for the full repayment term involved in this case, a ten year amortization after a four year delivery period. Therefore, the Eximbank Financing is necessary to provide repayment terms that would make the transaction economically feasible for TAP.

Lockheed estimates that the construction of each aircraft involves 600 man/years of employment evenly divided between Lockheed and its suppliers. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts and related equipment.

2. The financing plan

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$37,500,000	15
Unguaranteed private financing	62,500,000	25
Eximbank financing	150,000,000	60
Total	250,000,000	100

It is expected that forty percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank (Blended Eximbank Financing). The remaining sixty percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

(a) Eximbank Charges

The financial charge on the Blended Eximbank Financing to be paid by TAP will be 8% per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for TAP on July 5, 1979. A commitment fee of 0.5% per annum will also be charged on the undisbursed portions of the Eximbank Financing.

(b) Repayment Terms

The Eximbank Financing and the Unguaranteed Private Financing will be repaid by TAP in two schedules of 20 semiannual installments beginning October 25, 1983 and October 25, 1984. The Unguaranteed Private Financing will be repaid from the early installments of each such schedule.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. ALLEN.

PORTUGAL

Area: 92,072 sq. km.
Population (end 1979): 9.3 million.
Population Density: 101/sq/km.
GDP per capita (in 1979US$): 2,154.

GDP

[In percent]

Expenditure Structure (1979):	
Private Consumption	73
Government	15
Investment	22
Exports	25
Imports	—35
	100
Origin of GDP (1977)	
Agriculture	14
Industry	45
Services	41
	100

	1976	1977	1978	1979 (P)
GDP data:				
Millions of dollars (nominal)	14,821	15,730	16,994	20,028
Growth rate (real) (percent)	6.9	5.3	3.2	4.0
Fiscal and monetary data:				
Government deficit (millions of dollars)	1,585	1,142	1,941	1,981
Deficit as percent of GDP	10.7	7.3	11.4	9.9
Increase in money supply (MI) (percent)	8.4	11.8	14.5	25.9
Savings ratio (percent)	14.3	13.2	16.3	19.7
Price data (percent change over previous year):				
CPI	21.1	27.4	22.1	24.2
WPI	19.2	28.7	31.6	NA
Labor data:				
Wages (monthly earnings) (percent change)	11.9	12.0	11.0	NA
Unemployment rate (percent)	6.9	7.9	8.4	10.0
External debt (millions of dollars):				
Outstanding debt	2,892	4,427	5,420	6,583
Private	1,752	2,488	3,433	3,721
Public	1,140	1,939	1,987	2,862
Debt service ratio (public debt only) (percent)	5.0	6.1	5.3	NA
Total debt/GDP (percent)	19.5	28.1	31.9	32.9
Balance of payments (millions of dollars):				
Exports, f.o.b	1,823	2,027	2,410	3,594
Imports, f.o.b	3,932	−4,533	−4,791	−6,016
Trade balance	−2,109	−2,506	−2,381	−2,422
Tourism (net)	186	268	431	695
Net services	−107	−863	−54	100
Unilateral transfers (net)	972	1,134	1,635	2,472
Of which emigrant remittances		1,174	1,671	2,446
Current account balance	−1,244	−1,499	−800	150
Capital account balance	277	636	760	1,259
Overall balance	−1,967	−863	160	1,352
Reserves (millions of dollars):				
Foreign exchange (excluding gold)	176	366	871	940
Gold (London average price)	3,454	3,562	4,276	12,262

Note: Exchange rate: Escudos/U.S. dollar—1976=31.549, 1977=39.855, 1978=46.010, 1979=49.781.

Sources: I.F.S., OECD Survey, IMF—Recent economic developments.

EXIMBANK EXPOSURE IN PORTUGAL

[As of July 31, 1980]

	Outstanding	Undisbursed
Direct loans	$75,295,058.21	$11,833,288.82
CFF loans	1,128,425.70	1,333,288.82
Financial guarantees	2,658,426,92	
Bank guarantees and other	111,093.95	1,521,280.00
Insurance:		
Medium term	260,637.98	499,959.00
Short term	1,699,026.76	93,543,202.48
Total exposure	81,152,669.52	108,731,019.10

DEFAULTS AND RESCHEDULINGS

In the past ten years there have been no defaults or reschedulings of Export-Import Bank direct credits for U.S. export sales in Portugal.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

THE SPEAKER OF THE HOUSE,
The Speaker's Room, H-209, U.S. Capitol, Washington, D.C.

Dear Mr. Speaker:

Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Mexico.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing to Hylsa, S.A. in the form of loans and guarantees ("Eximbank Financing") of $178,110,000 covering U.S. costs of $151,393,500 and local costs of $26,716,500. The purpose of the financing is to facilitate the purchase in the U.S. for export to Mexico of various equipment and services required for the expansion of the Borrower's integrated steel facilities and port facilities at Tampico, Mexico. The total U.S. export value for this transaction is $178,110,000.

2. Identity of the borrower

Hylsa, S.A. is one of Mexico's leading producers of steel, and a wholly owned subsidiary of Grupo Industrial Alfa, S.A., which is Mexico's largest privately owned and most diversified company. Eximbank's experience with the Borrower has been satisfactory.

3. Nature and use of goods and services

Various items of equipment and services to be used in the expansion of the Borrower's steel port facilities.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank Financing of $178,110,000 will facilitate the export of that amount of U.S. goods and services. U.S. equipment firms are having a difficult time winning jobs against Japanese and European bidders, all of whom offer competitive pricing and financing. Eximbank has been informed by the U.S. suppliers that their backlogs are way down, particularly since there are no major expansions contemplated by U.S. steel plants; thousands of U.S. jobs are therefore dependent in large part upon the ability of the U.S. suppliers to compete for steel mill jobs overseas. Recent OECD exchanges make it clear that Japan and England are supporting financial packages for this project of 85% of fixed rate financing, in addition to 15% of local costs, all at an interest rate of 7.5%. The Eximbank Financing will assist in the generation of some 7,120 jobs in the U.S.

2. The financing plan

The total U.S. and local costs of the project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$26,716,500	15
Eximbank financing:		
(a) U.S. costs	151,393,500	85
Total		[1] 100
(b) Local costs	26,716,500	15
Total	204,826,500	

[1] U.S. costs.

It is expected that the Eximbank Financing for the U.S. Costs will consist of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

a. Eximbank Charges

The financial charges on the Eximbank Financing to be paid by Hylsa will be 8.25 percent per annum, payable semianually, a rate established in a Preliminary Commitment authorized by Eximbank for Hysla on March 6, 1980. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment terms

Hylsa will repay the Eximbank Financing in 20 semiannual installments, beginning on January 10, 1985.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

SOUTH AFRICA'S RACIAL POLICIES

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from Illinois (Mr. STEWART) is recognized for 30 minutes.

● Mr. STEWART. Mr. Speaker, recently, I wrote to the Honorable A. L. Schlebusch, M.P., Minister of Justice for South Africa. In my letter to the Minister I expressed my concern for Mr. Govindsamy Reddy, a political prisoner in South Africa. The Minister responded to my letter on June 10, 1980 and indicated that he was "not prepared to withdraw his (Mr. Reddy's) restrictions at this stage."

In his letter, the Minister also attempted to draw an analogy between the situation in South Africa and "the recent outburst in Miami."

I reject the analogy.

However, I did request the Congressional Research Service of the Library of Congress to review the Minister's letter. I am enclosing the Library's memorandum to me at this point in the RECORD.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., August 5, 1980.

To: Honorable Bennett Stewart. Attention: Coleman J. Conroy.

From: Brenda Branaman, Analyst in African Affairs, Foreign Affairs and National Defense Division.

Subject: A comparison of the racial situation in South Africa and the United States with particular attention to the causes of the Miami, Florida riots.

Both similarities and differences exist between the racial situation in South Africa and that of the United States. The most significant distinguishing feature between them is that South Africa pursues an official separate development policy while the United States in contrast has established legal guarantees of freedom and equality.

Until the early 1950's discrimination against blacks was practiced in both South Africa and the United States through legal measures and by a variety of informal social practices. Since that time the two countries have taken separate paths in the black struggle for equal rights. The United States began to move toward the elimination of discrimination with the 1954 Supreme Court's landmark decision in the case of *Brown* vs. *Board of Education of Topeka* which held that "separate but equal" educational systems are inherently unequal. This decision encouraged a campaign of nonviolent resistance against segregation laws in the South, culminating in the 1963 March on Washington. Subsequently civil rights legislation eliminated the legal barriers to racial equality and the position of many American blacks substantially improved. Problems in the implementation of this legislation continued through the late 1960's and 1970's, especially with respect to those laws which relate to social and economic rights. American blacks, however, now have the power of the vote with which to carry on their struggle, a political tool that continues to be denied to South African blacks.

In 1948 when the South African Nationalist Party came to power the policy of separate development was officially established. Implementing legislation began in 1949 which prohibited marriage and sex across racial lines and continued with a series of legislation that divided the population into racial categories, provided for separate racial residential areas in the cities and established the practice of banning organizations, publications and persons who disagreed with the government's apartheid policy. In 1952 South African blacks and Indians joined together to conduct a campaign of passive resistance to the apartheid laws. In 1956 they were joined in their resistance by the coloreds (those of mixed race). The three groups met to draw up a Freedom Charter, a document which laid down principles for a nonracial democratic South Africa. Authorities severly suppressed these peaceful resistance efforts and blamed the 1952 Port Elizabeth riots on the campaign. The government responded to periodic riots in the following years by passing progressively more restrictive legislation. This legislation established separate educational systems for each racial group, created the passbook system requiring blacks to carry identity documents, made strikes by black workers illegal and prevented black unions from participating in collective bargaining, established job classifications by race eroded the limited franchise previously enjoyed by Indians and coloreds, and established segregation in public places. After the 1960 Sharpville killing by South African police of blacks demonstrating against the passbook system, the government banned the African National Congress (ANC) and Pan-African Congress (PAC) and detained 1,900 people, including some whites. During the following two decades a small number of black leaders turned to violence as a method of resistance but their activities were effectively frustrated by the South African security forces.

The United States experienced its own pattern of violence in protest against economic deprivation and inequality beginning with the Harlem riot of 1964 and the Watts riot of 1965 and continuing through the late 1960's. The Black Panther Party and other separatist groups emerged during this period. They never gained widespread black acceptance, but neither did the ideas of these groups completely disappear. According to some observers the frustration and despair that produced the riots and these organizations in the sixties emerged again in 1980 in the form of the Miami riots.

REASONS FOR THE MIAMI RIOTS

The rioting which occurred in Miami's Liberty City in May 1980 was the immediate result of a number of trials by white juries whose verdicts were perceived as unjust by blacks. The specific case to which the black residents reacted was the McDuffie case. In that case an all-white jury found four white policemen not guilty of charges that they had beaten to death a black businessman. The trial was conducted in an atmosphere of extremely poor relations between the police and the black community. This incident provided only the spark which ignited a much more serious problem.

The underlying reasons for the May riot were frustration resulting from a high employment rate, especially among black youths, aggravated by frictions with Cuban refugees and government cutbacks in social programs intended to improve the quality of life in low-income areas. These conditions exist in other cities across the United States and it is the assessment of many black leaders that racial unrest similar to that in Miami could occur elsewhere in the country.

The Kerner Commission Report released under the Johnson Administration in March 1968 cited the lack of jobs as a factor contributing to violence in American cities in 1967. Some black leaders are saying that the government does not need new commissions to study the causes of riots but that the need is take effective action now. An official of the U.S. Commission on Civil Rights recently commented that all of the causes cited in the Kerner Commission Report were as relevant in 1980 as they were in 1968 and that the government should simply put a new date on it. The White House response to the Miami riot in May was to set up a task force to study the causes of the unrest.

The friction between American blacks and refugees appears to be a problem without a parallel in South Africa. Many American blacks believe that refugees are being hired for jobs that otherwise would be held by blacks. This belief is especially intense among black in Miami, a city which has experienced heavy influxes of refugees from Cuba and Haiti. The other problems underlying the Miami riots exist in South Africa, as well.

COMPARISON OF GENERAL CONDITIONS IN SOUTH AFRICA AND THE UNITED STATES

Legal system. In South Africa the legal barriers to racial equality remain in the forms of an intricate system of apartheid laws enforced by an extensive police and intelligence network. Although de facto discrimination remains in many cases in the United States, legal barriers to racial equality have been removed.

South Africa's system of government is highly centralized, and power is concentrated in the Executive Council consisting of the Prime Minister and his cabinet. This body controls parliament and the judiciary has no power to review legislation. Such a system make it extremely difficult for South African black to work for change through the legal system. On the other hand, American blacks have been able to appeal separately to any one of three branches of the more decentralized American government. They achieved legal changes through both litigation and legislation. Literature of the South African Foundation indicates that the changes made in South Africa within the last five years have come about as a result of executive policy in cooperation with the private business sector.

Focus of change. Since racial discrimination is incorporated into the South African legal system, groups working for change in that country focus their efforts on political and economic issues. The government of Prime Minister Botha has proposed the creation of a President's Council that could consider a new constitution. The council would include whites, Asians and coloreds. He has even indicated willingness to include an advisory role for urban blacks on the Council, but he also has made clear that blacks will not be granted the vote in the near future. Botha has focused most of his reform efforts on economic issues such as jobs and unions and changing petty apartheid laws which segregate public facilities. Some black leaders inside the country accept the idea of economic change and the postponement of political power sharing. But most black activists, both within and outside the country, oppose the "separate development policities of the government, which would channel black political activity into the homelands. These blacks want a unitary state with full political participation as well as economic changes. In short, they want the total elimination of apartheid.

Historically, American blacks have believed that acquisition of political power was necessary to obtain the economic benefits of U.S. prosperity. Consequently, for many years the black struggle for equality focused on obtaining the vote. Since the court decisions and legislation passed as a result of the civil rights movement in the 1950's and 1960's, the legal barriers to racial equality have been removed. The struggle by blacks in the United States now focuses on economic and sociological issues.

Values of society. The American value system includes a belief in political and social equality and equal economic opportunity. These values over time have come to include blacks and other minorities as well as whites. Blacks can therefore appeal to a segment of white public opinion to force a government response in the struggle for equal rights. In South Africa, the value system prevailing among whites treat differences between blacks and whites as divinely ordained and ineradicable. Consequently, there is no substantial element in white public opinion believing in equality of the races to which blacks can appeal.

COMPARISON OF SPECIFIC CONDITIONS IN SOUTH AFRICA AND THE UNITED STATES

This section will look at selected conditions which affect race relations in the two countries. It is not intended to be a comprehensive list.

Education. Equal access to education for blacks and whites remains a problem in both countries. The 1954 *Brown* decision and the 1964 Civil Rights Act promoted school desegregation in the United States as a means of providing quality education for blacks and other minorities on an equal basis with whites. Twenty-five years after the court decision half of all minority children in the United States still attend segregated schools according to the U.S. Civil Rights Commission. Desegregation has been more complete in the rural South than elsewhere in the country. In most big cities public schools remain primarily black because of a white exodus to the suburbs. Quality education has become a concern of black parents and leaders since these schools are producing large numbers of functionally illiterate dropouts and graduates. The Carter Administration has proposed a youth employment program that would attack the problem of illiteracy, a major cause of high minority youth unemployment. Despite these problems, American black participation in higher education has dramatically increased in recent years. In 1976 blacks composed 9.3 percent of the total college enrollment, compared to 11.5 percent of the total U.S. population.

In South Africa 90 percent of the white children attend public schools. The remaining 10 percent are mostly English-speaking students attending private schools run by the Catholic and Anglican churches. These private schools have been allowed limited integration in recent years, but this change has not improved the educational opportunities for the majority of non-white children. School attendance for white children between ages 7 and 16 is free and compulsory. Only since 1976 has schooling been compulsory for black children ages 7 through 11. Unlike whites, black parents must pay fees for tuition, textbooks, and uniforms for their children attending school.[1] During the recent school boycott initiated by the colored children, but later joined by many blacks, Prime Minister Botha acknowledged that there were inequalities in government spending on education for non-white groups and he promised to look into the matter. One of the most prominent inequalities in the segregated school system is the disparity between government educational expenditures on the racial groups.

The government spends 11.5 times more per student on whites than blacks. Until recently the government did not concern itself with this problem, but emphasized growing black enrollment, the growing number of new teachers and new schools. Even so, improvements in non-white school systems seem modest compared to their needs.

Employment/unemployment. In both the United States and South Africa black unemployment is a major problem and a direct result of past inequalities of education and general discrimination as well as the general state of the economy. However, the gap between black and white unemployment is smaller in the United States than in South Africa. In South Africa the level of black unemployment was at least four times as high as white unemployment in 1977. Government figures show 13.0 percent unemployment for blacks and 3.6 percent for whites, but unofficial estimates place black unemployment at between 20 and 25 percent counting underemployment and subsistence farmers in the homelands. In the United States black unemployment is consistently double that of white unemployment. In 1977 black unemployment was 13.9 percent and white unemployment was 6.2 percent. Youth unemployment for both blacks and whites was considerably higher but again figures for blacks are about double those for whites (1978—38.6 percent for blacks, 16.3 percent for whites).

There is a considerable wage gap between blacks and whites in the United States, but it is much smaller than the gap in South Africa. In 1978 the per capita income of black men in the United States was 59 percent of the per capita income of white men. In South Africa black per capita income was only 6.9 percent of white per capita income in 1975—a ratio of white-to-black per capita income of 14 to 1, according to the unofficial South African Institute of Race Relations. In South Africa a majority of black families live below the poverty level, while in 1977 28.2 percent of black families in the United States lived below that level. But poverty may not be defined the same way in both countries.

The United States has a substantial black middle class, partly as a result of the passage of the Civil Rights Act of 1964, which prohibited job discrimination on account of race, religion, or sex. American blacks still experience job discrimination but they have gained access to a number of jobs previously unavailable to them, especially in government (Federal, State and local) and the professions. South Africa on the other hand, has an extremely small black middle class because of a history of legally sanctioned job reservations for white workers. The Botha government in cooperation with the business sector has encouraged the gradual elimination of these job reservations, but recent legislation responding to recommendations of the government's Wiehahn Commission retained the use of "closed shop" contracts to prevent the hiring of blacks.

Freedom of movement. In the United States there have been no legal prohibitions on freedom of movement for blacks since the elimination of slavery. Discrimination against blacks in housing and employment was outlawed with the passage of the 1968 Fair Housing Act and the 1964 Civil Rights Act.

In South Africa, on the other hand, an intricate system of influx control is the mechanism by which the South African government enforces its separate development policy. The government has established nine ethnic homelands where blacks must live unless they are employed elsewhere. If found unemployed in the urban areas, blacks are forcibly returned to their homeland. Blacks who are able to get jobs in the urban areas must carry passbooks which identify them as having government permission to travel, reside, and work there. Large numbers of blacks are arrested each year for passbook violations since they migrate illegally from the homelands to the cities looking for jobs. There are an insufficient number of jobs available in the homelands and overcrowding makes subsistence farming very difficult. The South African government has attempted in recent years to develop industries near the homeland borders, but to date these efforts have failed to alleviate unemployment in the homelands.

Housing. Segregated residential housing exists in both countries but in sharply differing degrees. In the United States the 1968 Fair Housing Act gives blacks who can afford it access to housing on an equal basis with whites. Despite this legislation, discriminatory practices and separate neighborhoods persist, although integrated residential areas are growing. Efforts are being made in 1980 to pass legislation which would strengthen the Federal Government's fair-housing enforcement mechanisms, enabling it to more effectively implement the Fair Housing Act.

In South Africa the Group Areas Act of 1950 authorized the government to designate zones according to race in urban areas. Consequently there are no integrated neighborhoods, and even if a black family can afford to live in a white area it is prevented from doing so by law. Prime Minister Botha announced in 1979 that he was prepared to amend the Group Areas Act, but this has not been done. Urban blacks cannot own land or houses within their townships and are forced to rent, although this law was relaxed in 1979 to allow 99-year leases on land in the townships.

Both countries have problems concerning inadequate housing for low-income blacks. Shanty towns, also known as squatter camps, exist in South Africa, while the United States has inner city slums or ghettos. Both countries have public housing programs which have proved insufficient for the needs of low-income blacks. In both countries these blacks find it difficult to afford decent housing and must often live under conditions of severe overcrowding in unsafe buildings and with poor sanitation. Conditions in the two countries do differ, however. When it became clear that the government would be unable to provide enough units to keep up with the demand, the United States turned to methods other than construction of public housing such as a rent supplement program. South Africa, on the other hand, has continued to rely on public housing as the only solution and maintains a policy of restricting the number of units constructed as a means of encouraging blacks to remain in the homelands. The South African government continues to bulldoze the squatter settlements created by blacks illegally residing in urban areas.

Political participation. In South Africa only whites have the franchise and the privilege of full political participation. Blacks may vote and hold office within their respective homelands but not on a national basis. Asians and coloreds have no vote on a national level but have a limited franchise in selecting advisory councils to the government for their respective groups. In the United States blacks are guaranteed the right to vote. Poll taxes and other discriminatory practices hampered the exercise of this right until the passage of the Voting Rights Act of 1965. Since then, blacks have been elected to more public offices and have increasingly influenced Presidential elections. Currently, however, there are no black Senators.

Political prisoners and police/community relations. The United States has on occasion been charged by human rights organizations with having political prisoners and perhaps the best-known recent case involved the Wilmington 10. Cases involving American Indians have been publicized by Amnesty International. These cases are few in number, and many observers question the validity of charges that they amount to political imprisonment. South Africa, on the other hand, regularly arrests and detains without charge persons dissenting against the apartheid system, whites as well as blacks and other non-whites.

Most recently large numbers of colored school children were detained as a result of their boycott protesting the segregated school system. South Africa also regularly bans persons (legally restricts their movement, contacts, and rights to express themselves) especially blacks, and periodically bans organizations which work for the elimination of apartheid. In recent months several prominent blacks were banned, including religious leaders such as Bishop Tutu. In 1977 a large number of anti-apartheid organizations were banned following a government investigation of the death in detention of Steve Biko. During the 1970's there was a number of unexplained deaths

[1] The government several years ago promised to provide free textbooks for all students through grade 12 by the end of 1979.

in detention—deaths that were alleged by some observers to have been caused by brutal interrogation methods, but described by police as suicides.

Both South Africa and the United States are periodically charged with instances of police brutality. Police/community relations are generally poor in low-income black communities in both countries. Some American cities have attempted to improve these relations through police/citizen liaison groups and by increasing the number of blacks on the police force. Washington, D.C., for example, now has a 50 percent black police force and Detroit's force is more than 60 percent black. Most American cities, however, continue to have low proportions of blacks on their police force. In South Africa there are substantial numbers of blacks on the police force inside the urban black townships, but this does not appear to favorably affect relations between the black communities and the police.

CONCLUSION

A fundamental difference between the racial policies of the two countries exists. The South African government gives legal support to discrimination according to race and takes severe actions against those who dissent against the apartheid system. On the other hand, the United States has over the past 26 years worked toward eliminating discrimination through removal of segregation laws and the passage of laws guaranteeing equality.

Both governments claims that they are moving toward racial equality as quickly as possible, and South African Prime Minister Botha establishes commissions to make recommendations for change and delivers speeches instructing the white population to "adapt or die." American President Carter addresses the NAACP and notes his appointment of federal judges and his actions to curb inflation and proposes such programs and new youth employment program. Although the level of government commitment may be greater in the United States, many blacks in both countries, as well as other non-whites in South Africa, perceive that their respective governments are not moving fast enough to eliminate inequalities between the races. Some among them believe that the actions that have been taken are merely cosmetic and that their governments basically are not interested in creating a genuine equality. Whites in both countries, however, have a different view than non-whites. In the United States many whites believe that all racial barriers have been removed and do not see the need for continued government programs to assist blacks and other minorities. In South Africa large numbers of whites oppose Botha's reforms and it is for this reason many of his announced changes have been difficult to implement. However, some whites in both countries favor programs for equalizing opportunities available to blacks and other groups.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. PORTER (at the request of Mr. RHODES), for today, on account of a death in the family.

Mr. RUSSO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

Mr. RODINO (at the request of Mr. WRIGHT), for today, on account of illness in the family.

Mr. NELSON (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. CORMAN (at the request of Mr. WRIGHT), for today, on account of official business.

Mr. WOLFF, for September 9, on account of official business—Narcotics Committee.

Mr. CHAPPELL (at the request of Mr. BENNETT), for today, on account of official business in district.

SPECIAL ORDERS GRANTED

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

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

Mr. BETHUNE, for 10 minutes, today.

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

Mr. FASCELL, for 60 minutes, today.
Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. LEDERER, for 5 minutes, today.
Mr. ECKHARDT, for 15 minutes, today.
Mr. NEAL, for 10 minutes, today.
Mr. STEWART, for 30 minutes, today.
Mr. CONYERS, for 5 minutes, today.

EXTENSION OF REMARKS

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

Mr. SEIBERLING and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,768.50.

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

Mr. VANDER JAGT.
Mr. CARTER in two instances.
Mr. GREEN in two instances.
Mr. DERWINSKI in three instances.
Mr. LIVINGSTON.
Mr. SHUMWAY.
Mr. LEWIS in two instances.
Mr. COLLINS of Texas in two instances.
Mr. DORNAN in two instances.

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

Mr. BLANCHARD.
Mr. MURTHA.
Mr. SIMON in two instances.
Mr. ANDERSON of California in 10 instances.
Mr. GONZALEZ in six instances.
Mr. BROWN of California in 10 instances.
Mr. ANNUNZIO in six instances.
Ms. HOLTZMAN in 10 instances.
Mr. JONES of Tennessee in 10 instances.
Mr. BONER of Tennessee in five instances.
Mr. ROBERTS.
Mr. PATTERSON in two instances.
Mr. BARNES.
Mr. DRINAN.
Mr. BRODHEAD.
Mr. OBERSTAR.
Mr. RANGEL.
Mr. MAZZOLI.
Mr. FORD of Michigan.
Mr. SKELTON.
Mr. RODINO.
Mr. MARKEY in five instances.
Mr. GIBBONS.
Mr. BEDELL.
Mr. MCDONALD.
Mr. OTTINGER.
Mr. AUCOIN.

ADJOURNMENT

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

The motion was agreed to; accordingly (at 8 o'clock and 23 minutes p.m.), the House adjourned until tomorrow, Tuesday, September 9, 1980, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

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

5236. A letter from the Director, National Institute of Corrections, transmitting the fourth annual report of the Institute, pursuant to 18 U.S.C. 4352(b); to the Committee on Education and Labor.

5237. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of the Federal Republic of Germany for permission to transfer certain U.S..-origin defense equipment to Greece, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5238. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

5239. A letter from the Acting Administrator, U.S. International Development Cooperation Agency, transmitting the annual report on military expenditures by recipients of U.S. economic assistance, pursuant to section 620(s) of the Foreign Assistance Act of 1961, as amended; to the Committee on Foreign Affairs.

5240. A letter from the Records Officer, U.S. Postal Service, transmitting notice of two proposed new records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5241. A letter from the Secretary of the Interior, transmitting notice of the leasing systems to be used in oil and gas lease sale No. 55, Eastern Gulf of Alaska, to be held on October 21, 1980, pursuant to section 8(a)(8) of the Outer Continental Shelf Lands Act, as amended; to the Committee on Interior and Insular Affairs.

5242. A letter from the Secretary of Health and Human Services, transmitting notice of a further delay in the submission of the report on the study of the establishment of a federal system to assist in locating individuals who have been or may have been exposed to hazardous substances to determine the effect on their health of such exposure and to assist them in obtaining appropriate medical care and treatment, required by section 306(l)(3) of the Public Health Services Act, as amended (92 Stat. 3453); to the Committee on Interstate and Foreign Commerce.

5243. A letter from the General Counsel, Department of Energy, transmitting notice of various meetings relating to the international energy program to be held on September 10, 11, and 12, 1980, in New York and on

September 16 in Paris; to the Committee on Interstate and Foreign Commerce.

5244. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting reports concerning visa petitions approved according certain beneficiaries third and sixth preference classification, pursuant to section 204(d) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

5245. A letter from the Comptroller General of the United States, transmitting a report and recommendation concerning the claim of The Brooklyn Times against the United States, pursuant to the Meritorious Claims Act of April 10, 1928; to the Committee on the Judiciary.

5246. A letter from the Secretary of Commerce, transmitting the annual report for calendar year 1979 on implementation of the national voluntary laboratory accreditation program; to the Committee on Science and Technology.

5247. A letter from the Comptroller General of the United States, transmitting a report on progress in improving program and budget information for congressional use, pursuant to section 202(e) of the Legislative Reorganization Act of 1970, as amended (PAD–80–90, August 29, 1980); jointly, to the Committees on Government Operations, Appropriations, and the Budget.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

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

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 1316. A bill for the relief of Kuo-Yao Cheng (Rept. No. 96–1303). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 4139. A bill for the relief of Feeronaih Abbosh; with amendment (Rept. No. 96–1304). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 4778. A bill for the relief of Seung Ja Kim and Lada Kim; with amendment (Rept. No. 96–1305). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 6739. A bill to confer U.S. citizenship posthumously upon Leopoldine Marie Schmid (Rept. No. 96–1306). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. PHILLIP BURTON (for himself, Mr. JOHNSON of Colorado, Mr. SEBELIUS, Mr. LAGOMARSINO, Mr. GUDGER, Mr. REUSS, Mr. JOHN L. BURTON, and Mr. MINETA):

H.R. 8087. A bill to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. GIBBONS:

H.R. 8088. A bill to amend the Internal Revenue Code of 1954 to allow individuals a 50-percent credit for retirement savings and to otherwise encourage, expand, and simplify independent individual savings for retirement; to the Committee on Ways and Means.

By Mr. BUCHANAN:

H.R. 8089. A bill to amend the Internal Revenue Code of 1954 to provide an additional personal exemption for the taxpayer, the taxpayer's spouse, or a dependent, who has a disability requiring the use of a wheelchair; to the Committee on Ways and Means.

By Mr. GINN (for himself and Mr. BARNARD).

H.R. 8090. A bill to amend the Consolidated Farm and Rural Development Act to require that the rate of interest applicable to real estate loans made for irrigation purposes not exceed 7 percent; to the Committee on Agriculture.

By Mr. IRELAND:

H.R. 8091. A bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such act the liability of owners, operators, or charterers of vessels engaged in activities on the Outer Continental Shelf shall be limited to damages attributable to their negligence; to the Committee on Education and Labor.

By Mr. PHILIP M. CRANE:

H. Res. 783. Resolution requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called Stealth technology for military aircraft; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of rule XXII,

525. The SPEAKER presented a memorial of the Legislature of the State of California, relative to the Philippine Scouts, which was referred to the Committee on Armed Services.

ADDITIONAL SPONSORS

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

H.R. 204: Mr. LEACH of Iowa, Mr. TRIBLE, Mr. PETRI, Mr. HUBBARD, and Mr. VANDER JAGT.

H.R. 1785: Mr. WHITTEN, Mr. ALBOSTA, Mr. HARKIN, Mr. KILDEE, Mr. MYERS of Pennsylvania, Mr. GEPHARDT, Mr. ROTH, Mr. HAWKINS, Mr. CLAUSEN, Mr. STENHOLM, Mr. BEREUTER, Mr. RUDD, Mrs. SMITH of Nebraska, Mr. GRAY, and Mr. DASCHLE.

H.R. 1918: Mr. FITHIAN and Mr. GRASSLEY.

H.R. 2542: Mr. LEACH of Iowa and Mr. HARRIS.

H.R. 5099: Mr. MARKEY, Mr. BALDUS, Mr. BONER of Tennessee, Mr. QUAYLE, Mr. PORTER, Mr. DERWINSKI, Mr. FAZIO, and Mr. BOWEN.

H.R. 5305: Mr. LOWRY.

H.R. 5965: Mr. LEHMAN, Mr. DE LA GARZA, and Mr. WYATT.

H.R. 6203: Mr. PEYSER.

H.R. 6472: Mr. DOUGHERTY.

H.R. 6865: Mr. O'BRIEN and Mr. KOGOVSEK.

H.R. 6867: Mr. O'BRIEN and Mr. KOGOVSEK.

H.R. 6906: Mr. TAUKE, Mr. HANCE, Mr. FAZIO, and Mr. GILMAN.

H.R. 7069: Mr. ROE and Mr. FITHIAN.

H.R. 7129: Mr. GRISHAM.

H.R. 7287: Mr. WHITLEY and Mr. HEFNER.

H.R. 7485: Mr. MARRIOTT.

H.R. 7559: Mr. SEIBERLING.

H.R. 7688: Mr. TAUKE, Mr. WON PAT, Mr. BARNARD, Mr. DASCHLE, Mr. ALBOSTA, Mr. DODD, Mr. FITHIAN, Mr. GUARINI, Mr. MOLLOHAN, Mr. HUGHES, Mr. SEIBERLING, Mr. ROSE, Mr. MATSUI, Mr. FLORIO, Mr. SANTINI, Mr. HUBBARD, Mr. PANETTA, Mr. DIXON, Mr. DONNELLY, Mr. PEASE, Mr. HOWARD, Mr. BRODHEAD, and Mr. JENKINS.

H.R. 7704: Mr. SNYDER, Mr. TRAXLER, and Mr. GREEN.

H.R. 7773: Mr. MARLENEE.

H.R. 7781: Mr. LEACH of Louisiana, Mr. MUSTO, Mr. STUMP, Mr. UDALL, Mr. ANDREWS of North Carolina, Mr. CARTER, and Mr. OTTINGER.

H.R. 7793: Mr. WILLIAMS of Montana.

H.R. 7885: Mr. FAZIO, Mr. ROSE, Mr. LAGOMARSINO, and Mr. BOWEN.

H.R. 7891: Mr. BLANCHARD.

H.J. Res. 69: Mr. WOLFF and Mr. YOUNG of Florida.

H.J. Res. 389: Mr. BETHUNE, Mr. TAUKE, and Mr. MOLLOHAN.

H.J. Res. 511: Mr. HUGHES.

H.J. Res. 598: Mr. OBERSTAR, Ms. OAKAR, Mr. DUNCAN of Tennessee, Mr. ANDREWS of North Carolina, Mr. SAWYER, Mr. YOUNG of Missouri, Mr. MAGUIRE, Mr. WOLPE, Mr. MITCHELL of Maryland, Mr. KILDEE, Mr. STARK, Mr. BONIOR of Michigan, Mr. HUGHES, Mr. SIEBERLING, Mr. MOTTL, Mr. FORD of Michigan, Mr. MURPHY of Pennsylvania, Mr. MURPHY of Illinois, Mr. FORSYTHE, Mr. RAHALL, Mr. BENJAMIN, Mr. MURTHA, Mr. FROST, Mr. HOLLENBECK, Mr. FORD of Tennessee, Mr. HAMILTON, Mr. SNYDER, Mr. NEDZI, Mr. ROSE, and Mr. STRATTON.

H. Con. Res. 395: Mr. SIMON.

H. Con. Res. 399: Mr. MURPHY of Pennsylvania, and Mr. ZABLOCKI.

H. Res. 774: Mr. ROSENTHAL, Mr. OBERSTAR, Mr. WEISS, Mr. LOWRY, Mr. HARKIN, Mrs. CHISHOLM, Mr. JEFFORDS, Mr. MATSUI, Mr. DONNELLY, Mr. VENTO, Mr. DRINAN, Mr. SCHEUER, Mr. BONIOR of Michigan, Mr. MINETA, Mr. CORRADA, Mr. WOLPE, Mr. DELLUMS, Mr. FAZIO, Mr. MARKEY, Mr. LEHMAN, Mr. PEASE, Mr. MAVROULES, and Mr. PEPPER.

AMENDMENTS

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

H.R. 7235

By Mr. ECKHARDT:

(Substitute to the amendment of Mr. STAGGERS.)

—Page 125, strike out line 14 and all that follows through line 17 on page 138 (including the material between lines 17 and 18) and insert in lieu thereof the following:

EXPEDITED DIVISION OF REVENUE PROCEEDINGS

SEC. 301. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take the final action by the 180th day after completion of the evidentiary proceedings, except that—

"(A) when the proceding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(B) in all cases other than those specified in subparagraph (A) of this paragraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this subparagraph, it must report its reasons to Congress.".

Page 152, following line 13, insert the following new section:

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 310. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.), shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeals is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out 'and the Milwaukee Railroad Restructurign Act' and inserting in lieu thereof', the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act' ".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(d)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(n)(1) All obligations to the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceleld when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1)(A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out

"$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

By Mr. FRENZEL:

(Substitute to the amendment offered by Mr. STAGGERS.)

—On page 83, line 13 of the substitute, strike "SEC. 328—Loan Guarantees" through page 84, line 5.

And renumber the sections accordingly.

By Mr. LEVITAS:

—At the end of the bill, insert the following new section:

CONGRESSIONAL REVIEW OF PROPOSED RULES

SEC. 804. (a) Notwithstanding any other provision of law, simultaneously with prescribing any rule under subtitle IV of title 49, United States Code, relating to rail carriers (other than a rule relating to rates), the Interstate Commerce Commission shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives, and simultaneously with prescribing any rule relating to rail carriers, the Secretary of Transportation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives Except as provided in subsection (b), the rule shall not become effective, if—

(1) within 90 calendar days of continuous session of Congress after the date the rule is prescribed, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule prescribed by the ———— dealing with the matter of ————, which rule was transmitted to Congress on ————.", the first blank space therein being filled with the Interstate Commerce Commission or the Secretary of Transportation, as appropriate, and the other blank spaces therein being appropriately filled; or

(2) within 60 calendar days of continuous session of Congress after the date the rule is prescribed, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within 30 calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of 60 calendar days of continuous session of Congress after the date on which a rule described in subsection (a) is prescribed, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule, and neither House has adopted such a resolution, the rule may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule may go into effect not sooner than 90 calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a).

(c) Congressional inaction on, or rejection of, a resolution of disapproval under this section shall not be deemed an expression of approval of the rule involved.

(d) For purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 30, 60, and 90 calendar days of continuous session of Congress.

(e) For purposes of this section, the term "rule" has the same meaning such term has in section 551(4) of title 5, United States Code.